

Item No.2:

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Appeal No. 04 of 2019 (SZ)

(Through Video Conference)

IN THE MATTER OF

MEENAVA THANTHAI K.R. SELVARAJ KUMAR
MEENAVA NALA SANGAM

(Registered under section 10 of the Tamil Nadu Societies Act,
in Sl. No.205 of 2015 dated 26.06.2015)

Represented by its President,
M.R. Thiyagarajan, S/o. Late C. Rajalingam,
Office at No.48, 1st Floor, East Madha Church Street,
Royapuram, Chennai – 600 013.

...Appellant(s)

Versus

1. Union of India,
Through the Secretary,
Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhavan,
Jor Bagh, New Delhi- 110 003.
2. State of Tamil Nadu,
Through the Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.
3. Tamil Nadu State Coastal Zone Management Authority,
Through the Member Secretary,
Panagal Building, Saidapet,
Chennai – 600 015.
4. K.T.V. Health Food Private Limited,
Through the Director,
No.7/3, Arul Nagar Salai, Kodungaiyur,
Chennai – 600 018.

5. Expert Appraisal Committee (CRZ)
Through the Chairperson,
Indira Paryavaran Bhawan,
Ministry of Environment, Forest & Climate Change,
New Delhi – 110 003.

...Respondent(s)

For Appellant(s): Sri. Ritwick Dutta along with
Sri. G. Stanley Hebzon Singh &
Sri. K. Mageswaran.

For Respondent(s): Sri. G.M. Syed Nurullah Sheriff for R1& R5.
Sri. S. Kamalesh Kannan for R2 & R3.
Sri. R. Saravana Kumar for R4.

Judgment Reserved on: 30th July, 2020.

Judgment Pronounced on: 30th September, 2020.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

REVISED JUDGMENT

Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The above appeal has been filed challenging the CRZ Clearance granted to the 4th respondent by the 1st respondent

as per Annexure – A1, Proceedings F.No.11-18/2016-IA-III dated 08.03.2019 for the purpose of laying pipeline for transfer of edible oil from Chennai Port to the storage terminal tank and establishment of storage transit terminal at Tondiarpet Village and Taluk in Chennai District.

2. It is alleged in the appeal memorandum that the appellant is an organization engaged in protecting the coastal zone and the welfare of the local fishermen community. When the appellant came to know that the 4th respondent is engaged in making some construction in the CRZ Zone without getting necessary clearance from the authorities, he filed an Original Application as O.A. No.238 of 2016 before this Tribunal and this Tribunal had disposed of the case by Annexure – A4 Judgment which reads as follows:-

“5. In our order dated 18.01.2017, we have directed the 12th respondent to immediately stop its operations carried on at No.1,2 & 3, S.N. Chetty Street, Thondiarpet, Chennai 600 081 and also directed the 6th respondent – Board to ensure that the 12th respondent unit stopped its operations and file status report. Accordingly, the Board has filed the status report dated 14.02.2017 in which it is stated that the Board has issued direction by proceedings dated 31.01.2017 for closure of the unit and stoppage of power supply to the unit. It is also stated that accordingly the power supply to the 12th respondent was disconnected on 07.02.2017. The learned counsel appearing for the 12th respondent would submit that

immediately after the original closure order was passed, the unit was already closed.

6. Be that as it may, now that the unit was closed, we make it clear that no activity shall be carried in the said unit, unless and until MoEF& CC passes appropriate orders in the manner known to law.”

3. It is thereafter, that the 1st respondent had issued the impugned CRZ Clearance to the 4th respondent which is under challenge. It is alleged in the appeal memorandum that the Expert Appraisal Committee (EAC) in its 175th Meeting noted that there are no specific provisions under CRZ Notification, 2011 for considering the proposal for post facto CRZ Clearance. But they recommended the project considering the provisions under EIA Notification, 2006 subject to the following:-

(i) The project proponent shall submit a written undertaking that they shall be liable for restitution of environmental damage, if any, established by any Court of law.

(ii) The project proponent shall submit a copy of the report of the Advocate Commissioner submitted to the National Green Tribunal, Chennai.

4. According to the appellant, the authorities are not expected to draw power from another notification while they are exercising their power under a different notification.

5. Further, the Principal Bench of National Green Tribunal in **S.P. Muthuraman Vs. Union of India** vide Judgment dated 07.05.2015 held that no post facto clearance can be granted. So according to the appellant, the Expert Appraisal Committee (EAC) as per Annexure – A5 should not have recommended the project. Further, no action was taken by the authorities against the 4th respondent under the Environment (Protection) Act, 1986 for the violation committed by them. Further, it is also contended in the appeal memorandum that it is not a permissible activity in CRZ Zone except in notified port. The place where the oil storage terminal was established by the 4th respondent is not within the notified port area but it is outside the port area and not belonging to the port as well.
6. Further, earlier when the application was considered by the Expert Appraisal Committee (EAC) in the year 2016 in its 161st Meeting held on 27.07.2016 as per Annexure – A6 observed as follows:-

“On a query, the project proponent clarified that the facility is located in the custom notified area of Chennai Port, and not within the Chennai Port.

....

The EAC, after deliberations, desired that the Ministry may provide the necessary clarification in respect of permissibility of the activity in the given circumstances”

7. But as per annexure – A7, proceedings of the Expert Appraisal Committee (EAC) namely, 172nd Meeting, the committee has recommended the project noting the following:-

“On a query, regarding location of facility, the project proponent clarified that the facility is located in the Customs notified area of Chennai port, and not within the Chennai Port. The EAC had desired that the project proponent shall submit a site map of the project facility as well as the idle parking bay of single plant duly authenticated by the owner of the property. The Committee, after deliberations, desired that the Ministry may provide the necessary clarification in respect of permissibility of the activity in the given circumstances.

6. On submission of the observations made by the Committee in its 161st meeting, the proposal was again placed before the Committee for its perusal. The committee was also informed of various representations and litigations against the operations/activities being undertaken by the project proponent and in particular the Judgment of the NGT, Chennai in the matter of Application No.238 of 2016. The committee was accordingly informed of the Judgments of the NGT, Chennai dated 18.01.2017 and 23.03.2017 respectively.

7. Based on the clarifications provided by the project proponent and deliberations made, the Committee recommended the proposal for CRZ clearance subject to the following specific conditions...”

8. Further, according to the appellant, the 4th respondent has misrepresented material facts from the Expert Appraisal Committee regarding the availability of area for providing parking facility. In fact, they do not have so much area as

undertaken by them for providing such facility and without verifying the same, the authorities have granted the clearance which is also against law.

9. So according to the appellant, the Coastal Regulation Zone Clearance granted to the 4th respondent is illegal and the same is liable to be set aside and they filed the appeal seeking the following reliefs:-

- (i) *To quash and set aside the impugned 'post facto' CRZ clearance dated 08.03.2019 issued by the Ministry of Environment, Forest and Climate Change to M/s. KTV Health Food Private Limited for the purpose of the laying down the pipeline for transfer of edible oils from Chennai Port to storage terminal tank and establishment of storage transit terminal at Thondiarpet Village and Taluk, in Chennai, Tamil Nadu.*
- (ii) *Direct penal action and enquiry against the responsible officers of the Ministry of Environment, Forest and Climate Change as well as the members of the EAC (CRZ) who completely failed in discharging their statutory duties as prescribed under the CRZ Notification, 2011 by granting the impugned CRZ clearance dated 08.03.2019.*
- (iii) *Pass any other orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present Appeal."*

10. First respondent filed their reply affidavit contending as follows:-

“2. It is submitted that in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule(3) of rule 5 of the Environment (Protection) Rules, 1986, Ministry of Environment, Forest and Climate Change had notified the Coastal Zone Regulation Zone Notification, 1991 on 19th February, 1991, which has been subsequently superceded by the Coastal Regulation Zone (CRZ) Notification, 2011, notified vide S.O. No.19(E) dated 6th January, 2011. That the CRZ Notification, 2011 provides for regulation of developmental activities along the coastal stretches and to ensure the livelihood security to the fishermen communities and other local communities, living in the coastal areas, and to conserve and protect coastal stretches.

3. It is submitted that based on the experience gathered during the course of implementation of the aforesaid notification and request received from concerned State Governments and other stake holders, the said CRZ Notification, 2011 was amended from time to time.

4. It is submitted that vide S.O. No.1002(E), dated 06th March, 2018, in order to bring parity with the EIA Notification, 2006, the Central Government in the Ministry of Environment, Forest & Climate Change have brought an amendment to the extent CRZ Notification, 2011, wherein, the provision of ‘Post facto clearance’ was inserted in the said CRZ notification, 2011.

5. It is submitted that the said activity under scrutiny is a permissible activity and regulated under para No.8.(I)(i)(b), para No.8(I)(ii)(f) and para No.8.II.(vi) of the CRZ Notification, 2011.

6. It is submitted that as per the documents submitted by the project proponent, the system was acquired through SBI

auction from the original party along with liabilities. That the matter was earlier taken up by the Hon'ble Tribunal and vide its order dated 23.03.2017 in Application No.238 of 2016, the Hon'ble Tribunal had disposed of the matter with directions that no activity shall be carried on in the said unit unless and until, MoEF&CC passes appropriate orders in the matter known to law.

7. It is submitted that the project proponent had approached the Ministry of CRZ clearance under CRZ Notification, 2011 and the matter was taken up in several meetings of the Expert Appraisal Committee for projects related to Infrastructure Development, Coastal Regulation Zone, Building/Construction, Industrial Estate and Miscellaneous Projects herein referred as EAC (CRZ) viz. 160th, 161st, 172nd and 175th meetings respectively. That the EAC (CRZ) had recommended for CRZ clearance in its 172nd meeting held on 30.06.2017.

8. It is submitted the Ministry had learnt about the pending matter in the Hon'ble Tribunal and its subsequent order dated 23.03.2017 only during the course of examination of the concerned project file for consideration of acceptance of the recommendation of the EAC (CRZ). That thereafter the answering respondent Ministry had referred the matter back to the EAC (CRZ) and the matter was taken up by the EAC (CRZ) in its 175th meeting held on 07.09.2017. The EAC (CRZ) in the said 175th meeting had reiterated its earlier recommendation for CRZ clearances with conditions that the project proponent shall submit a written undertaking that they shall be liable for restitution of environmental damage (if any) established by any court of law and that the project proponent shall submit a copy of the report of the Advocate Commissioner submitted to the NGT, Chennai.

9. It is submitted that pursuant to the enabling provision as provided by the amendment of the CRZ Notification vide S.O. No.1002(E), dated 06th March, 2018, for 'Post facto

clearance' issued by the Ministry of Environment, Forest & Climate Change and in acceptance of the recommendation of the EAC (CRZ) along with the recommendation for post facto clearance by Tamil Nadu Coastal Zone Management Authority vide its letter No.709/EC.3/2019-1, dated 08.02.2019, post facto CRZ clearance was issued on 08.03.2019.

10. In view of the position prescribed in the preceding paras above, the answering respondent humbly prays that the Hon'ble Tribunal may pass an order fit under the facts and circumstances of the case. The answering respondent craves leave of this Hon'ble Court to make additional submissions, if required, during the course of the proceedings."

11. Third respondent on behalf of the 2nd respondent filed their reply affidavit which reads as follows:-

"1. I humbly submit that I am the Director, Department of Environment and also the Member Secretary, Tamil Nadu State Coastal Zone Management Authority (TNSCZMA) and I am well acquainted with the facts of the case from the records available and I am filing this reply in my official capacity as 3rd respondent and also on behalf of 2nd respondent.

2. I humbly submit that I have gone through the averments contained in the affidavit filed by the Applicant and I deny all the averments except those that are specifically admitted herein and the application is put to strict proof of the same.

3. I humbly submit that the applicant has filed the appeal challenging the CRZ clearance dated 08.03.2019, issued by the 1st respondent, issued in favour of the 4th respondent.

4. I humbly submit that the 4th respondent applied for clearance under the CRZ Notification, 2011, on 24.09.2015, for laying of pipeline for the transfer of Edible Oil, from Chennai Port to storage terminal and establishment of storage transit terminal, at old S.No. 4061 and new S.No.4061/A & 4061/2 in Ennore Express way (Door No.1,2 & 3 Suriyanarayana Street), Tondiarpet Village and Taluk of Chennai District.

5. I humbly state that the District Coastal Zone Management Authority recommended the project for clearance in the meeting held on 10.07.2015. The proposal was placed before the 88th meeting of the Tamil Nadu State Coastal Zone Management Authority (TNSCZMA) held on 15.02.2016 and as per the decision of the Authority, the proposal was forwarded to the 1st respondent, vide Environment & Forests Department, Govt. of Tamil Nadu Letter No.3726/EC.3/ 2016-1 dated 24.03.2016. The 4th respondent has not commenced the activities at the time of filing application to the TNSCZMA.

6. I humbly submit that while the said application was pending, the 4th respondent without getting clearance from MoEF& CC, Govt. of India, commenced the erection of pipelines.

7. I humbly submit that in the meantime MoEF&CC, Govt. of India have issued an amendment in the Notification, vide notification in S.O. No.1002(E) dated 06.03.2018 to the CRZ Notification, 2011 as follows:-

After sub-paragraph 4.2, the following sub-para has been inserted namely:-

“4.3 Post facto clearance for permissible activities:-

- i. All activities, which are otherwise permissible under the provisions of this notification, but have commenced construction without prior clearance, would be considered for regularisation only in such cases wherein the project applied for regularization in the

- specified time and the projects which are in violation of CRZ norms would not be regularised;*
- ii. The concerned Coastal Zone Management Authority shall give specific recommendations regarding regularisation of such proposals and shall certify that there have been no violations of the CRZ regulations, while making such recommendations;*
 - iii. Such cases where the construction have been commenced before the date of this notification without the requisite CRZ clearance, shall be considered only by Ministry of Environment, Forest & Climate Change, provided that the request for such regulation is received in the said Ministry by 30th June, 2018.”*

8. I humbly submit that subsequently the 4th respondent applied for clearance under the said Post facto clearance on 11.09.2018. The MoEF&CC, Govt. of India on the application of M/s. KTV Health Food Private Limited, Chennai for regularisation under post-facto clearance as prescribed vide Notification S.No.1002(E) dated 06.03.2018 in respect of the project, requested the TNSCZMA to furnish specific recommendation of TNSCZMA, vide Letter F.No.11-18/2016-IA.III dated 23.03.2018. & 26.10.2018. Accordingly, the DCZMA for Chennai District have been requested to inform whether the activities undertaken by M/s. KTV Health Food Private Limited, have caused any violation with reference to the CRZ regulations except obtaining prior clearance.

9. I humbly submit that the District Environment Engineer, TNPCB, Chennai District inspected the site on 07.12.2018 and stated that the unit was not under operation and the storage tanks and the pipeline laid / provided for the transfer of edible oil from Chennai Port to storage tanks were kept idle. Further, the unit authorities had also informed that the unit was kept idle for the last four years.

10. I humbly submit that the District Environment Engineer, Tamil Nadu Pollution Control Board, Chennai District has also informed that no violation was observed with reference to the CRZ notification, 2011 except that the work had been commenced without obtaining prior clearance for installation of tanks and laying of pipeline.

11. I humbly submit that the said proposal, under notification in S.O. No.1002(E) dated 06.03.2018 to the CRZ Notification, 2011, was placed before the Tamil Nadu State Coastal Zone Management Authority again in its 103rd meeting held on 03.01.2019 and the Authority stated that "The District Environment Engineer, Tamil Nadu Pollution Control Board, Chennai District, who is also the Convenor for the District Coastal Zone Management Authority for Chennai District, has informed that no violation was observed, with reference to the CRZ Notification, 2011 except obtaining prior clearance for installation of tanks and laying of pipeline as per CRZ Notification, 2011 as amended, at the project area. Further, the District Environment Engineer, TNPCB, Chennai District, has inspected the site on 07.12.2018 and stated that the unit was not under operation and the storage tanks and the pipeline laid / provided for the transfer of edible oil from Chennai Port to storage tanks were kept idle."

12. I humbly submit that in view of above, the Authority decided to recommended for the Post facto clearance for the above project to the MoEF&CC, GoI with the said facts.

13. I humbly submit that as per the recommendations of the TNSCZMA, the Environment & Forest Department, Govt. of Tamil Nadu have recommended and forwarded the proposal to MoEF&CC, Govt. of India through letter No.709/EC.3/2019-1 dated

08.02.2019, for post facto clearance for permissible activities for the pipeline for Transfer of Edible Oils from Chennai Port to Storage terminal tank and establishment of storage Transit Terminal at Tondiarpet Village and Taluk, Chennai District and other proposed facilities proposed by M/s. KTV Health Food Private Limited, Chennai. And in view of the above the 1st respondent have issued post facto CRZ clearance to the 4th respondent, for the pipeline for transfer of edible oils from Chennai Port to Storage Terminal Tank and Establishment of Storage transit terminal at Tondiarpet Village and Taluk, Chennai District, vide Letter F.No.11-18/2016-IA-III dated 08.03.2019.

It is therefore humbly prayed that this Hon'ble Court may be pleased to pass appropriate orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

12. Fourth respondent filed their reply affidavit contending as follows:-

“1. The 4th respondent firmly denies all the averments made by the appellant, except those that are specifically admitted herein. The 4th respondent submits that the post facto CRZ Clearance is given by the 1st respondent for laying the pipeline from Chennai Port Trust to the transit storage oil facility and for establishing the transit storage oil facility, for onward transportation to the refining units of the 4th respondent at Gummidipoondi and Korukkupet. The CRZ Clearance given is in conformity with the Notification dated 06.03.2018 (Annexure – V), amending Coastal Regulation Zone Notification, 2011.

2. The 4th respondent is a dealer in edible oil. The 4th respondent intended to establish a transit storage terminal for transporting edible oil through pipes from the Chennai Port to the Transit Storage Terminal for onward transportation to their units in Gummidipoondi and Korukkupet. Hence, the 4th respondent purchased the site situated at Old Door No.4061/A and new Survey No.4061/2 in Ennore Express Way (Door No.1,2 & 3 Suriyanarayana Street), Tondiarpet Village, Chennai District. The 4th respondent purchased the same in public auction conducted by State Bank of India.

3. The respondent submit that the above said site falls under the Coastal Regulation Zone-II (CRZ-II) and is under General Industrial Use Zone, as classified by the Chennai Metropolitan Development Authority.

4. The 4th respondent submits that after purchasing the site, the 4th respondent applied for clearance under the CRZ Notification, 2011 on 24.09.2015 for the projects namely (a) laying pipeline for transfer of Edible Oil from Chennai Port Trust to transit storage terminal and (b) for establishment of transit storage terminal at the above mentioned site. The respondent submits that the project would result in avoiding transportation through lorries, saves time and cost, besides reducing the traffic in Chennai Port Trust.

5. The 4th respondent proposed to lay the pipeline through the dedicated pipeline corridor, approved by the Highways Department and Chennai Port Trust. The 4th respondent sought for permission and after inspection, the National Highways Authority of India, Chennai Fishing Harbour Management Committee and the Chennai Port Trust granted permission to lay the pipeline from the Port to the transit storage oil facility.

6. The 4th respondent submits that the District Coastal Zone Management Authority considered the proposal and recommended the same on 15.07.2015

(Annexure-1) and thereafter, the State Coastal Zone Management Authority recommended the project for clearance, which was forwarded to the 1st respondent by the Secretary to Government (Environmental Forest), Government of Tamil Nadu, vide its letter dated 24.03.2016 (Annexure – II).

7. The 4th respondent further submits that in the meanwhile, the appellant herein filed an Application No.238 of 2016 against the establishment of storage tanks and laying of pipelines before the National Green Tribunal (Southern Bench), alleging that the proposed industrial activity of the 4th respondent would cause pollution. The 4th respondent submitted that there was no industrial activity at the site and that the site was to be used only a facility for transit storage of edible oil for onward transportation to the refining units at Gummidipoondi; that while purchasing the site in 2015, there were oil tanks, way bridge and an office building and that during inspection, it was confirmed that the tanks and pipes were empty; that permission from the Highways, Port Authority were obtained and that the State Coastal Zone Management Authority recommended the project for CRZ clearance. The 4th respondent submits that vide Order dated 23.03.2017 (Annexure-IV), the Hon'ble National Green Tribunal directed the 4th respondent to stop the activities in the site until the 1st respondent passes appropriate orders in the application, seeking CRZ clearance. Hence, the 4th respondent kept the site with the tanks and pipes idle and was following up the application further for getting CRZ clearance.

8. The 4th respondent further submits that in the meanwhile, the Government of India (MoEF) issued the Notification No. S.O. No.1002(E) dated 06.03.2018 (Annexure-V), amending the CRZ Notification, 2011 and providing for post facto clearance, by inserting para 4.3 as follows: -

“Post facto clearance for permissible activities

- i. All activities, which are otherwise permissible under the provision of this notification, but have commenced construction without prior clearance, would be considered for regularization in the specified time and the projects which are in violation of CRZ norms would not be regularised;*
- ii. The concerned Coastal Zone Management Authority shall give specific recommendations regarding regularisation of such proposals and shall certify that there have been no violations of the CRZ regulations, while making such recommendations;*

9. The 4th respondent submits that as directed in para 4.3 (ii) of the CRZ Notification 2011, the 1st respondent directed the 4th respondent to again get the recommendation of the Tamil Nadu Coastal Zone Management Authority for considering post facto clearance of the proposal, vide its letter dated 23.03.2018 (Annexure-VI). Hence, the 4th respondent again approached the State Coastal Zone Management Authority, seeking its recommendation that the activities undertaken by the 4th respondent did not cause any violation of the CRZ norms, except obtaining prior clearance.

10. The 4th respondent submits that thereafter, the District Environmental Engineer, Tamil Nadu Pollution Control Board (who is the convenor of the District Coastal Zone Management Authority) inspected the site on 07.12.2018 and informed that the unit was not under operation and that the storage tanks and the pipeline were kept idle. Thereafter, the State Coastal Zone Management Authority recommended the project of the 4th respondent for CRZ clearance and the Secretary to Government (Environment and Forest Department)

forwarded the proposal to the 1st respondent. The 4th respondent submits that on considering of the recommendation, the 1st respondent issued the post facto CRZ clearance to the 4th respondent on 08.03.2019 (Annexure-IX) for laying the pipeline for transfer of edible oils from Chennai Port to Storage Terminal Tank and Establishment of Transit Storage Terminal at Tondiarpet Village and Taluk, Chennai District.

11. The 4th respondent submits that thereafter, the 4th respondent obtained the consent to operate from the Tamil Nadu Pollution Control Board on 05.04.2019 (Annexure -X & XI) and has commenced operation.

12. With regard to the grant of post facto clearance, the 4th respondent submits that the Notification dated 06.03.2018 (Annexure-V), amending CRZ Notification 2011, provides for the same, subject only to the condition that there was no violation of the CRZ regulations. The 4th respondent submits that as provided in the Notification dated 06.03.2018 (Annexure-V), the 1st respondent vide letter dated 12.10.2018 (Annexure-VII) and letter dated 10.01.2018 (Annexure-VIII), State Coastal Zone Management Authority was directed to furnish its recommendations regarding regularisation of such proposal and to certify that there have been no violations. Accordingly, the State Coastal Zone Management Authority advised the District Coastal Zone Management Authority was requested to inspect and inform whether the activities undertaken by the 4th respondent caused any violation with reference to the CRZ regulations, except obtaining prior clearance.

13. The 4th respondent submits that the District Environmental Engineer, TNPCB inspected the site on 07.12.2018 and informed that the unit was not under operation and the storage tanks and the pipelines were

kept idle. The 4th respondent further submits that the site falls under Coastal Regulation Zone (and General Industrial use Zone) and the Tamil Nadu State Coastal Zone Management Authority, considered the project in its meeting on 03.01.2019 and recommended for clearance to the 1st respondent, after verifying that there has been no violation of the CRZ regulations. Finally, the 1st respondent (MOF)/ Competent Authority granted the CRZ clearance on 08.03.2019 (Annexure-IX) to this respondent. सत्यमेव जयते

14. With regard to the averment of the appellant that the project cannot be permitted in the present site, the 4th respondent submits that the project site is to be used as a facility for transit storage of edible oil for onward transportation to their refining units at Gummidipoondi and Korukkupet. There is no other activity and no discharge of effluent/emission. The 4th respondent submits that the State Coastal Zone Management Authority, in its recommendations has stated that as per CRZ Notification, 2011 vide 8-II CRZ-II(VI), storage of non-hazardous cargo such as edible oil shall be established in notified port, however, vide para 3-11(a) & (b) of CRZ Notification, 2011, transfer of hazardous substances from ships to ports, terminals and refineries and vice versa; facilities for receipt and storage of petroleum products, liquefied natural gas, fertilizers and raw materials required for manufacture of fertilizers like ammonia, phosphoric acid, sulphur, sulphuric acid, nitric acid and the like are permissible activity in CRZ area (other than CRZ-I(A) ecologically sensitive area). Further as per para 4 (ii) (a) and (d), the above activities require clearance from the Ministry of Environment, Forest and Climate Change, Government of India.

15. The 4th respondent further submits that the Expert Appraisal Committee also in its meeting on

28.06.2016 (160th meeting) and on 30.06.2017 (172nd meeting) noted that the proposed site falls in Coastal Regulation Zone-II and vide para 4 (ii) (a) & (d) of CRZ Notification, 2011, the above activities require clearance from the 1st respondent (MoEF). Finally, the CRZ clearance was given by the 1st respondent only. The fact that it is located in custom bounded area, cannot be a reason to deny clearance as the facility is located in CRZ-II and falls within General Industrial Use Zone. The respondent submits that when facilities for storage of hazardous cargo like petroleum products and fertilizers are permissible in CRZ-II, there is no impediment in giving clearance to the 4th respondent, as it is only a facility for transit storage of edible oil which is non-hazardous, for onward transportation to the units.

16. The 4th respondent further submits that the respondent purchased the site in 2015 with the tanks, way bridge and infrastructure, installed and used by the previous owner. After purchasing the site, the respondent got the approval from the Highways Authority, Chennai Port Trust and the Chennai Fishing Harbour Management Committee, but stopped further activities, pursuant to the direction of this Hon'ble Tribunal in Application No. 238 of 2016 and was awaiting CRZ clearance. In this connection, the averment of the appellant that the 4th respondent suppressed the order of the Hon'ble Tribunal is baseless, as the 1st respondent and Expert Appraisal Committee were parties to the order dated 23.03.2017 (Annexure-IV) and the 4th respondent also furnished the copy of the same to them. Hence, except commencing the groundwork for laying the pipes and the maintenance of the tanks (installed by the previous owner), the 4th respondent did not carry out any work in violation of the CRZ regulations and this was also confirmed by the State Coastal Zone Management

Authority based on the inspection carried out by the District Environmental Engineer.

17. The 4th respondent submits that there was no misrepresentations with regard to the parking facility of the oil tankers. The respondent submits that the Expert Appraisal Committee required this respondent to provide the circulation plan for the tankers which would be used for transporting oil from the transit storage facility for onward destination and parking facility. The 4th respondent submitted that there is an additional land measuring 4 acres of its sister concern viz., KTV Oil Mill Private Ltd., Out of which 2 acres would be earmarked for parking of idle tankers and that the next tank due for filling would be sent out of the parking, after one tanker leaves the final way bridge after loading. (Annexures XII & XIII) Hence, there was no misrepresentation by the 4th respondent and the averment of the appellant is baseless and ill motivated.

18. The 4th respondent submits that the facility of transit storage of edible oil (non-hazardous) is a permissible activity in CRZ II area. The CRZ clearance given to this respondent is valid and the respondent has also got the consent to operate from the Tamil Nadu Pollution Control Board on 05.04.2019 (Annexure – X & XI) and is operating the facility. Hence, the appeal filed by the appellant is misconceived in law and facts and is liable to be dismissed.

Hence, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the appeal and thus render justice.”

13. The appellant has filed rejoinder to the reply affidavits submitted by the respondents 2 & 3, denying the allegations and reiterating their contentions in the appeal memorandum.
14. Heard Sri. Ritwick Dutta along with Sri. G. Stanley Hebzon Singh and Sri. K. Mageswaran, counsel appearing for the appellant. Sri. Kamallesh Kannan appearing for the respondents 2 & 3, Sri. G.M. Syed Nurullah Sheriff appearing for respondents 1 & 5 and Sri. R. Saravana Kumar appearing for 4th respondent.
15. Sri. Ritwick Dutta, the learned counsel appearing for the appellant argued that there is no provision for issuing post facto Clearance either under the CRZ Notification, 2011 or under the Environment (Protection) Act, 1986. Further, the area in which the storage facility was established is neither in the notified port nor area belonging to the port and as such activities are not permissible in this area and this was raised by the Expert Appraisal Committee (EAC) in their earlier meeting held in the year 2016 and sought clarification from the Ministry in this regard. But the Ministry has not given any clarification and that was over looked by the Expert Appraisal Committee when it was reconsidered later.
16. The learned counsel also argued that though it was found to be an ex-post facto clearance, no compensation has been

realized from them for the violation committed by them. On the other hand, they have only directed them to submit an apology undertaking that they will not repeat the same in future. Further, they have relied on the provisions of EIA Notification, 2006 for the purpose of granting ex-post facto clearance and infact EIA Notification, 2006 also does not contemplate any ex-post facto clearance. There were suppression of material facts regarding the availability of land for parking purpose which has not been properly considered by the authorities before issuing the clearance.

17. He had relied on the decisions reported in ***M.C. Mehta Vs. Kamalnath 1997 (1) SCC 388, Nasiruddin Vs. Sita Ram Agarwal 2003 (5) SCC 577, Commissioner of Customs (Import) Vs. M/s. Dilip Kumar and Company 2018 (9) SCC Page 1, Commissioner of Income Tax Vs. J.B. Gupta 1985 (4) SCC 343, Union of India Vs. Tata Chemicals Limited 2014 (6) SCC 335, T.N. Godavarman Thirumulpad Vs. Union of India 2012 (3) SCC 277, Common Cause Vs. Union of India 2017 (9) SCC 499, Alembic Pharmaceuticals Limited Vs. Rohit Prajapati (Civil Appeal No.1526/2016)*** reported in ***2020 SCC Online SC 347*** in support of his case.

18. On the other hand, the learned counsel appearing for the MoEF&CC submitted that as per 2018 Notification, ex-post facto clearance is permissible, if the application is filed within a particular time limit provided therein and if it is otherwise a permissible activity. According to the learned counsel, a co-joint reading of Para 3 & 8 will go to show that it is a permissible activity in CRZ-II area and as such the clearance granted was legal.

19. The learned counsel appearing for the Tamil Nadu Coastal Zone Management Authority (TNCZMA) argued that after considering the relevant documents and the recommendations of the Expert Appraisal Committee, the project has been recommended by them to the Ministry of Environment, Forests & Climate Change (MoEF&CC) and it was on that basis that the clearance was granted.

20. The learned counsel appearing for the 4th respondent argued that as per Para 3 & 8 of the Coastal Regulation Zone Notification, 2011, laying of pipeline and providing storage terminal for non-hazardous substance like edible oil is a permissible activity in CRZ-II Zone. Further, the application for CRZ Clearance was pending from 2015 onwards and when the Ministry of Environment, Forests & Climate Change (MoEF&CC) informed that if they wanted they would have to

apply for regularisation as per 2018 Notification, they sent a letter treating the existing application as violation application and it was on that basis that the impugned clearance was granted and as such there is no illegality committed by the authorities in granting the same. Further, it is not against the object of CRZ Notification, 2011. The authorities have considered all these aspects and it is on that basis that clearance was granted. Further, the word “in notified port” has to be interpreted applying the purposive interpretation and it has to be read as near the port as well so as to enable such activity being carried out, if sufficient land is not available in the possession of the port authorities.

21. According to the learned counsel appearing for the 6th respondent, none of the decisions relied on by the counsel appearing for the appellant is applicable to the facts of this case. He had relied on the decisions report in ***Marry George Vs. Special Tahsildar & Ors. 2010 (13) SCC 198, M/s. Rubber House Vs. Excellior Needle Industries Private Limited AIR 1989 SC 1160, Sharifuddin Vs. Abdulganilon AIR 1980 SC 303, Dr. K. Mohan Vs. Chennai Port Trust & Ors. 2009 SCC Online Madras 907*** in support of his case.

22. Considered the submissions made by both the counsel and written submissions and the precedents submitted by them.

23. The points that arises for consideration are:-

(i) Whether the ex-post facto clearance granted in favour of the 4th respondent is valid in law?

(ii) Whether the activity of the 4th respondent is permissible in CRZ Zone otherwise than in notified port?

(iii) Whether the authorities are justified in accepting the apology for the violation while granting CRZ Clearance without imposing any environmental compensation for violation?

(iv) Whether even if the CRZ Clearance granted to the 4th respondent is liable to be set aside for any other reason, if it is allowed to continue then under what terms and conditions it can be permitted to continue?

Points (i) to (iv):-

24. It is an admitted fact that 4th respondent had purchased this area in a public auction conducted by the State Bank of India for the purpose of establishment of storage terminal tank as an interim transit facility so as to take edible oil to their unit at Gumudipundi and Korukkupet. It is also an admitted fact that they have applied for the clearance on

24.09.2015 for the purpose of laying pipeline for transfer of edible oil from Chennai Port to transit storage terminal and for establishment of storage transit terminal at Old S.No.4061 (New S.No.4061/A and 4061/2) in Ennoor Express High Road at Door No. 1, 2 & 3, Suriyanarayana Street, Thondiarpet Village and Taluk, Chennai District. It is also an admitted fact that pending application before the authorities, the 4th respondent had obtained No Objection Certificate (NOC) from the Chennai Port and also from the National Highway Authority of India and Chennai Fishing Harbour Committee for drawing the pipe line and establishment of transit edible oil storage facility in this area and they started the work of laying pipeline and establishing storage tank in the disputed area before obtaining the necessary CRZ clearance. It is also an admitted fact that earlier there was an application filed by the appellant herein as O.A. No.238 of 2016 before this Tribunal challenging the act of the 4th respondent herein who was shown as 12th respondent in that case from proceeding with the work in the disputed area without getting CRZ Clearance.

25. It is also an admitted fact that this Tribunal by order dated 18.11.2017 by Annexure – A4, Order directed the present 4th respondent who was the 12th respondent in that case to

immediately stop its operation being carried out in the disputed area. The Tribunal also directed the Tamil Nadu Pollution Control Board (TNPCB) to ensure that the project proponent to stop operation of the unit and file status report and thereafter, by order dated 23.03.2017, this Tribunal had disposed of that application with following directions:-

“In our order dated 18.1.2017 we have directed the 12th respondent to immediately stop its operations carried on at No.1, 2 & 3 S.N. Chetty Street, Tondiarpet, Chennai 600 081 and also directed the 6th respondent – Board to ensure that the 12th respondent unit stopped its operations and file status report. Accordingly, the Board has filed the status report dated 14.2.2017 in which it is stated that the Board has issued direction by proceedings dated 31.1.2017 for closure of the unit and stoppage of power supply to the unit. It is also stated that accordingly the power supply to the 12th respondent was disconnected on 7.2.2017. The learned counsel appearing for the 12th respondent would submit that immediately after the original closure order was passed, the unit was already closed.

Be that as it may, now that the unit was closed, we make it clear that no activity shall be carried on in the said unit, unless and until MoEF & CC passes appropriate orders in the manner known to law.

It is also relevant to note that in the case we have appointed an Advocate Commissioner and directed both the applicant as well as the 12th respondent to equally share the remuneration to be paid to the Advocate Commissioner viz., R.40,000/- and accordingly it is stated that the applicant has also contributed Rs.20,000/- towards his share. As it is clear that the

12th respondent has laid the pipeline without obtaining CRZ clearance, we are of the view that any amount which has been contributed by the applicant towards Advocate Commissioner' fee is to be returned by the 12th respondent. In view of the same, we direct the 12th respondent to refund Rs.20,000/- to the applicant through the learned counsel within a period of lone week.

With the above direction, the application stands closed. There shall be no order as to cost.”

26. It is also an admitted fact that earlier the Expert Appraisal Committee (EAC) in their 161st Meeting held on 29th June, 2016 considered this project for the purpose of granting CRZ Clearance and observed as follows:-

“During appraisal of the proposal, the EAC noted the following:-

The lay out plan is not indicating the parking facilities, circulation plan for oil tankers which would be used for transporting oil from the tank farm for onward destinations. The vehicle circulation plan should also be indicated for parking and movement of vehicles.

The project proponent has submitted the permission for laying 12” edible oil pipeline. It was indicated by the project proponent that the owner of the land is Tamil Nadu Road Development Corporation (TNRDC) and as such necessary permission from TNRDC is also required or laying the pipeline.”

27. It is seen from the reply statement submitted by the Ministry of Environment, Forests & Climate Change (MoEF&CC) that they have issued an amended notification to CRZ Notification, 2011 vide S.O. No.1002 (E) dated

06.03.2018, amending the CRZ Notification, 2011 incorporating the following provision in respect of granting post facto clearance for permissible activities as follows:-

“4.3. Post facto clearance for permissible activities:-

- (i) all activities, which are otherwise permissible under the provisions of this notification, but have commenced construction without prior clearance, would be considered for regulation only in such cases wherein the project applied for regularization in the specified time and the projects which are in violation of CRZ norms would not be regularised
- (ii) the concerned Coastal Zone Management Authority shall give specific recommendations regarding regularisation of such proposals and shall certify that there have been no violations of the CRZ regulations, while making such recommendations
- (iii) such cases where the construction have been commenced before the date of notification without the requisite CRZ clearance, shall be considered only by Ministry of Environment, Forest and Climate Change, provided that the request for such regularisation is received in the said Ministry by 30th June, 2018.”

28. It is seen from the notification that a new Para 4.3 was added to the CRZ Notification, 2011 as per amendment Notification of CRZ Notification vide S.O. No.1002 (E) dated 06.03.2018. It is seen from this that it was made with an intention to regularize the CRZ activities started in the CRZ Zone without getting prior Environmental Clearance in respect of permissible activities on the basis of the recommendations

of the State Coastal Zone Management Authority and the same will have to be filed on or before 30.06.2018. If an application has been filed thereafter, it will not be considered and it appears that the concept of post facto clearance for regularization of activities which are permissible under the Notification but some work has been started without getting prior Environmental Clearance was introduced by this Notification as a one time measure, but not as a regular feature of regularising the violation cases.

29. So, the decisions relied on by the leaned counsel for the appellant in respect of deprecating post facto clearance is not applicable to this case as this was issued on the basis of the amended CRZ Notification, 2011 which permits granting of post facto clearance as one time measure in respect of permissible activities in CRZ Zone if the application was filed after it coming into force of this notification namely 06.03.2018 but on or before 30.06.2018. It appears that there was no challenge of this notification by the appellant but it was brought to our notice that this notification was challenged before the Hon'ble High Court of Mumbai at Goa and it is pending.

30. As far as EIA Notification, 2006 is concerned till 2017, there was no provisions for regularizing the activity that has

started without getting prior Environmental Clearance and only by 2017, a circular was issued by the MoEF&CC treating certain cases as violation cases, and if that application was filed within a particular time and that was challenged before the Hon'ble High Court of Madras and the Hon'ble High Court of Madras had disposed of the writ petition on the basis of the submissions made by the learned Advocate General that it was intended as one time measure and not a permanent feature.

31. But in this case it was introduced by way of notification as a subordinate legislation amending the original Notification of 2011 so it will have the force of law unless that provision was set aside by any Court.

32. It is also an admitted fact that on the basis of that notification, the MoEF&CC by letter dated 10.01.2019 directed the Tamil Nadu Coastal Zone Management Authority (TNCZMA) to give specific recommendations regarding the regularization of the proposal and certify that there have been no violation of CRZ regulation while making such recommendation. They also sent an communication to the 4th respondent vide their letter dated 23.03.2018, informing about the above aspect and also requesting the 4th respondent to apply for regularization and it was thereafter that the 4th

respondent had sent a request to treat their earlier pending application as an application for post facto clearance on 11.09.2018 whereas, as per the notification dated 06.03.2018 the said application had to be filed within three months i.e., on or before 30.06.2018.

33. It is thereafter on the basis of the recommendations of the District Coastal Zone Management Authority, the Tamil Nadu Coastal Zone Management Authority recommended the project in their 103rd Meeting held on 03.01.2019 and the proposal along with the recommendation was forwarded by the State Government to the MoEF&CC for their consideration and it was on that basis that the impugned clearance was granted on 08.03.2019.

34. It may be mentioned here that nothing was mentioned about their earlier clarification required in respect of the post facto clearance as well as permissibility of this activity beyond the port area as the activity has to be established not in the notified port or within the port area but outside the port area. There was nothing mentioned about this aspect also when they made their recommendation. Though post facto clearance can be permissible by virtue of this notification, if the application was filed within that time mentioned in the notification, but whether it is a permissible activity or not has

to be considered on the basis of the clarification sought for by the Tamil Nadu Coastal Zone Management Authority from the Ministry earlier in the year 2016. However, since the application for Coastal Regulation Zone Clearance was pending with the Ministry since 2015 and it was neither rejected nor returned with any observation, the request made by the 4th respondent on 11.09.2018 can be treated as a request to convert that pending application to a regularization application of granting ex-post facto clearance and as such the contention made by the counsel appearing for the appellant that the application ought not to have been considered by the authorities since it was filed beyond the period mentioned in the Notification namely 30.06.2018 cannot be accepted.

35. In ***Alembic Pharmaceutical Limited Vs. Rohit Prajapati (Civil Appeal No.1526/2016)*** reported in **2020 SCC Online SC 377**, the Hon'ble Apex Court has held that ex-post facto clearance is not contemplated under EIA Notification, 2006 but the Hon'ble Apex Court had set aside the order passed by the National Green Tribunal, Western Bench, (WB) setting aside the ex-post facto clearance granted to the industrial unit and allowed the unit to continue on the basis of the fact that subsequently clearance was granted and

on the basis of subsequent clearance, expansion of the unit was carried out and as such retained the post facto clearance granted on imposing the environmental compensation. Further, in ***Lafarge Umiam Mining Private Limited Vs. Union of India 2011 (7) SCC 338, Goa Foundation Vs. Union of India & Ors. 2005 (11) SCC 559*** and ***M/s. Electrotherm (India) Ltd. Vs. Patel Vipulkumar Ramjibhai & Ors. 2016 (9) SCC 300***, it has been held that there is no concept of giving ex-post facto clearance either under the EIA Notification, 2006 or under the Environment (Protection) Act, 1986 and the past act of violation cannot be ratified by providing an ex-post facto clearance and it will not have retrospective operation but it will have only prospective operation from the date on which it was issued and till then the act committed by the project proponent will be deemed to be unauthorized or an illegal act for which he will have to pay environmental compensation applying the “Polluter Pays” principle.

36. Then the only question that arises for consideration is whether it is a permissible activity in CRZ Zone outside the notified port area.

37. Para 3 of the Coastal Regulation Zone Notification, 2011 deals with the prohibited activities within the CRZ which reads as follows:-

“3. Prohibited activities within CRZ - The following are declared as prohibited activities within the CRZ,-

(i) Setting up of new industries and expansion of existing industries except,-

(a) those directly related to waterfront or directly needing foreshore facilities;

Explanation: The expression “foreshore facilities” means those activities permissible under this notification and they require waterfront for their operations such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, lighthouses, navigational safety facilities, coastal police stations and the like.;

(b) projects of Department of Atomic Energy;

(c) facilities for generating power by non-conventional energy sources and setting up of desalination plants in the areas not classified as CRZ-I(i) based on an impact assessment study including social impacts.;

(d) development of green field Airport already permitted only at Navi Mumbai;

(e) reconstruction, repair works of dwelling units of local communities including fishers in accordance with local town and country planning regulations.

(ii) manufacture or handling oil storage or disposal of hazardous substance as specified in the notification of Ministry of Environment and Forests, No. S.O.594 (E), dated the 28th July

1989, S.O.No.966(E), dated the 27th November, 1989 and GSR 1037 (E), dated the 5th December, 1989 except,-

(a) transfer of hazardous substances from ships to ports, terminals and refineries and vice versa;

(b) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II appended to this notification and facilities for regasification of Liquefied Natural Gas (hereinafter referred to as the LNG) in the areas not classified as CRZ- I(i) subject to implementation of safety regulations including guidelines issued by the Oil Industry Safety Directorate in the Ministry of Petroleum and Natural Gas and guidelines issued by MoEF and subject to further terms and conditions for implementation of ameliorative and restorative measures in relation to environment as may be stipulated by in MoEF.

Provided that facilities for receipt and storage of fertilizers and raw materials required for manufacture of fertilizers like ammonia, phosphoric acid, sulphur, sulphuric acid, nitric acid and the like, shall be permitted within the said zone in the areas not classified as CRZ-I(A).

(iii) Setting up and expansion of fish processing units including warehousing except hatchery and natural fish drying in permitted areas:

(iv) Land reclamation, bunding or disturbing the natural course of seawater except those,-

(a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, and such as meant for defence and security purpose and for other facilities

that are essential for activities permissible under the notification;

(b) measures for control of erosion, based on scientific including Environmental Impact Assessment (hereinafter referred to as the EIA) studies

(c) maintenance or clearing of waterways, channels and ports, based on EIA studies;

(d) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MoEF.

(v) Setting up and expansion of units or mechanism for disposal of wastes and effluents except facilities required for,-

(a) discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) storm water drains and ancillary structures for pumping;

(c) treatment of waste and effluents arising from hotels, beach resorts and human settlements located in CRZ areas other than CRZ-I and disposal of treated wastes and effluents;

(vi) Discharge of untreated waste and effluents from industries, cities or towns and other human settlements. The concerned authorities shall implement schemes for phasing out existing discharge of this nature, if any, within a time period not exceeding two years from the date of issue of this notification.

(vii) Dumping of city or town wastes including construction debris, industrial solid wastes, fly ash for the purpose of land filling and the like and the concerned authority shall implement schemes for phasing out any existing practice, if any, shall be

phased out within a period of one year from date of commencement of this notification.

Note:-The MoEF will issue a separate instruction to the State Governments and Union territory Administration in respect of preparation of Action Plans and their implementation as also monitoring including the time schedule thereof, in respect of paras (v), (vi) and (vii). (viii) Port and harbour projects in high eroding stretches of the coast, except those projects classified as strategic and defence related in terms of EIA notification, 2006 identified by MoEF based on scientific studies and in consultation with the State Government or the Union territory Administration.

(ix) Reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment activities.

(x) Mining of sand, rocks and other sub-strata materials except,-

(a) those rare minerals not available outside the CRZ area,

(b) exploration and exploitation of Oil and Natural Gas.

(xi) Drawl of groundwater and construction related thereto, within 200mts of HTL; except the following:-

(a) in the areas which are inhabited by the local communities and only for their use.

(b) In the area between 200mts-500mts zone the drawl of ground water shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries and where no other source of water is available.

Note:-Restrictions for such drawl may be imposed by the Authority designated by the State Government and Union territory Administration in the areas affected by sea water intrusion.

(xi) Construction activities in CRZ-I except those specified in para 8 of this notification.

(xiii) Dressing or altering the sand dunes, hills, natural features including landscape changes for beautification, recreation and other such purpose.

(xiv) Facilities required for patrolling and vigilance activities of marine/coastal police stations.”

38. It is clear from the Para 3 (ii) of the Notification that though manufacture or handling oil storage or disposal of hazardous substance as specified in the Notification of Ministry of Environment, Forest & Climate Change (MoEF&CC) is prohibited but the exception says that the transfer of hazardous substance from ship to port, terminals and refineries and vice versa is permissible. Similarly, facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure – II appended to this notification and facilities for re-gasification of Liquefied Natural Gas (herein after refer to as LNG) in the area not classified as CRZ-I (i) subject to implementation of safety regulation including guidelines issued by the Oil Industry Safety Directorate in the Ministry of Petroleum and Natural Gas and guidelines issued by the MoEF&CC and subject to further terms and condition for implementation of ameliorative and restorative measures in relation as may be stipulated by the MoEF&CC. Provided that facilities for

receipt and storage of fertilizers and raw materials required for manufacture of fertilizers like ammonia, phosphoric acid, sulphur, sulphuric acid, nitric acid and the like, shall be permitted within the said zone in the areas not classified as CRZ-I (A).

39. So, it is clear from this that in respect of petroleum products, storage is not permissible but facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II appended to this notification and facilities for re-gasification of Liquefied Natural Gas (hereinafter referred to as LNG) is permissible in the areas not classified as CRZ- I and the facilities for receipt and storage of fertilizers and raw materials required for manufacture of fertilizers like ammonia, phosphoric acid, sulphur, sulphuric acid, nitric acid and the like, shall be permitted within the said zone in the areas not classified as CRZ-I(A).

40. Para 4 of the Notification deals with the regulation of permissible activities in CRZ Zone and Para 7 deals with the classification of CRZ Zones.

41. Para 8 of the Notification deals with norms for regulation of activities permissible under this notification which reads as follows:-

“8. Norms for regulation of activities permissible under this notification,-

(i) The development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the following norms, namely:-

Note:- The word existing use hereinafter in relation to existence of various features or existence of regularisation or norms shall mean existence of these features or regularisation or norms as on 19.2.1991 wherein CRZ notification, was notified.

I. CRZ-I,-

(i) no new construction shall be permitted in CRZ-I except,-

(a) projects relating to Department of Atomic Energy;

(b) pipelines, conveying systems including transmission lines;

(c) facilities that are essential for activities permissible under CRZ-I;

(d) installation of weather radar for monitoring of cyclones movement and prediction by Indian Meteorological Department;

(e) construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL.

(f) development of green field airport already approved at only Navi Mumbai;

(ii) Areas between LTL and HTL which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely:-

(a) exploration and extraction of natural gas;

(b) construction of dispensaries, schools, public rainshelter, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants living within the biosphere

reserves after obtaining approval from concerned CZMA.

(c) necessary safety measure shall be incorporated while permitting such developmental activities in the area falling in the hazard zone;

(d) salt harvesting by solar evaporation of seawater;

(e) desalination plants;

(f) storage of non-hazardous cargo such as edible oil, fertilizers and food grain within notified ports;

(g) construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water.

II. CRZ-II,-

(i) buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorized structures;

(ii) buildings permitted on the landward side of the existing and proposed roads or existing authorized structures shall be subject to the existing local town and country planning regulations including the 'existing' norms of Floor Space Index or Floor Area Ratio: Provided that no permission for construction of buildings shall be given on landward side of any new roads which are constructed on the seaward side of an existing road:

(iii) reconstruction of authorized building to be permitted subject with the existing Floor Space Index or Floor Area Ratio Norms and without change in present use;

(iv) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II appended to this notification and facilities for regasification of Liquefied Natural Gas subject to the conditions

as mentioned in sub-paragraph (ii) of paragraph 3;

(v) desalination plants and associated facilities;

(vi) storage of non-hazardous cargo, such as edible oil, fertilizers and food grain in notified ports;

(vii) facilities for generating power by non-conventional power sources and associated facilities;”

42. It is seen from the Para 8 – (I)(i)(b),(ii)(f), (II)(iv) & (vi) of the notification deals with storage of non-hazardous cargo such as edible oil, fertilizers and food grains within and in the notified ports respectively. So, as regards storage of non-hazardous cargo such as edible oil, fertilizers and food grains are permissible even in CRZ-I Zone but with a qualification “within notified ports”. But when it comes to CRZ-II, there is some difference which says storage of non-hazardous cargo such as edible oil, fertilizers and food grains “in notified ports”.

43. So, this Tribunal has to consider as to how these two clauses can be harmoniously construed for the purpose of making both of them more congenial and conducive.

44. No two different meanings can be given for these same words which have been used in different context unless it was intended by the legislature that the some has to be interpreted or understood with a different meaning.

45. It is settled law of interpretation of statutes that when a particular word has been used in different provisions whether it carries the same meaning or not has to be understood considering the nature and intention of the legislature in enacting that statute.
46. If the intention of the legislature was that it has to be interpreted in a different way considering the context in which those words were used, Court cannot import its own meaning different from the intention of the legislature so as to give the purpose for which the Court want to use the same against the intention and purport of the legislature.
47. If there is no ambiguity or confusion in understanding the words, then Courts will have to interpret that word in a same manner in which it was intended by the legislature and no different meaning can be imported by the Courts.
48. The principle of Hyden's Rule of interpretation (remove the mischief and advance the purpose) can be used by the Courts while interpreting the particular provision of enactment only if the Court feels that unless it was differently interpreted, the purpose and intention of the legislature in enacting the provision itself will be defeated or end in absurdity. In such cases, the Court can import a different meaning so as to make

the provision workable in the manner in which it was intended by the legislature.

49. The above principles are reiterated in the following decisions, ***Workmen of Jimithi Tea Estate Vs. Management of Jimithi Tea Estate AIR 1958 SC 353, R.L. Arora Vs. State of Uttar Pradesh & Ors. AIR 1964 SC 1230, Thampanoor Ravi Vs. Charupara Ravi & Ors. 1999 (8) SCC 74, Utkal Contractors and Joinery Private Limited & Ors. Vs. State of Orissa & Other connected case 1987 (3) SCC 279, Thakker Shipping Pvt. Ltd. Vs. Commissioner of Customs (General) 2012 (12) SCC 189, State Bank of Travancore Vs. Mohammed Mohammed Khan 1981 (4) SCC 82, Competition Commission of India Vs. Steel Authority of India Limited and others 2010 (10) SCC 744, Union of India Vs. Elphinstone Spinning & Weaving Company Limited and Ors. 2001 (4) SCC 139, Ameer Trading Corporation Ltd. Vs. Shapoorji Data Processing Ltd. 2004 (1) SCC 702, Badshah Vs. Urmila Badshah Godse & Anr. 2014 (1) SCC 188, Padma Sundara Rao (Dead) & Ors. Vs. State of Tamil Nadu & Ors. 2002 (3) SCC 533, Bharath Aluminium Company Vs. Kaiser Aluminium Technical Services INC and connected cases 2012 (9) SCC 552.***

50. With these principles in mind, this Tribunal has to consider the question of interpretation of the word “in notified port” and “within notified port” mentioned in Para 8 and 3 of the Coastal Regulation Zone Notification, 2011 respectively.

51. It is also settled law that as far as possible, interpretation of statutes will have to be done in a strict sense with its literal meaning, without resorting to the external or internal aids but considering the object of the legislation from the statute itself. If the Court felt that without substituting something or some words are to be interpreted in a different way, the implementation of the statute itself will become absurd and end in absurdity, then alone the Courts can supply the causes omises and make the statute workable.

52. As far as environmental laws are concerned, it was intended for the purpose of the protecting environment and it must be interpreted strictly in its literal sense. Any liberal interpretation given for any of the provision of the statute relating to environment protection then, it will have adverse impact on the environment.

53. It is true that while balancing development and environment, the principle of ‘Sustainable Development’ has to be considered but at the same time when these two things are weighed and if it is found that providing liberal

interpretation to promote development will result in disaster to the environment or affect the very purpose of the enactment for which it has been enacted then, such interpretation should be avoided.

54. In compact Oxford English Dictionary, the meaning of the word '**in**' is defined as follows:-

*“in Preposition 1) so as to enclosed, surrounded, or inside. 2) expressing a period of time during which an event takes place. 3) expressing the length of time before an event is expected to happen. 4) expressing a state, condition, or quality. 5) expressing inclusion or involvement. 6) indicating the means of expression used: put in writing. 7) indicating a person’s occupation or profession. 8) expressing a value as a proportion of whole. Adverb 1) expressing movement that results in being inside or surrounded. 2) expressing the state of being enclosed or surrounded. 3) present at one’s home or office. 4) expressing arrival at a destination. 5) [of the tide] rising or at its highest level. Adjective informal fashionable. – Phrases **be in for** be going to experience something, especially something unpleasant. **in on** knowing a secret. **in that** for the reason that. **in with** informal enjoying friendly relations with. **the ins and outs** informal all the details. – Origin Old English”*

55. The word '**within**' has been defined in the same Dictionary as follows:-

“within Preposition 1) inside. 2) inside the range or bounds of: we were within sight of the finish. 3) occurring inside a particular period of time. 4) not further off than

(used with distances). Adverb: 1) inside; indoors. 2) internally or inwardly.”

56. Meaning of these words when compared, it will be clear that what was intended by these words is something will have to be done within the area, if it relates to the area and in the area if relates to the area and not beyond that area.

57. It is true that Section 35 of the Major Port Trust Act, 1963 deals with the power of the Board to execute certain works and provide appliances which reads as follows:-

“35. Power of Board to execute works and provide appliances.—

(1) A Board may execute such works within or without the limits of the port and provide such appliances as it may deem necessary or expedient.

(2) Such works and appliances may include—

(a) wharves, quays, docks, stages, jetties, piers and other works within the port or port approaches or on the foreshore of the port or port approaches, with all such convenient arches, drains, landing places, stairs, fences, roads, railways, bridges, tunnels and approaches and buildings required for the residence of the employees of the Board as the Board may consider necessary;

(b) buses, railways, locomotives, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise;

(c) moorings and cranes, scales and all other necessary means and appliances for loading and unloading vessels;

(d) reclaiming, excavating, enclosing and raising any part of the foreshore of the port or port approaches which may be necessary for the execution of the works authorised by this Act, or otherwise for the purposes of this Act;

(e) such breakwaters and other works as may be expedient for the protection of the port;

(f) dredgers and other machines for cleaning, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches;

(g) lighthouses, lightships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and of the port approaches;

(h) vessels, tugs or other boats for use within the limits of the port or beyond those limits, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere, and for the purpose of saving or protecting life or property and for the purpose of landing, shipping or transshipping passengers or goods under section 42;

(i) sinking of tube-wells, and equipment, maintenance and use of boats, barges and other appliances for the purpose of the supply of water at the port;

(j) engines and other appliances necessary for the extinguishing of fires;

(k) construction of models and plans for carrying out hydraulic studies;

(l) dry docks, slipways, boat basins and workshops to carry out repairs or overhauling of vessels, tugs, boats, machinery or other appliances.”

58. It gives power to the Board to execute such work within or without the limits of the port and the nature of activities will include providing storage facility for goods as well. Those are all relating to the general things and not relating to the specified goods or other activities.

59. Coastal Regulation Zone Notification restricts certain activities within the CRZ Zone and if such activities are to be done within the port area or in the notified port then, it can be done in those areas alone and not beyond that area.

60. Further, in the decision reported in ***Dr. T.K. Mohan Vs. Chennai Port Trust and Ors. 2009 SCC Online Madras 907***, the Hon'ble Madras High Court while considering the question as to whether the storage facility in the property belonging to the port trust requires any further permission under the regulations framed under Development Regulations of 2nd Master Plan for Chennai Metropolitan Area, 2006 under the Tamil Nadu Town and Country Planning Act, 1971 held that it is not necessary.

61. Further, a reading of that decision will go to show that the port trust has to provide such facilities either within the port or near to the port belonging to them and that was a case where the storage facility for edible oil was provided in the

property belonging to the Chennai Port in Royapuram area and that was very near to the port and the property belonged to them.

62. So that interpretation will not be helpful to the respondents to come to the conclusion that the storage terminal can be provided outside the port area or outside the notified port area.

63. Further, the legislature was very careful in using the word while permitting certain activities in the Coastal Zone Regulation restricted and regulated areas and if that is liberally construed and it was allowed to provide beyond that area without any restriction then, it is likely to be misused by the authorities and such facilities will be permitted in such zone indiscriminately throughout the foreshore area of the Coastal Zone which will have a great adverse impact on coastal environment and also it will affect the interest of the traditional fishermen community as such.

64. Further, the dictum laid down in the decision reported in ***M. Nizamudeen Vs. Chemplast Sanmar Ltd. & Ors 2010 (4) SCC 240*** is not applicable to the facts of this case for the purpose of extending the principle of purposive interpretation, considering the facts of this case. That was dealing with transfer of hazardous substance from ships to the port and

the word except in the port area has been interpreted so as to read “in or through” the port areas. There also it was not beyond the port area or outside the port area.

65. Drawing of pipeline is different from establishment of storage terminal outside the port. In this case, storage facility will have to be provided outside the port area in the land not belonging to the port but to the industrial estate which was allotted to the 4th respondent.

66. These aspects were not considered by the authorities, while granting the clearance to the 4th respondent for the project. Further, it was an ex-post facto clearance and this was clear from the proceedings itself, but it was treated as a fresh proposal which itself is not a legal procedure. If it is treated as a violation case then, the procedure to be adopted by them is different.

67. So it is clear from this that if the words provided in the notification are literally construed then it can only be possible to come to a conclusion that such activity of establishing a storage terminal for edible oil can be permissible either within the port area or in the notified port or area belonging to the notified port and it cannot be possible to extend the provision beyond the notified port area.

68. The decisions relied on by the counsel appearing for the 6th respondent namely ***Mary George Vs. Special Tahsildar and Anr. 2010 (3) SCC 98, M/s. Rubber House Vs. M/s. Excelsior Needle Industries Private Limited 1989 (2) SCC 413, Sharifuddin Vs. Abdul Gani 1980 (1) SCC 403*** are not applicable to the facts of this case as those decisions are relating to the interpretation of certain provisions to consider whether a particular provision is mandatory or directory. But the question in this case is not that. Whenever, the environmental issues are there, procedure will have to be followed strictly as it was intended for particular purpose of protecting the environment and that should not be interpreted in a different way so as to defeat the purpose itself. The distance within which beyond the port area if at all such activities can be permitted is a matter for the rule making authority to incorporate if the intention of the legislature/rule making authority was to provide such facilities even beyond the port area. In the absence of such criteria provided in the Rule, it cannot be treated as a causes omises and that could not be substituted by the Court. If the intention of the legislature or the rule making authority was that, it could be beyond the port area as well, then they ought to have included that aspect also in the Rules by providing a distance criteria

in the absence of which it can only be presumed that they did not have such an intention and as such intention cannot be inferred by the Court or Tribunal.

69. In view of the discussions made above, it can be safely concluded that the activity is not a permissible activity within the CRZ -II Zone as it has to be established beyond the port area and as such even assuming that the amended notification of 2018 can be made applicable for granting ex-post facto clearance, if such application were filed within the specified time mentioned therein, even then it cannot be treated as a category permissible activity falling under that notification as it is not a permissible activity in the CRZ-II Zone except in notified port and not outside the port area.

70. So under such circumstances, the authorities were not justified in considering the application under the amended Notification, 2018 and granting ex-post facto clearance to an activity which is not permissible and wrongly interpreting Para 3 & 8 of the Notification and the same is unsustainable in law and hence, the ex-post facto clearance granted as per the impugned clearance F.No. 11-18/2016-IA-III dated 08.03.2019 is liable to be set aside.

71. Though this Tribunal while disposing of O.A. No.238 of 2016 restraining the 4th respondent from carrying out the

activity till CRZ clearance is obtained, no environmental compensation was awarded. Since it is an illegally activity done by the 4th respondent without getting prior clearance they must be liable to pay environmental compensation for the violation committed and this Tribunal also found now that the Coastal Regulation Zone Clearance granted is not sustainable and as such they are liable to pay environmental compensation which this Tribunal fixes at Rs.25 Lakhs as in a similar case this Tribunal had awarded that much amount as environmental compensation against the sister concern of the 4th respondent unit.

72. So, the 4th respondent is liable to pay an environmental compensation of Rs.25 Lakhs for the violation committed by them by commencing the operation without getting prior CRZ Clearance.

73. In the result, the appeal is allowed and the impugned CRZ Clearance issued to the 4th respondent by the 1st respondent by Proceeding No. F. No. 11-18/2016-IA-III dated 08.03.2019 is set aside.

(ii) the 4th respondent is directed to pay an environmental compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) for the violation committed by them in commencing the work without getting prior CRZ Clearance and they are

directed to deposit the amount with the Tamil Nadu State Pollution Control Board, Chennai within a period of 2 (Two) months and if the amount is not paid, the Tamil Nadu State Pollution Control Board is at liberty to recover the amount from them in accordance with law.

(iii) the 4th respondent is directed to remove the structures constructed by them in the CRZ Zone within a period of 3 (Three) months and if it is not removed within a period of 3 (Three) months, then the Tamil Nadu Coastal Zone Management Authority (TNCZMA) is directed to remove the same and recover the cost from the 4th respondent incurred by them for this purpose.

(iv) Considering the circumstances, the parties are directed to bear their respective costs in the appeal.

.....**J.M.**
(Justice K. Ramakrishnan)

.....**E.M.**
(Shri. Saibal Dasgupta)

**Appeal No.04/2019,
30th September, 2020. Mn.**