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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 371/88/SL/10 /6478

Date of Issue: 05.08.2023

ORDER NO. 624/2023-CUS (WZ) /ASRA/MUMBAI DATED 30.08.2023 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 James Mackintosh & Co. Pvt. Ltd.,  
Darabshaw House, Shoorji Vallabhdas Marg,  
Ballard Estate, Mumbai – 400 038.
- Respondent : Commissioner of Customs (Import),  
New Custom House, Ballard Estate,  
Mumbai – 400 038.
- Subject : Revision Applications filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal  
No.92/2010/MCH/AC/MCD/2010 dated 03.05.2010  
passed by the Commissioner of Customs (Appeals),  
Mumbai - I.

**ORDER**

These proceedings are in compliance of the Order dated 19.12.2022 passed by the Hon'ble High Court of Bombay in W.P. No.1927 of 2012 filed by the applicant, wherein the Hon'ble Court had set aside the Order no.223/12-CUS dated 09.05.2012 of the Revision Authority and had restored the subject Revision Applications, with the direction to the Revisionary Authority to take necessary decision in light of the observations of the Hon'ble Court in its said Order.

2. The subject Revision Applications have been filed by M/s James Mackintosh & Co. Pvt. Ltd., Mumbai (here-in-after referred to as 'the applicant') against the Order-in-Appeal No.92/2010/MCH/AC/MCD/2010 dated 03.05.2010 passed by the Commissioner of Customs (Appeals), Mumbai - I. The said Order-in-Appeal was passed in compliance of the Order dated 19.01.2020 of the Hon'ble High Court of Bombay which had remanded the cases back to the Commissioner (Appeals) for being decided afresh.

3. Brief facts of the case are that the applicant, at the material time, was an agent of one Pacific International Lines (Pte) Ltd., Singapore and had filed two Import General Manifests, viz., IGM No.8808 dated 15.03.2001 and IGM No.7309 dated 21.09.2000 in respect of vessels M.V. Kota Raja and M.V. Kota Rukum, respectively. On the basis of Out Turn Report issued by the MbPT, AC/MCD, the applicant was issued Show Cause Notices seeking to impose penalty on them for short landing under Section 116 of the Customs Act, 1962. In response, the applicant submitted that there were other intermediaries like Slot Agents, Freight Forwarders in the Shipping trade who issued Bills of Lading as carriers and had accepted responsibility for loss, damage and shortage of cargo. They also submitted that the containers were received with the seal in intact condition and that the freight forwarders could not satisfactorily account for the short landing when called upon to do so, and hence the liability for short-landing was on the freight forwarders and their agents as stuffing was done by them. The

details of the IGMs and the Slot Agents/Charterers submitted by them before the original authorities is as under:-

A) IGM No.8808/15.03.2001

Sl. No.	ITEM No.	Slot Agent/Charterer
1.	Item No.27	M/s Liberty Marine Syndicate P. Ltd.
2.	Item No.31	M/s Liberty Marine Syndicate P. Ltd.
3.	Item No.38	M/s Globelink WW India Pvt. Ltd.
4.	Item No.39	M/s Globelink WW India Pvt. Ltd.
5.	Item No.40	M/s Schenker India Limited

B) IGM No.7309/21.09.2000

Sl. No.	ITEM No.	Slot Agent/Charterer
1.	Item No.22	M/s All Cargo Movers (I) P. Ltd.
2.	Item No.25	M/s All Cargo Movers (I) P. Ltd.
3.	Item No.87	M/s Parekh Marine Agencies P. Ltd.

The original authority, in both cases, after having heard all the parties concerned, imposed penalties at the maximum rate on the 'Steamer Agent' and sent a copy of the Order-in-Original to the applicant as well as the Slot Agents/Charterers. Thereafter, both the cases went through several rounds of litigation with the applicant challenging the Orders-in-Original and Orders-in-Appeal in the High Court of Bombay. The impugned Order-in-Appeal dated 03.05.2010 which decided both the cases was passed in compliance of the Order dated 19.01.2010 in W.P. No.3185 of 2002 and W.P.No.6 of 2003, of the High Court of Bombay, wherein the Hon'ble High Court had remanded the case back to the Commissioner (Appeals) for being considered afresh in view of its decision in the case of M/s Shaw Wallace & Co. [1986 (25) ELT 948 (Bombay)]. The Commissioner (Appeals) vide the impugned Order-in-Appeal dated 03.05.2010, except for dropping the penalty imposed in respect of Item no.87 of IGM No.7309/21.09.2000, upheld the rest of the penalties imposed by the Orders-in-Original.

4. Aggrieved, the applicant filed Revision Applications against the Order-in-Appeal dated 03.05.2010 before the Revisionary Authority, Mumbai. The Revisionary Authority vide Order No.223/12-CUS dated 09.05.2012, while upholding the findings of the Commissioner (Appeals) found that the penalties imposed were on the higher side and reduced the same by half in all cases. The applicant filed W.P. No.1927 of 2012 in the High Court of

Bombay against the said Order of the Revisionary Authority. The Hon'ble High Court vide its Order dated 19.12.2022 quashed and set aside the said Order of the Revisionary Authority and restored the Revision Applications filed by the applicant. The Hon'ble Court directed the Revision Authority to take necessary decision in light of its observations in the said Order. As stated above, the subject Revision Applications are now being taken up for being decided afresh in light of the directions of the Hon'ble High Court in its Order dated 19.12.2022.

5. Government finds that the applicant had filed the subject Revision Applications against the impugned Order-in-Appeal dated 03.05.2010 on the following grounds:-

(a) The Commissioner (Appeals) had erroneously relied upon the LCL Bill of Lading issued by the Slot Charterer, Import General Manifest filed by the applicant and de-stuffing tally sheet and had held them responsible for short-landing and liable for penalties;

(b) The Commissioner (Appeals) had erroneously held that as the applicant has acted as agent appointed in terms of Section 148 of the Customs Act, 1962 and therefore the applicant was responsible for the short-landing and liable for penalties without taking into consideration LCL Bills of Lading issued by the Slot Agents who could have been summoned in the matter and who are now recognized by Port and Customs whilst levying penalty in several matters;

(c) The Commissioner (Appeals) had held the applicant liable on the basis of Import General Manifest filed by them which declared the items as LCL and had failed to consider that the Import General manifest was prepared on the basis of the Bills of Lading issued by Slot Agents for the actual consignee to file a Bill of entry for taking delivery of the cargo; that the actual consignee was only mentioned on the Bills of Lading issued by these Slot Charterers; that the Bill of Lading issued by them would show the Slot Agent as consignee, thus relevant for applying M/s Shaw Wallace & Co. Case;

(d) That the IGM was filed on the basis of the Bills of Lading issued by various forwarders and Slot Charterers as carriers since only these Bills of Lading would show the names of the actual consignee without which the Customs would not permit the consignee to clear the goods; that

consequently the containers were shown as FCL or LCL depending on what these Bills of Lading disclose and not on the basis of the Bills of Lading issued by their principal company; thus, if short-landing is to be ascertained on whether the container is FCL or LCL then liability must fall on the carrier who had issued such Bills of Lading to the actual shippers when receiving the container from them on the basis of which Import General Manifest was filed;

(e) The Commissioner (Appeals) had erroneously held them liable on the basis of the IGM which declared the items as LCL on the basis of the LCL Bill of Lading issued by the Slot Agent who consolidate cargo from different sources into one container; that the actual consignee was only mentioned on the Bill of Lading issued by the Slot Agent and therefore it was incumbent upon the applicant to declare in Import General Manifest the items on the basis of the Bill of Lading issued by Slot Agent or Customs Authorities would also find it difficult to give clearance to the cargo without knowing the actual consignee; that the Commissioner (Appeals) did not take into consideration that Section 116 imposes penalty on the person in charge of the conveyance; that Section 2(31) defines person in charge as the master of the vessel; that the Master is the servant or employee of the carrier; hence the liability was of the carrier; that the Shaw Wallace judgement also places the liability on the carrier in paragraph 8(B)(a) and 8(B)(1); that the carrier is the person who has issued the Bill of Lading and whose Bill of Lading is taken into account for the purpose of ascertaining whether it is an FCL or LCL Bills of Lading; that it was only they who could explain the short-landing because they had stuffed the containers at the port of loading; that the carrier and the agents were identified in the matter; that they appeared before the Asst. Commissioner of Customs and were liable to explain the shortage; that it was clear that the penalty should be imposed upon them and recovery made accordingly;

(f) That a Freight Forwarder or a Slot Charterer who, in his capacity as a carrier, issues to the shipper a Bill of Lading in respect of the goods to be loaded into containers for carriage by sea, is responsible and accountable for any shortage that may be found upon discharge of those goods at the port of destination and consequently liable for any penalty imposed under Section 116 of the Customs Act, 1962;

(g) That the guidelines laid down by the judgment of a Single judge of this one Court in the case of Show Wallace & Co. Ltd. Vs. The Assistant Collector of Customs [1986(25) ELT 948 (Bom)] are inadequate or are not comprehensive enough to do with and take care of situations arising out of acceptance of Bills of Lading issued by Freight Forwarders and Slot Charterers by the Port and Customs authorities need to be reviewed, clarified and supplemented; that under the existing guidelines the carrier is not liable for any shortage ascertained on de-stuffing of an FCL container if the seals are found to be intact. However, the carrier is liable if any shortage is ascertained on de-stuffing of an LCL container – even if the seals were found to be intact on the ground that it is the carrier who has stuffed the container at the port of loading and consequently liable for the shortage; that if the Bills of Lading issued by Freight Forwarders or Slot charterers are accepted by the Customs Authorities then it follows that the Freight Forwarder or Slot Charterer, as the case may be, who ought to be held liable for the short-landing and penalty, if any;

(h) That the imposition of penalty at the rate of 200% of the amount of duty payable on the goods without assigning any reason as to the enhanced rate of penalty imposed was ex facie arbitrary, capricious and bad in law; that Section 116 of the Customs Act, 1962 the purpose of which is to safeguard Customs Revenue, has accordingly to be given a wider meaning to include within its ambit the "carrier" whosoever it may be who issues the Bills of Lading as the person in charge of the conveyance; that they were concerned, the container discharged at port of Mumbai was an FCL Container and in view of seal of item No. 87 was intact at the time of unloading; that in the case of container cargo, the Slot Charterer who loads the LCL container is the person in charge of the conveyance;

(i) That the Commissioner (Appeals) had clearly erred in his findings inasmuch as he failed to appreciate the role of slot charters and other intermediaries involved; that the interpretation of the terms "persons in charge of conveyance" appearing in section 116 of the Customs Act, was done incorrectly and that the Bombay High Court Judgement in Gokak Patel Volkart Ltd. vs AC, Customs, had been ignored.

6. Personal hearing in the matter was held on 27.04.2023 and Shri Prashant Pratap, Sr. Advocate and Shri Nishaan Shetty, Advocate appeared

for the same on behalf of the applicant. They invited attention to the High Court dated 19.12.2022. They submitted an additional written submission in the matter. They contended that under Section 148(2) of the Customs Act, 1962 the Slot agents should have been held responsible as slot agents acted as Steamer agents. They further submitted that the Order-in-Original in the matter is ambiguous and does not clearly establish penal liability against them. They further submitted that penal liability, if any, need to be fastened on the Slot Agents and not on them. They requested to allow the application. No one appeared on behalf of the Department.

7. The applicant in their written submissions made during the personal hearing averred that :-

(a) That the judgment of the Hon'ble Bombay High Court in the case of M/s. Shaw Wallace and Co. Ltd. vs. the Asst. Commissioner of Customs was relevant and applicable for the purpose of ascertaining short-landing from goods in containers and the guidelines laid down in this judgment for ascertaining short-landing had been incorporated by the Customs Authority in Public Notice No.50 dated 20 March 1992;

(b) That as per these guidelines in the event it is an FCL container and the seals are found intact then the vessel owner is not responsible for any short-landing and cannot be made liable to pay penalty; that in the present case it was an FCL container as per the Bill of Lading issued by their Principal (vessel owner) as carriers and the seals were found intact and hence no penalty could be imposed on the vessel owner on the basis of this Bill of Lading;

(c) That the guidelines further provide that if it is an LCL container, even if the seals are intact but there is short-landing then the carrier is liable to account for the shortage; that in the present case the containers were received as LCL containers from various steamer agents who were also agents of the carrier (principal) under the Bills of Lading issued by them (showing LCL container) and also identified as steamer agents in the order of the original authority; that consequently it is they who have to account for the short-landing (as only they can explain having stuffed the goods in the container) and upon their failure to do so the penalty for short-landing ought to be imposed on them as the concerned steamer agents;

(d) That the Hon'ble Bombay High Court in its order dated 19.12.2022 noted this submission and also noted the various orders passed in various

instances by the Customs Authorities where the steamer agents have been identified and penalty for short-landing has been imposed on them as agents of the carrier; that accordingly the Hon'ble Bombay High Court noted that "there appears to be a practice of holding an enquiry to ascertain whether it is the steamer agent who has filed the IGM who should be liable for the penalty in the case of short-landing or the liability should be fixed on the slot agent (relevant steamer agent) and that there is no reason on record why this cause of action is not adopted in the present case"; that the Hon'ble Bombay High Court further observed at paragraph 18 that "the cases cited in the additional affidavit are similar on facts and no justifiable reason exists to take a different stand, the Revisional Authority will proceed as per law accordingly.";

(e) That the present case was on similar facts as in those cases cited in the additional affidavit dated 14.12.2022, a copy of which was enclosed along with the various orders/Exhibits; that in all those cases liability was imposed on the relevant steamer agent on whose behalf the goods were manifested; that consequently there is no justifiable reason to take a different stand in the present case; that included in this is an order dated 6 September 2002 of the Revisional Authority in the case of Parikh Marine Agencies P. Ltd. who were the steamer agents for the short-landed item and not the agent who filed the IGM; that in the circumstances the penalty for short-landing ought to be imposed on various steamer agents identified in the order of the original authority; that these steamer agents have been identified along with the relevant item numbers as appearing in the IGM and had short-landed;

(f) That under Section 116 of the Customs Act the liability is on the person in charge of the conveyance; that Section 2(31) defines the person-in-charge in relation to a vessel, as the Master of the vessel; that Section 148 states that where the Act requires anything to be done by the person in charge of a conveyance it may be done on his behalf by his agent; that Section 148(2) was applicable to the present case; as if the steamer agents (slot agents) who have been identified, appear before the Asst. Commissioner of Customs representing themselves to be the agents of the carrier (person in charge of the conveyance) and submit to the jurisdiction of the authority, then clearly it is these steamer agents who are liable to account for the shortage; that since it is the LCL container, the guidelines pertaining to LCL containers apply; and that the guidelines referred to make it the responsibility of the carrier; that thus the steamer agents who are agents of



the carrier on whose behalf the goods were manifested as LCL, container, are liable for the shortage.

(g) That if the guidelines laid down in the Shaw Wallace judgment are to be applied and Public Notice No.50 dated 20 March 1992 make these guidelines applicable, then the only logical conclusion was that if the carrier referred to in the guidelines for LCL containers was responsible for the shortage then that liability has to be imposed on the agent of the carrier who in the facts of this case have been identified as the steamer agents responsible for the items short-landed; that this view was also consistent with the provisions of Section 148(2) of the Customs Act which refers to any person who represents himself as an agent for any such person in charge;

(h) That this was the view taken by the Asst. Commissioner of Customs in the various orders referred to by the High Court where liability was imposed on the steamer agent and not on the agent who had filed the IGM; that this was also the view taken by the Revisional Authority in one of the cases where the short-landed items were manifested by different steamer agents and penalty imposed on the different steamer agents; that the Revision Application was filed by one of the steamer agents on whom penalty had been imposed and the penalty was set aside on facts because there was no short-landing as per the guidelines;

(i) That the CESTAT in its order dated 11.03.2020 in the case of MSC Agency (India) Pvt. Ltd. vs. Commissioner of Customs had also referred to the Bill of Lading issued by the carrier MSC and their agent MSC Agency (India) Pvt. Ltd. showing the goods as "shippers Load Stow & Count" meaning a FCL container; thus if it was a FCL container and seals were intact there could be no penalty for shortage; that in the present case their Bill of Lading issued by their Principal was for FCL container and seals are intact whereas it is the other steamer agents whose principals have issued Bill of Lading showing LCL container and who are liable;

(j) That in the circumstances as noted by the High Court in its order dated 19.12.2022 there was no reason why the same course of action should not be followed in the present case and the penalty imposed on the identified steamer agents;

(k) That the Multimodal Transportation of Goods Acts, 1993 was enacted following an exponential increase in containerization or a mode of transport in the world trade, to allow various consolidators and freight forwarders who act as transport intermediaries to issue Bills of Lading which would have the

same meaning and import as Bills of Lading issued by the vessel owner and impose the same liability on these forwarders/ consolidators as would be imposed on the vessel owner; that the term carrier is defined in Section 2(a) of the said Act as "Carrier means a person who is engaged in the business of transportation for hire goods by road, rail, inland waters or sea."; that as a result various forwarders and consolidators and NVOCC's (Non Vessel Owning Common Carriers) who issue their Bills of Lading are carriers as defined in the said Act and generally in law and are exposed to the same liability as any other vessel owner;

(l) The term "Carrier" is not defined under the Customs Act, 1962; that however it is defined in the Multimodal Act as above; that the Indian Carriage of Goods by Sea Act, 1925 also defines a Carrier in Article 1 as "includes the owner or the charterer who enters into a contract of carriage with the shipper."; that this is an inclusive definition and would include slot charterers, forwarders and consolidators as well;

(m) That in the guidelines pertaining to LCL containers as set out in the Shaw Wallace judgment, the term used is "Carrier" and not vessel owner and liability is imposed on the "Carrier"; thus it was incumbent upon the Customs Authorities to fasten liability on the concerned "Carrier" if there was more than one carrier involved in the shipment in respect of which there has been short-landing; that these carriers are easily identified by the Bill of Lading and have their own appointed and identified agents at the port of discharge;

(n) That a penal provision was always to be strictly construed and if it is clear from the facts that the carrier who has issued the LCL Bills of Lading is liable to account for the shortage, then the penalty has to be imposed on this carrier and/or his agents and not on any other carrier;

In light of the above submissions, they requested that their Revision Applications be allowed and the Orders of the lower authorities be quashed and the penalties imposed on them be set aside. They further submitted that in the event that Revisionary Authority was not persuaded to take a different view from that taken in the previous order of the Revisionary Authority dated 09.05.2012 then the reduction in the penalty amount granted be maintained and the penalty be reduced accordingly.

8. Government has carefully gone through the Order dated 19.12.2022 of the Hon'ble High Court of Bombay referred to above, the relevant case

records, the written and oral submissions and also perused the impugned Orders-in-Original and the impugned Order-in-Appeal dated 03.05.2010.

9. Government finds that the issue involved is whether the applicant who are agents of a Shipping Line can be held responsible for 'short-landing' of goods and be held liable for penalty as against their claim that it was the 'Slot Agents' who were responsible for such short-landing and hence should be liable for penalty under Section 116 of the Customs Act, 1962. Government finds that the orders of the original authority, as observed by the Hon'ble High Court, are ambiguous inasmuch as penalties have been imposed on "Steamer Agent" without actually specifying whether it was the applicant or the Slot Agents who were penalized.

10. Government finds that the Hon'ble High Court has observed that Section 30 of the Customs Act, 1962 obligates the person-in-charge carrying the goods for import to submit an IGM, which contains a signature and statement of verification and that as per Section 116, the person in charge of the conveyance is responsible for the short-landing. The Court further observed that this has to be read with Section 148 which dealt with the liability of an agent appointed by the person in charge of a conveyance and laid down that where the Act requires anything to be done by the person in charge of the conveyance, it may be done on his behalf by his agent. The Court further observed that such 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 fulfillment in respect of the matter in question of all obligations imposed on such person in charge including penalties. The Hon'ble Court while referring to its decision in the case of Shaw Wallace, which laid down the guidelines for short-landing made the following observations:-

*"16. According to the Petitioner, since the seals of the containers (LCL) were intact, the guidelines laid down in the case of Shaw Wallace would apply as to the liability of the "Carrier". The case of the Petitioner is also that an enquiry is not impermissible when there are slot agents involved, and the defence is taken that IGM is based on the Bill of Lading submitted by the slot agents, especially when the container arrives in sealed condition. This has been Petitioner's consistent case. The Petitioner in response to the show cause notice has taken this defence and had even given the details of the slot agents M/s. Liberty Marines Syndicate Pvt.*

*Ltd., Globe Link W.W. India Pvt. Ltd. and M/s. Schenker India Ltd. These slot agents were directed to remain present for the hearing before the Assistant Commissioner, and the Assistant Commissioner (Customs) had given them the opportunity and heard the slot agents as well. Thereafter, the Commissioner (Customs) passed an order wherein there was no bifurcation of liability though the order was sent to the Petitioner and these three slot agents. It is the Petitioner who took up the challenge to the order, as according to the Petitioner, since the Petitioner is a reputed firm, it did not want the stigma of the order of penalty. The factual aspect as to the role of enquiry thereafter was not undertaken, and by the order in Appeal and the Revisional orders, the Order in Original was confirmed. According to the Petitioner, provisions of the Act regarding the liability of the Agents for penalty and confiscation should be meaningfully read so as to include the slot agents.*

*17. It has to be kept in mind that Section 116 imposes a penalty and, in that sense, is a penal provision and not a beneficial provision to be construed liberally and widely. However, apart from the legal issue raised by the Petitioner based on the interpretation of Section 116 of the Act, we do not deem it necessary to conclude the issue at present, in view of the additional affidavit filed by the Petitioner. In the additional affidavit, the Petitioner has stated as under: -*

*"(1) I am personally aware of the facts of the case and am well versed with the issues in connection with the above Petition. I am making this affidavit in support of the submissions made on 9 December 2022 to place on record copies of three orders passed by the Customs Authorities wherein penalties for shortlanding of cargo under Section 116 of the Customs Act were imposed on the slot agents who are shown as the steamer agents for the relevant items that were shortlanded. These item numbers correspond to the entry in the Import General Manifest (IGM) which is filed by the vessel owner agent. Both the vessel owners agent and the slot agents are called 'steamer agents' by the Customs Authorities and covered by Section 148 of the Customs Act, 1962.*

*(2) In all these cases the initial Show Cause Notice was issued to the vessel owners' agents to explain the shortlanding. Since the shortlanded items were manifested in the IGM by the vessel owners' agent on behalf of the slot agents (also referred to as steamer agents), it was these agents who appeared before the adjudicating authority to explain the shortlanding as only they could have done so. Penalties were accordingly imposed on these steamer agents and not on the vessel owners' agent who had filed the IGM.*

*(3) In the order dated 5 October 1999 the vessel owners' agents who had filed the IGM was Parikh Marine Agencies Ltd. Mumbai. The shortlanded Item No.64 in the IGM was manifested by steamer agent M/s. Lucky Maritime Agency Pvt. Ltd. Mumbai. Accordingly, show cause notice for shortlanding was issued to M/s. Lucky Maritime Agency Pvt. Ltd. Mumbai and eventually penalty was imposed on the said steamer agent for shortlanding of Item No.64 in the IGM.*

(4) In order dated 21 January 2000 IGM was filed by James Mackintosh & Co. Pvt. Ltd. as vessel owners' agent. Shortlanding was in respect of Item No. 107 which was manifested by slot steamer agent Supreme Maritime Agencies Pvt. Ltd. Since the said steamer agent did not explain the shortlanding to the satisfaction of the adjudicating authority, the penalty was imposed on them and not on the vessel owners' agent James Mackintosh & Co. Pvt. Ltd. who had filed the IGM.

(5) In the third order dated 6 September 2002 passed in the revision application filed under Section 129DD of the Customs Act, once again James Mackintosh & Co. Pvt. Ltd. had filed IGM as vessel owners' agents. However the shortlanded Item Nos 22,25 and 87 of the said IGM were manifested by different steamer agents. The said steamer agents appeared before the adjudicating authority and penalty for shortlanding was imposed on these and not on the vessel agent who had filed the IGM. In the revision application filed by one of the steamer agents, the penalty was set aside on facts. However it can be seen from this order that the revisional authority noted the guidelines set out in Public Notice No.50 dated 20 March 1992 which are the guidelines set out in the judgment in *Shaw Wallace & Co. Ltd. vs. Asst. Collector of Customs & Anr. 1986 SCC OnLine Bom. 180* and incorporated by the Customs Authorities in the Public Notice as guidelines for the purpose of dealing with steamer agents liability under Section 116 of the Customs Act.

(6) There is yet another order dated 21 August 2000 where the main agent James Mackintosh & Co. Pvt. Ltd. (vessel owners' agent) who had filed the IGM, applied for amendment of IGM as one of the consolidating agents (slot agents) had omitted to include one of the items appearing on the Bill of Lading in the IGM filed by James Mackintosh & Co. Pvt. Ltd. The adjudicating authority held the consolidating agent liable for failure to manifest the goods covered by the Bill of Lading and imposed a penalty on the said agent under Section 112(c) of the Customs Act and not the vessel owners' agent who had filed the IGM."

18. The abovementioned incidences cited by the Petitioner are supported by the orders, which are annexed. The orders annexed to the additional affidavit show that the Respondents have carried out an enquiry into the role of slot agents and have not necessarily held that the steamer agent who filed the IGM alone is responsible. Therefore, prima facie there appears to be a practice of holding an enquiry to ascertain whether it is the steamer agent who has filed the IGM should be held liable for the penalty in the case of short-landing or the liability should be fixed on the slot agent. We find no reason on record why this course of action is adopted in this case when the Petitioner has been consistently demanding the same. Thus, the appropriate course of action would be to set aside the impugned order and restore the Revision. The Revisional Authority will deal with the contention of the Petitioner raised in the additional affidavit.

*If the cases cited in the additional affidavit are similar on facts and no justifiable reason exists to take a different stand, the Respondent-Revisional Authority will proceed as per law accordingly.*

19. *The learned Counsel for the Petitioner submitted that the Petitioner has deposited an amount of Rs. 60 Lakhs in this Court pursuant to an order dated 6 January 2003 in Writ Petition No. 3185 of 2002 which has remained in this Court and depending on the outcome of the revision, the amount is to be permitted to be withdrawn*

20. *Accordingly, the impugned order dated 9 May 2012 passed by the Joint Secretary, Revisional Authority, is quashed and set aside, and the revision filed by the Petitioner is restored to the file. The Revisional Authority will take the necessary decision in the revision in light of what is stated above. The decision should be taken within four months from the date this order is uploaded. subject to earlier time-bound directions and other urgent public duties of the Revisional Authority. Liberty to apply to the successful party in the revision for withdrawal of the amount of Rs.60 lakhs deposited in this Court.*

21. *Rule is made absolute in the above terms. No costs."*

Government notes that the Hon'ble High Court has clearly found that as per the provisions of the Customs Act, 1962, an agent appointed by the person in charge of the conveyance, who represents himself to the Customs authorities on their behalf and accepted as such by the Customs authorities, shall be liable for fulfilment of all obligations cast upon him. Further, Government notes that the Hon'ble High Court has taken cognizance of the cases cited by the applicant in support of their submission that in other cases necessary inquiries were conducted to establish the role of Slot Agents and thereafter they have been held liable for penalties. Government notes that the Hon'ble Court has observed that in the present case the factual aspect as to the role of enquiry conducted by the original authority was not undertaken. Government notes that the original authority had heard the Slot Agents during the course of deciding this case, however, neither their role/responsibilities in the instant case was brought out nor was their liability to penalty or otherwise discussed in the said order.

11. As directed by the Hon'ble Court, Government has examined the Orders cited by the applicant before the Court in support of their submission that in similar cases it was the 'Slot Agents' who were penalized and not the Shipping Line, and finds that they are indeed similar on facts to the present case. Government finds that in similar cases it was the 'Slot

Agents' who have been held responsible for short landing/arrival of non-manifested item and were held liable for penalty. In the present case, Government finds that in view of the directions of the Hon'ble Court, a proper enquiry has to be conducted to establish the role of the Slot Agents and the applicant, in each case of short landing and the liability for penalties be decided afterwards. In view of the same, Government remands the case back to the original authority for the purpose of conducting such enquiries, as directed by the Hon'ble High Court, to establish the role of the Slot Agents concerned and the applicant vis-à-vis each case of short landing. Further, as directed by the Hon'ble Court, the original authority shall, based on the result of such enquiry, determine the party/parties responsible for such short landing and thereafter if found liable, impose penalties specifically on the Slot Agent or/and the applicant.

12. Further, Government notes that the impugned Order-in-Appeal dated 03.05.2010, on the directions of the Hon'ble High Court, had disposed of appeals against Order-in-Original No.8808/15.03.2001 dated 12.12.2001 and No.7309/21.09.2000 dated 08.02.2002. Government finds that the Hon'ble High Court in the subject Order no.223/12-CUS dated 09.05.2012 has dealt with the cases covered by the Order-in-Original No.8808 dated 12.12.2001. Government notes that the cases covered by the Order-in-Original No.7309/21.09.2000 dated 08.02.2002 are identical to those covered by the Hon'ble High Court in the subject Order. Government observes that the Order-in-Original dated 08.02.2002 covered three cases of short-landing, viz. Item no.22, 25 and 87 of which the Commissioner (Appeals) had confirmed the penalties with respect to Item nos.22 & 25 and set aside the penalty imposed with respect Item no.87. Government finds that the decision to drop the penalty with respect to Item no.87 has not been challenged. Given the above, Government remand the cases of short landing in Item no.22 & 25, decided vide Order-in-Original dated 08.02.2002, back to the original authority for being decided on the lines mentioned above.

13. Government directs the original authority to decide the above cases within eight weeks of the receipt of this order after hearing all the parties concerned and providing proper opportunity to them for placing their submissions on record. Government also directs the applicant and the Slot

Agents to make their submissions and furnish the necessary information to the original authority for deciding the subject issue.

14. The Revision Applications are disposed of in the above terms.

  
(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 624/2023-CUS(WZ) /ASRA/Mumbai dated 30.08.2023.

To,

M/s James Mackintosh & Co. Pvt. Ltd.,  
Darabshaw House, Shoorji Vallabhdas Marg,  
Ballard Estate, Mumbai – 400 038.

Copy to:

1. The Commissioner of Customs (Imports), New Custom House, Ballard Estate, Mumbai – 400 038.
2. The Pr. Commissioner of Customs (Appeals), Mumbai – I, 2<sup>nd</sup> floor, New Custom House, Ballard Estate, Mumbai 400 001.
3. Shri Nishaan Shetty, Advocate, 151 Maker Chambers III, 15<sup>th</sup> floor, Nariman Point, Mumbai 400 021.
4. Sr. P.S. to AS (RA), Mumbai
5. ~~Guard file~~