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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005**

F. NO. 380/87/DBK/13-RA/361 Date of Issue: 24.02.2021

ORDER NO. 21/2021-CUS (WZ) /ASRA/MUMBAI DATED 04.02.2021
OF THE OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN
KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF
CUSTOMS ACT,1962.

Applicant : The Commissioner of Customs (Preventive), Jamnagar, Gujrat.

Respondent: M/s Maersk Line India Pvt. Ltd.,
Office No. 21/22/23, 2nd floor,
Port Users' Complex, Pipavav Port,
P.O. Ucchaya, Ta. Rajula, Dist. Amreli - 365 560.

Subject : Revision Applications filed, under Section 129DD of Customs
Act, 1962 against the Order-in-Appeal No.
248/Comr(A)/JMN/2013 dated 05.07.2013 passed by the
Commissioner (Appeals) Customs, Jamnagar.



: ORDER :

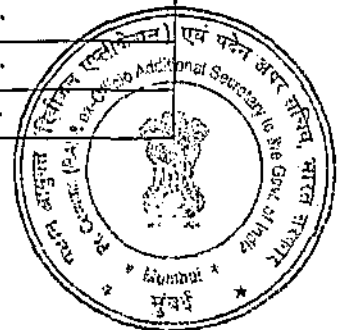
This Revision Application is filed by the Commissioner of Customs (Preventive), Jamnagar, Gujrat (hereinafter referred to as "the department") against the 248/Comr(A)/JMN/2013 dated 05.07.2013 passed by the Commissioner (Appeals) Customs, Jamnagar.

2. The case in brief is that M/s Maersk Line Pvt. Ltd., Office No. 21/22/23, 2nd floor, Port Users' Complex, Pipavav Port, P.O. Ucchaya, Ta. Rajula, Dist. Amreli - 365 560 (hereinafter referred to as "the respondents") acting as an agent on behalf of the person-in-charge of the vessel MV Nedloyad America-1211-12 filed a cargo declaration under regulation 3 and 4 of Import Manifest (Vessels) Regulations, 1971 contained inter alia for below mentioned four containers carrying heavy melting scrap covered under B/L dated 02.05.2012 totally weighing 100.490 MTs consigned to M/s Gursimarnjit Singh & Bros., Chandigarh.

Sr. No.	Container No.	M/s Maersk Line Seal Number
1.	MSKU 2900028	ML-LR-0034038
2.	MSKU 7212096	ML-LR-0034037
3.	MSKU 7240014	ML-LR-0043159
4.	MSKU 2819662	ML-LR-0034036

The above goods were purchased by M/s Rushil Global Trade Limited on high sea sale basis from M/s Gursimranjit Singh & Bros., Chandigarh, which was shipped by M/s Best Service Freight Forwarding Inc., Liberia. The Custom House Agent appointed by M/s Rushil had filed B/E dated 26.06.2012 for clearance of the said goods. Pending assessment of said B/E the goods contained in above four containers were offloaded from MV Nedloyad America-1211-12 at Pipavav and transshipped to CGS M/s Logix Park, Pipavav. During the physical weighment the imported goods were found to be only 3760 Kgs as against 10.490 MTS declared in the B/L and other import documents. The details are as under :-

Sr. No.	Container No.	Weighment Bill Ref. No.	Dated weighment	of	Weighment of cargo as per weighment slip
1	MSKU 2900028	05732	28.06.2012		1280 Kgs.
2	MSKU 7212096	05731	28.06.2012		1140 Kgs.
3	MSKU 7240014	05730	28.06.2012		900 Kgs.
4	MSKU 2819662	05733	28.06.2012		440 Kgs.
			Total		3760 Kgs.



In view of the above discrepancy the imported goods were examined under the Panchanama, wherein it was noticed that the seals belonging to M/s Mearsk Line were proper and intact on all the four containers without any tampering. The Show Cause Notice was issued to the respondent for short landing of the goods. The adjudicating authority after due process under law, vide order in original No. 39/AC/GPPL/12-13 dated 21.01.2013, imposed a penalty of Rs. 4,00,000/- (Rupees Four Lakhs Only) on the respondent under Section 116(a) of the Customs Act, 1962.

3. Being aggrieved by the Order in Original, the respondent filed an appeal before the Commissioner (Appeals), Jamnagar. The appellate authority vide impugned order in appeal had set aside the order in original and allowed appeal filed by the respondent. The Appellate Authority while passing the impugned Order in Appeals observed that :-

3.1 From the Equipment Interchange Receipts (E.I.R.) furnished by the respondent, it was established that the goods were stuffed in the containers by the shipper with the same seals as were found in tact in joint survey under Panchanama at the unloading station; that the variations of seal numbers noticed in respect of two containers in the B/L vis-à-vis seal numbers actually found appeared to be a clerical mistake; that the EIR was prepared prior to preparation of B/L and it matched with the seal numbers actually found; that when respondent received containers for export at the load port (Monrova) there were fastened with same seals as found upon unloading in India.

3.2 There was nothing on record to establish the fact that seller in Liberia had refunded / returned the amount to the importer for the short received goods or there was nothing on record that insurance company had reimbursed the amount for short received goods of 96.730 MTs.

3.3 The averment of the respondent that the shipper was not traceable was an indication about the real motive of the shipper.

3.4 The section 116(a) of Customs Act, 1962 would fasten liability on vessel owner if and only if it loaded the stated quantities manifested for destination but failed to unload it; that the position 'seals intact' found during joint survey also tantamount to satisfactory explanation of the respondent that this was a case of short-shipment which is condition sine qua non for not imposing penalty under Section 116(a) of the Act.



3.5 The Hon'ble High Court in the case of Shaw Wallace & Co. Ltd. (1986(25)ELT 948 (HC-Bombay)) had laid down the guidelines for FCL Containers which were found having seals intact; that the Revisionary Authority in the case I.A.I Shipping Agencies (2006(202)ELT 151(GOI)); Hon'ble High Court of Bombay in the case of Seahorse Shipping & Ship Management (2004(163) ELT 145 (BOM)) and Hon'ble Tribunal A'bad in the case of M/s Sical Logistics (2007(218) ELT 372 (Tri. Ahmd.)) had found that penalty under Section 116(a) of the Customs Act, 1962 was not imposable when seals were found intact in case of FCL Containers; that as per doctrine of judicial discipline the decisions of higher appellate authorities were binding.

4. Being aggrieved with the impugned order in appeal, the department has filed this Revision Application under Section 129DD of the Customs Act, 1962 before the Government on the following grounds :-

4.1 The respondent should have weighed the goods while taking the responsibility for transporting them. By filing IGM, the respondent held himself liable to the truthfulness of the contents declared therein. So, the question of short landing of goods in this case is squarely falling within the ambit of Section 116 as the respondent failed to unload or account for deficiency to the satisfaction of the Adjudicating Authority.

4.2 The case laws relied upon by the appellate authority have been distinguished by the Hon'ble High Court of Madras while deciding the Writ Petition filed by M/s Caravel Logistics Pvt. Ltd. Vs. Joint Secretary (RA)(2013(292) ELT 342 (Mad.)) on similar issue.

5. The Personal hearings in this case were fixed on 26.09.2018, 04.10.2019, 06.01.2021, 13.01.2021 and 20.01.2021. The department vide letter dated 30.09.2019 informed that there are no additional submissions and requested to decide the case on merit based on the documents submitted. No one appeared for any of the personal hearings so fixed from respondent's side. Since adequate opportunity for hearing the matter was granted, the matter is taken up for decision based on the documents available on record.



6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government notes that the respondents are the steamer agent who filed IGM No.150 dated 22.06.2012 (EDI IGM No. 2038920 dated 22.06.2012) as per provision of Section 30 of Custom Act, 1962 in respect of 4 containers said to carry Heavy Melting Scrap of quantity 100.490 MTS. However, on physical weighment, it was found that entire manifested quantity of 100.490 MTs of impugned goods said to be contained in 4 containers was not landed/short-landed and actual quantity was found to be 3760 Kgs. i.e. shortage 96.730 MTs Original authority after due process of law, vide impugned Order-in-Original No. 39/AC/GPPL/12-13 dated 21.01.2013, imposed a penalty of Rs. 4,00,000/- on the respondent steamer agents under Section 116(a) of Custom Act, 1962, for their failure to satisfactorily account for the not landed or short-landed of above said total manifested quantity of good as stated in the Bill of Lading. In appeal, Commissioner (Appeals) after considering their submissions set aside the order in original and allowed the appeal. Now the department has filed this revision application on the grounds stated in para 4 above.

8. Government notes that chapter VI of the Customs Act, 1962 provides the provisions relating to conveyances carrying imported (or exported) goods. Section 30 stipulates delivery of import manifest or import report with true declaration therein. Further Import Manifest (Vessel) Regulations, 1971 provides the nature condition and position (including status) to be truly declared as per respective declaration form. It is therefore quite clear that "Manifest" is to be considered a basic legal documents to be considered and the declarations made therein are to be taken as legal submissions for the purpose of further actions under the relevant provisions of Customs Act, 1962. Similarly, Chapter V of the Act provides for levy and assessment of Customs duties and Section 13 thereof when read with provisions of Bill of Entry (Form) Regulations, 1976 the legality of the duty levied in this case can be clearly understood. Further for levy/calculation of impugned penalty, the provisions of Section 116 of the Customs Act, 1962 unambiguously stipulates the levy of penalty not exceeding twice the amount of duty.



8.2 Government observes that person-in-charge of conveyance is responsible for any short-landing or non-landing of goods. As per definition in Section 2(31) of Customs Act, 1962, person-in-charge of the conveyance is the master of the vessel. There is no dispute in the matter that all the total quantity of impugned goods as per relevant documents was found short. The steamer agent is an agent of carrier, appointed under Section 148 of Customs Act, 1962. The liability of the agent so appointed by the person-in-charge of the conveyance stipulated under Section 148 is as under :-

“148. Liability of agent appointed by the person in charge of a conveyance. -

(1) Where this Act requires anything to be done by the person in charge of a conveyance, it may be done on his behalf by his agent.

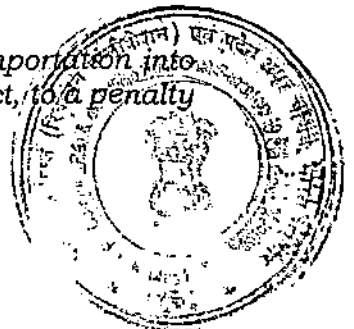
(2) An agent appointed by the person in charge of a conveyance and any person who represents himself to any officer of customs as an agent of any such person in charge, and is accepted as such by that officer, shall be liable for the fulfilment in respect of the matter in question of all obligations imposed on such person in charge by or under this Act or any law for the time being in force, and to penalties and confiscations which may be incurred in respect of that matter.”

The said provision of Section 148 makes it clear that such agent shall be liable for fulfilment in respect of matter in question of all obligations imposed on such person in-charge by or under this Act or any law for the time being in force and to penalties and confiscation which may be incurred in respect of that matter. As such steamer agent is liable to penal action under Section 116 *ibid* in this case matter.

8.3 To understand the penal action provision, the relevant Section 116 is extracted as under :-

“116. Penalty for not accounting for goods. - If any goods loaded in a conveyance for importation into India, or any goods transshipped under the provisions of this Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at the destination, and if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, the person-in-charge of the conveyance shall be liable, -

(a) In the case of goods loaded in a conveyance for importation into India or goods transshipped under the provisions of this Act, to a penalty



not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported;

(b) In the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported."

The said provision of Section 116 makes it clear that penalty is imposed for not unloading the goods which were loaded in vessel for importation into India. In this case, the short-landing of goods is not denied by the respondent. Moreover, the respondent, being steamer agent cannot claim that he was not aware of short shipment and 96.730 MTs weight not loaded on the ship gone unnoticed. Therefore, the penalty was rightly imposed on the respondents.

8.4 Government notes that for interpreting the provisions of law, Hon'ble Supreme Court in the case of *M/s. ITC Ltd. v. CCE Delhi - 2004 (171) E.L.T. 433 (S.C.)* and *M/s. Paper Products Ltd. v. CCE, Vadodara - 1999 (112) E.L.T. 765 (S.C.)* has held that ordinary and natural meaning of words of statutes has to be strictly construed without any intendments or any liberal interpretation. In view of these principles laid down by Hon'ble Supreme Court, the penal action is rightly taken against steamer agent under Section 116, by the lower authorities.

9. The Government finds that the appellate authority has relied upon the following judgements while setting aside the original order.

a) *M/s. Shaw Wallace & Co. Ltd. Vs. ACC & others.- 1986 (25) E.L.T. 948 (Bom.)*

b) *M/s Seahorse Shipping & Ship Management Pvt. Ltd. Vs. UOI - 2004(163) ELT 145 (Bom.)*

9.2 The Government finds that the above two judgements have been distinguished by the Hon'ble High Court of Madras in the judgement while deciding Writ Petition filed by *M/s Carvel Logistics Pvt. Ltd. Vs. JS(RA)- 2013 (293) ELT 342 (Mad.)* and the same has been Affirmed in 2016 (338) ELT 266 (Madras High Court). It is held that :-

"15. Various expressions found in the statute have been defined in Section 2 of the Act, which was ushered in by the Parliament to curb the dents on the revenue caused. Sub-section (31) of Section 2 defines the expression "person-in-charge" following words :



“(31) “person-in-charge” means, -

- (a) in relation to a vessel, the master of the vessel;
- (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
- (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
- (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;’

.....

.....

20. From a conjoint reading of Sections 2(31), 30, 31, 116 and 148 of the Act, it becomes clear that the person-in-charge of a conveyance together with the person acting on his behalf as his agent or for the matter any other person acting on his behalf by lodging import manifest under Section 30 of the Act, equally becomes liable for payment of the penalty.

21. In fact, the Supreme Court in “British Airways PIC v. Union of India” [2002 (2) SCC 95 = AIR 2002 SC 391] = 2002 (139) E.L.T. 6 (S.C.)] has considered the combined effect of Sections 2(31), 116 and 148 of the Act and held as under :

“The scheme of the Act provides that the cargo must be unloaded at the place of intended destination and it should not be short of the quantity. Where it is found that the cargo has not been unloaded at the requisite destination or the deficiencies are not accounted for to the satisfaction of the authorities under the Act, the person-in-charge of the conveyance shall be liable in terms of Section 116 of the Act. Besides the person-in-charge of the conveyance, the liability could be fastened upon his agent appointed under the Act or a person representing the officer-in-charge who has accepted as such by the officer concerned for the purposes of dealing with the cargo on his (officer-in-charge) behalf. Assuming that the appellants are neither the officer-in-charge within the meaning of Section 2(31) of the Act nor his agent, it cannot be denied that they shall be deemed to be a person representing the office-in-charge to the officers of the customs as his agent for the purposes of dealing with the cargo off-loaded from the aircraft of the appellants carrier.”

22. Learned single Judge has followed the above principle enunciated by the Supreme Court in British Airways PIC’s case (referred to supra) while dismissing the present writ petition, from out of which the appeal arises.

23.

24. Now turning to the judgment rendered by the learned Single Judge of Bombay High Court in Shaw Wallace and Co. Ltd. 's case (referred to supra), over which heavy reliance was placed by the learned counsel for the appellant it is clearly distinguishable.

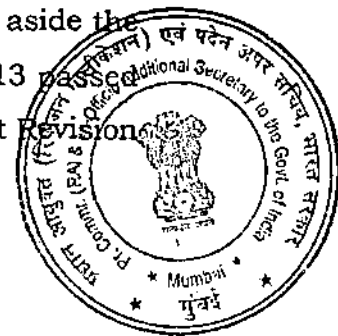


25. Certain guidelines as agreed to/suggested by the counsel for both sides have been provided for in Paragraph No. 8 of the said judgment, for enabling smooth exercise of functions under the provisions of the Customs Act by all concerned including the persons-in-charge of the conveyance, their agents and the customs authorities. Guidelines formulated in a judgment are intended for guidance of all concerned in conducting their affairs. When statutory obligations and responsibilities have to be discharged, there, perhaps, cannot be an exhaustive list of guidelines that can be formulated. Courts, generally, do not lay down, very precisely, guidelines for universal application. The facts and circumstances of each case have got to be kept in view. Therefore, guidelines spelt out in *Shaw Wallace and Co. Ltd.*'s case by the learned single Judge of the Bombay High Court cannot be treated as an exhaustive enumeration of all the legal principles applicable on the subject, but they should be understood and construed as sound and workable rules evolved for ironing out the creases noticed. By their very nature, guidelines are parameters to be kept in view while working out the provisions of a statute whole thing apart, it is cardinal principle that a judgment cannot be read like a statute and a judgment is only significant for what it decides and lays down as ratio.

26. Similarly, the reliance placed upon the judgment in *Seahorse Shipping & Ship-Management Pvt. Ltd.*'s and *Marine Container Services*' cases (referred to *supra*) is also not appropriate, particularly in view of the fact that these subsequent judgments have not noticed the binding judgment rendered by the Supreme Court in *British Airways PIC*'s case (referred to *supra*) earlier.

27. In view of what has been set out by us *supra*, we are of the opinion that the appellant, for all practical purposes, is liable to be treated as "any other person" if not as an agent of the "person-in-charge" of the conveyance and hence liable to suffer the penalty as provided for under Section 116 of the Act. We see no reason whatsoever to interfere with the order passed by the learned single Judge and this appeal fails. Accordingly, the appeal stands dismissed. No order as to costs. The miscellaneous petitions are closed."

10. In view of the above discussion and findings, the Government sets aside the impugned Order-in-Appeal No. 248/Comr (A)/JMN/2013 dated 05.07.2013 passed by the Commissioner (Appeals) Customs, Jamnagar and allows the instant Revision Application.



ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

Shrawan
4/2/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 21 /2021-CUS (WZ) /ASRA/Mumbai DATED 04.02.2021

To,

The Commissioner of Customs,
GPPL, Custom House,
Pipavav, Tal. Rajula, Dist. Amreli.

Copy to:

1. M/s Maersk Line India Pvt. Ltd., Office No. 21/22/23, 2nd floor, Port Users' Complex, Pipavav Port, P.O. Uchaya, Ta. Rajula, Dist. Amreli - 365 560.
2. The Commissioner of Customs (Prev.), "Sarda House", Bedi Bunder Road, Opp. Panchvati, Jamnagar- 361 008.
3. The Commissioner of Customs (Appeals), Jamnagar, 4th floor, "Milestone", P.N. Marg, Nr. Panchavati Society, Jamnagar- 361 002.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

