

Union of India v. Gosalia Shipping Private Ltd., Margao, Goa

Civil Appeal No. 1735 of 1972

[1978] 3 SCR 943 | 1978-05-05

Whether time-charter hire payable irrespective of cargo use, when the charterer transported its own goods, was an amount paid or payable on account of carriage of goods within the then section 172(2).

172(1) (application of the special shipping provision) | 172(2) (charging condition: receipt on account of carriage; then one-sixth measure) | 172(3)–(7) (quoted historical return, assessment, clearance and regular-assessment machinery) | 194 (as printed in the quotation of historical section 172(4) at SCR 946 A; historical cross-reference not independently verified and not separately adjudicated)

3-judge bench | Y.V. Chandrachud, C.J. | P.N. Bhagwati, J. | D.A. Desai, J.

Assessment years: See the source-scope notes; no year inferred.

Historical section 172; contract-specific hire finding

This decision applies the section 172 text governing the 1970 voyage and demand, including a historical one-sixth measure. It turns on hire payable regardless of use and carriage of the charterer's own goods; it is not a blanket exemption for charter hire. No AY is stated. The preserved report contains a broken sentence at SCR 948 C, so the clear surrounding reasons and final conclusion control. Great Eastern Shipping (2019) has been checked only within disclosed bounds in a different sales-tax context. Comprehensive later treatment, current law and 2025 mapping remain not_verified.

01 FACTS OF THE CASE

Gosalia Shipping was the Indian shipping agent of the non-resident Aluminium Company of Canada Ltd. The latter time-chartered a vessel owned by another non-resident company. At Betul, Goa, the ship loaded 13,000 long tons of bauxite belonging to the charterer itself; it arrived on 1 March 1970 and departed on 20 March 1970 for Alfred port, Canada. Gosalia gave a guarantee bond undertaking to pay the charterer's income tax under section 172, enabling departure (physical page 2/SCR 944 E–G).

Clause 4 of the charter required payment at US\$4.50 per ton of the vessel's total deadweight carrying capacity per calendar month, from delivery until redelivery, for use and hire of the vessel. Payment did not vary with whether the vessel carried goods. On 15 April 1970 the ITO demanded Rs.51,191 from Gosalia. Its writ petition succeeded: the Judicial Commissioner of Goa quashed the demand on 29 October 1971. The Union appealed on a certificate under article 133(1)(b) and (c) (physical pages 2–3/SCR 944 G–945 B; pages 5 and 7/SCR 947 D–E, 949 D–F).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Court reproduced section 172 as it stood at the relevant time. It described the special summary levy and collection machinery for non-resident occasional shipping, including the then rule deeming one-sixth of specified receipts to be income, returns before departure, alternative satisfactory arrangements, port clearance and the option to seek a regular assessment. This historical fraction is not a statement of a present rate or current statutory text (physical pages 3–5/SCR 945 B–947 A).

The non-resident charterer's ship had carried goods loaded at an Indian port, satisfying section 172(1). That did not itself answer the distinct charging question under subsection (2): was there an amount paid or payable to owner or charterer on account of carriage? The Court identified the Aluminium Company as the assessee represented by Gosalia's guarantee and examined the character of the charter payment (physical page 5/SCR 947 B–E).

The Court held that the payment was for use and hire, not for carrying goods. Contractual labels alone are not conclusive; substance must be examined and a drafting device cannot control the true nature of a payment. But there was no basis for attributing a concealed freight arrangement to this standard-form New York Produce Exchange charter. Its terms supported the stated nature: the charterer could sublet, directed the captain as to employment and agency, and was entitled to return of unearned advance hire if the vessel was lost. The hire obligation persisted whether or not goods were carried. Loading goods in India did not change hire into freight (physical pages 5–6/SCR 947 F–948 E).

The own-goods fact also mattered. The charterer neither sublet the ship nor carried another person's cargo, so it received no freight for carriage. The owner received hire, while the charterer received no carriage amount; neither received the kind of payment described in subsection (2) (physical page 6/SCR 948 E–G).

The Court rejected the assumption that every charterparty is a carriage contract. It discussed B.C. Mitra, Carver and Scrutton on charter types, but its conclusion turned on this agreement's continuing hire obligation. Whether this charter operated by demise was immaterial to that conclusion. The passages about possession and varieties of charter are attributed explanatory authorities; they do not create an automatic tax rule for all time charters (physical pages 6–7/SCR 948 G–949 F).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The Court confirmed the Judicial Commissioner's judgment quashing the Rs.51,191 demand and dismissed the Union's appeal with costs. It made no remand, quantified refund direction or order determining tax under a different charging provision (physical page 7/SCR 949 F–G; physical page 3/SCR 945 A for the order affirmed).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Respondent shipping agent and represented non-resident charterer

Revenue appeal dismissed with costs; order quashing the demand affirmed

Final reasoned construction and application of the then section 172(2) charging condition

Confined to this charter's hire terms and carriage of the charterer's own goods. The Court did not decide that all charter hire is exempt from income tax, or determine another tax provision, treaty, later shipping-tax scheme or an assessment year. Demise character was expressly immaterial to the decided question.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Separate the gateway from the charge. A non-resident ship loading goods at an Indian port may satisfy section 172(1), yet subsection (2) still requires a receipt of the specified character. Read the payment obligation, actual commercial use and recipient together: fixed hire continuing without cargo, plus the charterer's carriage of its own goods, produced no freight receipt here. The historical one-sixth computation is not a substitute for analysing that threshold or checking the applicable statutory version.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, date, bench, appeal and underlying proceeding

Source url: [Open cited source](#)

Pdf pages: 1; 2

Paragraphs: SCR 943 heading; 944 D–E

Source role: reported metadata and judicial text

2.

Topic: Ship, parties, own goods, guarantee, demand and successful writ

Source url: [Open cited source](#)

Pdf pages: 2; 3

Paragraphs: SCR 944 E–945 A

Source role: judicial text

3.

Topic: Express 1961 Act and historical section 172(1)–(7)

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: SCR 945 B–946 E

Source role: judicial text

4.

Topic: Difference between section 172(1) application and section 172(2) charging condition

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: SCR 946 F–947 E

Source role: judicial text

5.

Topic: Substance of charter, contractual terms and payment independent of carriage

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: SCR 947 E–948 E

Source role: judicial text

6.

Topic: Own-goods carriage produced no freight receipt; time-charter authorities and demise immaterial

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: SCR 948 E–949 F

Source role: judicial text

7.

Topic: Judicial Commissioner's judgment confirmed; Revenue appeal dismissed with costs

Source url: [Open cited source](#)

Pdf pages: 7

Paragraphs: SCR 949 F–G

Source role: judicial text

8.

Topic: Bounded later direct discussion in a different sales-tax setting

Source url: [Open cited source](#)

Pdf pages: 38; 39; 40; 41; 42; 43

Paragraphs: Paragraphs 41–43; SCR 893–898

Source role: later judgment bounded comparison

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Y.V. Chandrachud, C.J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (section 172 as it stood for the 1970 voyage and demand)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Constitution of India, article 133(1)(b) and (c) (certificate of fitness to appeal)

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 7 PDF pages; SHA-256

09608b70f54670a08825bebb2487b0fd2a04556d874e5192ba9f666752ca05cd. Original bytes preserved.

Judicial body begins physical page 2/SCR 944 E (Chandrachud, C.J.) and ends physical page 7/SCR 949 F–G with affirmation and dismissal with costs. Page 1 and upper page 2 are reporter headnote and appellate metadata. No neighbouring judgment.

Open cited source rendition

The then one-sixth measure and reproduced section 172 machinery are historical and must not be auto-carried into another period.; No AY is stated. The voyage and demand dates do not justify inventing one.; The printed sentence at SCR 948 C is broken/duplicated in the preserved rendition; the surrounding text and final reasoning clearly explain payment independent of carriage. The source is unchanged and no missing words are supplied as a quotation.; The appellate metadata describes the originating court as the High Court of Goa, Daman and Diu; the judicial body calls it the Court of the Judicial Commissioner, Goa. The note follows the body while retaining the exact underlying date and S.C.A.31 of 1970.; The 2019 comparison is a limited, direct citation check in another tax context, not comprehensive subsequent-treatment or present-law verification.

No assessment-year label is stated. The Court identifies a March 1970 voyage and the 15 April 1970 demand; an AY is not inferred from those dates.

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025; no present-law certification. Verify applicable statutory text, amendments and later judicial treatment separately.

LATER TREATMENT

Source checked 2026-10-05. not_verified comprehensively. A bounded primary check of The Great Eastern Shipping Co. Ltd. v. State of Karnataka, 4 December 2019, [2019] 17 SCR 856, Civil Appeal No.3383 of 2004, verifies direct discussion of Gosalia in paragraph 41 (physical pages 38–40/SCR 893–895). It uses Gosalia's distinction between charter forms; paragraphs 42–43 then distinguish the contract-specific right-to-use analysis from a universal service-contract proposition (physical pages 40–43/SCR 895–898). Great Eastern concerned Karnataka sales tax and a different agreement, not a fresh ruling on the historical income-tax liability here. The later judgment's shorter description does not replace Gosalia's own distinction between subsection (1) applicability and subsection (2) charge. No overruling, comprehensive current validity or 2025 mapping claim is made.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 7

SHA-256: 09608b70f54670a08825bebb2487b0fd2a04556d874e5192ba9f666752ca05cd

later judgment bounded direct treatment - PDF pages: 61

SHA-256: 1e61d16b4535a0c902bb67415dd9a9067168f986bb731fe3f62adc0161666993

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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