



# Korea Maritime Law Research Centre Maritime Law News Update

Vol. 15 June 30, 2016

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○ Korea University Maritime Law Research Centre aims to provide information regarding domestic and foreign maritime law trends regularly to practitioners, for the future development in Korean Maritime Law. We kindly ask for your support and interest.

○ This News Letter was published upon the Maritime Development Fund from Mr. Shin-hwan Park Spark, president of Spark International. We thank you deeply for your sponsorship.

## **I. Introduction of Court Decisions : A Stationary Floating Dock Does Not Constitute a ‘Ship’ Under the Local Tax Act** **(Tax Tribunal 2015.12.24. Docket No. 2015Ja0873 decision)**

### **1. Facts**

When a domestic shipyard tried to take benefit on acquisition tax by reporting its acquisition of a stationary floating dock as an acquisition of an industrial building under Article 276, Paragraph 1 of the Local Tax Act, the taxation authorities rather saw the dock as a ship, which was a floating ship building yard, and imposed heavier tax. The shipyard applied for the cancellation of taxation to the Tax tribunal.

### **2. Court’s Decision**

A ‘ship’ that is subject to acquisition tax under the Local Tax Act, refers to all ships regardless of its title. Meanwhile, Article 1-2, Paragraph 1 of the Ship Act defines and classifies a ‘ship’ as “the sort of ships that are or may be used for navigation on or under water”. According to Article 2, Subparagraph 1 of the Ship Safety Act and Article 3 of the Enforcement Decree of the Ship Safety Act, a "ship" means a vessel that is used or can be used for navigation on the water or under water (including a vessel with an outboard engine) and floating maritime structures prescribed by Ordinance of the Ministry of Oceans and Fisheries, such as movable oil prospecting ships and floatels; with the exclusion floating structures on sea, including oil prospecting ships and floatels, floating restaurants and floating stages, which can accommodate 13 persons other than its crew and is permanently fixed to surface of the ocean. In light of such

provisions, it is reasonable to define a 'ship' under the Local Tax Act as "a vessel that is used for navigation on the water" which is not fixed on the surface of the water.

(i) The structure at issue was a stationary floating dock, which was fixed to its installed location and even when launched, had no other movement than the floor surface partially sinking and the ships being launched. The structure was not needed to be used for navigation on water and considering the volume of force generation of the generator installed on the structure, it appears that the generator is used to prevent the structure from sinking and not for navigation, (ii) also taking into consideration the fact that it took approximately 8 months of dredging construction, aside from the production fee of the structure itself, to ensure the depth of water for purpose of installing the structure in a stationary type, it is hard to say that there was any plan or possibility to dismantle the structure and use it as a ship, (iii) despite the fact that the structure at issue was permanently fixed to the ocean surface and obligatory inspection under the Ship Safety Act was not necessary, the claimant assertions that the structure received examination from the Korean Register of Shipping by the choice of the shipyard in order to secure the safety as a shipbuilding facility as requested by the shipowners, has credibility (iv) the structure at issue is not subject to ship registration under the Ship Act and the Ship Registration Act, and has never been registered as a ship, (v) [...] in view of such points, it is difficult to regard such structure as a 'ship'. Therefore, it is wrong for the authorities to regard the structure at issue as a ship and imposed acquisition tax accordingly.

### **3. Comments**

The meaning of the decision of the Tax Tribunal is that it did not see an immobile stationary floating dock as a 'ship' under the Local Tax Act. Since the definition clause of each law is different, whether or not a subject can be seen as a ship shall be decided by the relevant law. However, the Ship Act, as the common law, can be an essential ground for reason. Generally, for a subject to become a ship it should at least have (i) mobility and; (ii) momentum. For floating docks under the Ship Act, momentum may be supplemented by other means and there for it does not need self-momentum.

In this case 'mobility' was also considered as a key factor. In the Supreme Court case of 2014.6.26. Docket No. 2014Du3945, similarly handling the imposition of acquisition tax for a floating dock pursuant to the Local Tax Act, the Supreme Court held that "the said floating dock floats on water during the shipbuilding process. When the shipbuilding process is finished it loads the ships and is carried to the deep sea by a tug boat and sinks under water using the mechanisms of a submarine in order for the ships to launch. Therefore, the floating dock in this case has floatability, capability to load and mobility". Base on such grounds the Supreme court acknowledged the floating dock as a 'ship' under the Local Tax Act. However, in this case the fact that the dock was stationary was recognized and thus the dock was seen as structure and not a ship.

Additionally, since only ships can be subject to a ship registration, this also acts as a factor in determining whether a subject can be recognized as a ship. In the aforementioned Supreme court case, the fact that a ship registration and registration of ownership preservation was completed after the ship construction certificate and shipping gross tonnage measurement

certificate was issued was recognized. However, in this case, the fact that there was no ship registration or registration of ownership preservation was also considered in the decision.

## **II. Discussion: The Legal Nature of Top Ranked Give-way Vessel under the New Ship's Port Entry and Departure Act**

### **1. Issue**

For the purpose of establishing order in open ports, the Open Ports Act names small sized ships (including tanker vessels) which are familiar with the situation inside of the port, "miscellaneous vessels" and imposes the duty to avoid large sized ships. The name "miscellaneous vessel" was changed to "top ranked give-way vessel" in 2011 and furthermore, the Open Ports Act was renamed as "The Ship's Port Entry and Departure Act (hereinafter the Act)" in 2015. Because the Act is applicable only for the trade ports (or open port) and the Maritime Safety Act (identical to COLREG) is applicable for the Korean territorial waters, the Act is regarded as a special Act as opposed to the Maritime Safety Act as a general Act. As a result, the navigation rule in the Act prevails over that in the Maritime Safety Act. The top ranked give-way vessel has no obligation to keep out of the way of the general power driven vessel under the Maritime Safety Act. However, the top ranked give-way vessel should keep out of the way of it under the Act.

### **2. Top Ranked Give-Way Vessel under the Ship's Port Entry and Departure Act**

Top Ranked Give-way Vessels include barges, tug-boats, bunker supply vessels, water supply boats, sampan and ships under 20 tons. These are generally limited to ships that "mainly operate within the water area of the trade port" (Article 2, Subparagraph 5 of the Ship's Port Entry and Departure Act"). There is not much controversy in the understanding that 'barges' only refer to barges pulled by tug-boats (and not pusher barges) and that 'tug-boats' mean port tug-boats. Can a fishing boat become a top ranked give-way vessel by being considered as a ship under 20 tons? After the revision of the Act on 2011, a top ranked give-way vessel should "mainly" operated in the trade port. However, fishing boats are operated in the open sea and thus should be excluded. In the same manner, tug-boats and barges which are engaged in the carriage of goods by sea shall be excluded from the category as well. It is questionable as to whether this view is in line with the legislative intent. (No. 808 Taeyang, which was 19 tons, was decided as a top ranked give-way vessel in the No. 808 Taeyang collision case of Busan Maritime Tribunal 2016-009.)

### **3. The Duty of the Top Ranked Give-Way Vessel**

According to the maritime transportation Law, the duty to give-way and the duty not to impede the other's safe passage differ from each other. The crossing ship as the give-way vessel has the duty to keep out of the way of the stand-on vessel. However, in narrow waterways small sized vessels have an obligation not to impede the safe passage of a ship following the fairway.

Since the latter obligation is still required under situations with no risk of collision, this is considered to be a higher obligation than the duty to give-way.

Meanwhile, Article 16 of the Act stipulates that top ranked give-way vessels should not interrupt the path of another ship. It is unclear as to whether this duty should be regarded as the duty to give-way or the duty not to impede. Since the academic views and court decisions vary, this needs to be clarified. (In the Central Maritime Safety Tribunal 2006-10, oil tank No.7 Guangmin, fishing boat No.1 Chilyang collision case, it was decided as the duty not to impede. However, in the Busan Maritime Tribunal 2016-009 ferry boat Hanryu, fishing boat No. 808 Taeyang collision case, this duty was regarded as the duty to give-way.)

### **III. Events**

#### **1. The 9<sup>th</sup> East-Asian Maritime Law Forum**

- o Cohosted by Japan Waseda University, China Dalian Maritime University, Korea University
- o November 11-12, 2016 (2 days, Saturday-Sunday) at Incheon Harbor park Hotel
- o The topics will include: (i) key note speech, (ii) recent Maritime Law trends of each country, (iii) duty of care for seaworthiness and (v) carriage of dangerous cargo etc.
- o We are seeking for a speaker

#### **2. The 4<sup>th</sup> TransLawFer, 2016 Korea University, Seoul**

- o A global meeting of carriage law academic in their 30s ~ 40s
- o November 27, 2016 (Sunday) at CJ Law Building of Korea University
- o We receive speech applications from academics or lawyers in their 30s~40s (attached document)

### **IV. Korea University Maritime Law Lectures**

#### **1. Lectures for the 2<sup>nd</sup> semester of 2016**

- o 2 lectures: Law on Carriage of Goods by Sea (English Lecture) and Ship Collision will open for Law School students
- o Marine Insurance Law lecture will open for undergraduate students
- o Maritime Law (Tuesday) and Charter Contract Law (Friday) will open as daytime and evening courses for graduate school students

#### **2. Korea University – Southampton University Maritime Lectures**

- o September 19 – 23, 2016 a short 8hour per day course
- o The lecture will be held by professors from Korea University and Southampton University
- o The lecture will handle Korean and English Laws on transportation contracts, charter contracts, bill of lading, limitation of ship owner's liability, ship collision and maritime insurance etc.

- o A certain amount of lecture fee will be charged. There will be a notice of the specific program later on

<Notice 1> Maritime Law Research Centre is open to anyone who wishes to learn more about Maritime Law at room 402 and 408, CJ Law Building, Korea University. Maritime law related professors on sabbatical, maritime lawyers, professionals in the maritime industry and doctoral students are welcome. Anyone who is interested may contact the Head of Centre InHyeon Kim at [captainihkim@korea.ac.kr](mailto:captainihkim@korea.ac.kr).