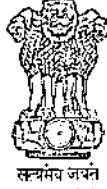


SPEED POST
REGISTERED POST



**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. 373/142/SL/15-RA/6831

Date of Issue: 25.11.2021

ORDER NO. 296/2021-CUS (WZ) /ASRA/MUMBAI DATED 22.11.2021 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 THE CUSTOMS ACT, 1962.

Applicant : M/s Chakiat Shipping Services P. Ltd.,
40, IInd Floor, Rajaji Salai,
Chennai 600 001.

Respondent : Commissioner of Customs (Seaport-Imports),
Customs House, 60, Rajaji Salai,
Chennai - 600 001.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.57/2015 dated 30.01.2015 passed by the Commissioner of Customs (Appeals - II), Chennai.

ORDER

This Revision Application is filed by M/s Chakiat Shipping Services P. Ltd., 40, 2nd Floor, Rajaji Salai, Chennai 600 001 (here-in-after referred to as 'the applicant') against the Order-in-Appeal No.157/2015 dated 30.01.2015 passed by the Commissioner of Customs (Appeals - II), Chennai. The said Order-in-Appeal dated 30.01.2015 decided an appeal against the Order-in-Original dated 16.10.2014 passed by the Deputy Commissioner of Customs (MCD), Chennai.

2. Brief facts of the case are that M/s Vimala Paper Company, Chennai ordered 8200 reams of 'Copy Paper' valued at Rs.6,59,556/- from M/s Hebei Kehua Paper Industry Co. Limited, China. They filed Bill of Entry No.9731964 dated 01.04.2013 for the same. During the course of examination of the consignment by Customs officers on 04.04.2013 it was noticed that there was a shortage in the quantity of goods that had landed at the port. The container was found to contain 619 reams of poor quality paper against the declared 8200 reams. The Customs House Agent (CHA) for the importer, M/s Trinity Forwarders, gave a letter to the Deputy Commissioner of Customs (Docks) on 05.04.2013 and a letter to the MCD Section on 16.04.2013 informing the short-shipment and subsequent survey, etc. The importer, in his statement before the Customs Authorities, deposed that the foreign supplier had cheated them and that they were in the process of claiming insurance on the consignment. The applicant submitted to the Customs Authorities that the shipment was FCL load and was booked at Port of Qingdao, China on a 'container yard to container yard' basis; that the Bill of Lading had a clause "the goods are shippers load, count and sale". He clarified that the cargo was stuffed by the shipper in their factory and that upon its arrival at Chennai they had released the same to the importer after checking that the container was in proper condition and the seals intact; that it was only after the container was moved to ECCT CFS from the harbor and opened and examined did they

came to know about the short-shipment. They further submitted that the said container was said to contain 18000 kgs of goods excluding the container weight and that they had received the loading list from the port of loading which mentioned that a total of 20250 kgs which included the weight of the container, was loaded at the port of shipment.

3. The applicants were issued a Show Cause Notice dated 22.10.2013 by the Deputy Commissioner, Customs (MCD) wherein it was alleged that they had failed to provide satisfactory reason for the 'short landing' and called upon them to show cause as to why penalty should not be imposed on them under Section 116 of the Customs Act, 1962 for the same. The original Adjudicating Authority vide Order-in-Original dated 16.10.2014 found that the applicant was responsible for such short shipment and that they had violated the provisions of Section 30 of the Customs Act, 1962 by giving a false declaration in terms of the weight and contents of the shipment and imposed a penalty of Rs.2,00,000/- on them under Section 116 of the Customs Act, 1962.

4. Aggrieved, the applicant preferred an appeal against the said Order-in-Original dated 16.10.2014 before the Commissioner of Customs (Appeals - II), Chennai resulting in Order-in-Appeal dated 30.01.2015. The Commissioner (Appeals) found that the applicant, whose sole responsibility was to deliver the weight as booked, had not done their job and the argument of the applicant that the goods had reached with seals intact did not make any change in the position that the applicants have not discharged their duty properly. The Commissioner (Appeals) held that the applicant was responsible for the weight that had been booked; that they had received freight charges for 18000 Kgs of goods and had delivered only 1515 Kgs which clearly indicated that they had failed in their basic duty. The Commissioner (Appeals) held that when the consignor delivered a full FCL container in a sealed condition at the yard in the load port, it was the duty of the steamer agent to receive the cargo after weighing the same and by not doing so they had rendered themselves liable to penalty. In view of

the said findings the Commissioner (A) upheld the Order-in-Original imposing penalty on the applicant.

5. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 30.01.2015 on the following grounds:-

- (a) The importer had admitted that the goods were short shipped and that the foreign suppliers had cheated them and hence it was not a case of 'short landing' calling for action under Section 116 of the Customs Act, 1962;
- (b) That the shippers had hired the container, taken it to their yard, stuffed the goods and handed it over to the liners under the terms 'shippers, load count and seal' and that on landing in India the seal was found intact and hence they could not be held responsible for the alleged 'short landing'; they sought to rely on the case of Shaw Wallace & Co. Ltd vs Asst. Collector of Customs [1986 (25) ELT 948 (Bom.)] and Public Notice No.50/1992 of the Mumbai Customs House.
- (c) That they had accepted the weight declared by the shipper and had accordingly filed the Import General Manifest;
- (d) That the Appellate Authority had gone beyond the notice and the Order-in-Original to express concern over the difficulties faced by the Captain of the vessel due to such mis-declaration; that the difficulties faced by the liners on account of the discrepancies between the actual and declared weights of the containers was deliberated in the 93rd session of the Maritime Safety Committee of the International Maritime Organization wherein it was decided to implement compulsory verification of weights of containers by the container owners with effect from July 2016; and hence the applicants could not be penalized.

In light of the above submissions, they prayed that the impugned Order-in-Appeal be set aside.

6. Personal hearing in the matter was granted to the applicant on 12.03.2021 and Shri Shankar Vedivelu, Advocate and Shri M. Suresh, Accountant appeared online for the same. The Advocate submitted that goods were short shipped by the shipper in a sealed container, therefore shipping line cannot be penalized under Section 116 of the Customs Act, 1962. They submitted that it was a full container cargo and therefore shipping line is to deliver what is received. He further submitted that importer had submitted that it was the shipper who had cheated them. Shri Suresh reiterated the submissions already made by them.

7. Government has carefully gone through the relevant case records available in the case file, the written submissions and also perused the impugned Order-in-Original dated 16.10.2014 and the Order-in-Appeal dated 30.01.2015.

8. Government finds that the issue involved is whether the Shipping Line can be held responsible for 'short landing' of a consignment which when shipped was declared to weigh 18000 Kgs and on landing in India was found to weigh 1515 Kgs; and whether in such circumstance the Shipping line was liable for penalty under Section 116 of the Customs Act, 1962.

9. Government notes that in this case the applicants represent their Principal, M/s Regional Container Lines, in India. It is not in dispute that M/s Regional Container Lines, had provided the container to the shipper, received it back in stuffed and sealed condition and had thereafter issued Bill of Lading covering the said consignment. This Bill of Lading mentioned the weight of the consignment as 18000 Kgs. Government notes that the applicant, being the representative of the Shipping Line issuing the Bill of Lading, cannot absolve their responsibility for such massive short shipment by stating that they had merely reproduced what was declared by the Shipper. Given the fact that the container was received by them in a sealed condition, the only parameter that could be verified by the Shipping Line was the weight declared by the Shipper, which, in this case they have failed to do. The plea of the applicant that the seal of the container was intact

does not find purchase as it is not alleged that they have tampered with it resulting in the short landing of goods. Government notes that the Commissioner (Appeals) has in his findings clearly elaborated the shortcomings of the applicant in the service provided by them as a Shipping Line, including the fact that they had charged and received freight for shipping 18000Kgs, but had delivered only 1515 Kgs. Government notes that given the findings of the Commissioner (Appeal) it is clear that the 'short landing' in the present case was not due to factors beyond the control of the applicant.

10. Government notes that Section 116 of the Customs Act, 1962 reads as follows:-

" 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 that destination, and of 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-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;

....."

Government notes that in the present case the applicant had issued a Bill of Lading stating that the consignment received by them weighed 18000 Kgs. The said consignment when landed in India was found to weight 1515 Kgs., thus it is clear that quantity unloaded is short of the quantity they should have actually unloaded, making the applicant liable for penalty under Section 116 of the Customs Act, 1962. The case law cited by the applicant has been distinguished by the Commissioner (Appeals) in the impugned Order-in-Appeal and was found to be of no support to the applicant. Thus,

Government finds that the Order-in-Appeal upholding the penalty imposed by the original Adjudicating Authority on the applicant is just and proper.

11. In view of the findings recorded above, Government finds no reason to annul or modify the Order-in-Appeal No.157/2015 dated 30.01.2015 passed by the Commissioner of Customs (Appeals - II), Chennai.

12. The Revision Application is dismissed.

Shrawan
22/11/21
(SHRAWAN KUMAR)

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

ORDER No: ~~296~~296/2021-CUS(WZ) /ASRA/Mumbai dated ~~22.11.2021~~ 22.11.2021

To,

M/s Chakiat Shipping Services P. Ltd.,
40, IInd Floor, Rajaji Salai,
Chennai 600 001.

Copy to:

1. The Commissioner of Customs (Seaport-Imports), Customs House, 60, Rajaji Salai.
2. The Commissioner (Appeals - II), 60, Rajaji Salai, Custom House, Chennai - 600 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board