

REGISTERED  
SPEED POST



F. No. 372/11/SL/2021-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 18/02/22

Orders No. 53/22-Cus dated 18-02-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(Port)/AKR/160/2021 dated 22.02.2021, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : M/s PIL (India ) Pvt. Ltd., Kolkata.

Respondent : The Commissioner of Customs (Port), Kolkata.

**ORDER**

Revision Application, bearing no. 372/11/SL/2021-RA dated 22.03.2021, has been filed by M/s PIL (India) Pvt. Ltd., Kolkata (hereinafter referred to as the Applicant) against the KOL/CUS(Port)/AKR/160/2021 dated 22.02.2021, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original, passed by the Assistant Commissioner of Customs, Manifest Clearance Department, Custom House, Kolkata, bearing no. KOL/CUS/AC(MCD)/2453/2017 dated 27.07.2017, vide which penalty was imposed upon the Applicant herein under Section 116 of the Customs Act, 1962.

2. Briefly stated, On the basis of Joint Survey Report dated 21.01.2017, done in the presence of CHA, CO, Appraiser, AC(CFS JJP) it was observed that the goods against the Rotation No. 2155627/16 dated 12.01.2017 of M.V. X-Press had short landed at Kolkata Port, as per details below:

<b>Line No.</b>	<b>Bill of Lading</b>	<b>Consignee</b>	<b>Quantity and Description of goods</b>	<b>Shortage Of goods Quantity numbers</b>	<b>Assessable value Of short landed Goods (In INR)</b>	<b>Amount of Duty on short Landed goods (In INR)</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
86	STJCC U1617 713	Sidhanta Solutions India(P) Ltd.,	3360 pkgs 'A4 size white Copy paper Made of wood	3350 pkgs	Rs.13,96,708.72/-	Rs.3,06,287/-

			Pulp' of "smartest" make			
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Accordingly, a show cause notice was issued to the Applicant for imposing penalty under Section 116 read with Section 148 of the Act *ibid* for the short landing of goods. The original authority imposed penalty of Rs.6,12,574/- on the Applicant . The appeal filed by the Applicant herein before the Commissioner (Appeals) has been rejected, vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the whole containers (02x20') were carried on board with "Seals Intact" and the obligation of the carrier was met when the container were delivered at the destination with "Seals Intact'. Reliance has been placed on the judgments in the case of *Shaw Wallace & Co. Ltd. vs. Assistant Collector of Customs {1986 (25) ELT 948 (Bom.)}* and *MSC Agency (India) Pvt. Ltd. Vs CC {2014(312)ELT-65 (T-C)}*. A reply F.No. 121-16/2017 SIB dated 28.05.2021 has been filed by the Respondent department.

4. Personal hearing in the matter was held on 17.02.2022, in virtual mode. Sh. A.K. Das, Consultant appeared for the Applicant and reiterated the contents of the RA. He highlighted that the container was delivered with seal intact and hence the Applicant cannot be held liable for any short landing. No one appeared for the Respondent department nor any request for adjournment has been received. Hence the matter is taken up for disposal based on written submissions

5.1 The Government has carefully examined the matter. The revision application has been filed, mainly, on the ground that the seals of the containers were intact at the time of delivery. Therefore, they cannot be held responsible for any 'Short Landing'. The Commissioner (Appeals) has, on the other hand, relied upon the judgments in K.R & Sons Pvt Ltd. {2014(313)ELT 949 GOI}, Caravel Logistics P. Ltd. {2016(338)ELT235 (Mad)} and Natvar Parikh Industries {2006(338)ELT 194(Tri)} to hold that the Applicant herein is liable to penalty under Section 116.

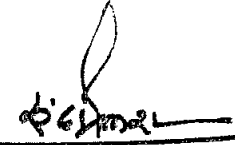
5.2 The Government observes that in the case of Shaw Wallace & Co. Ltd (supra), which has been heavily relied upon by the Applicant, certain guidelines were issued in the background of practices followed at the Bombay Port Trust and the Customs in early 1980s. The applicability of these guidelines after a lapse of about 40 years does not appear to have been tested, by any constitutional court in the recent past. Further the Hon'ble Supreme Court has, in the case of *British Airways PLC. Vs. Union of India* {2002 (139) ELT 6 (SC)}, elaborated the scope of penalty under Section 116 in following terms:

*"9. 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, by the person incharge of the conveyance, the liability could be fastened upon his agent appointed under the Act or a person representing the officer incharge who was accepted as such by the officer concerned for the purposes of dealing with the cargo on his (officer-in-charge) behalf."*

In the case of *Commissioner of Customs (Imports), Mumbai vs. Patvolk {2006 (202) ELT 411 (Bom.)}*, a Division Bench of Hon'ble Bombay High Court itself has followed the judgment in *British Airways PLC (supra)* and repelled the challenge to penalty imposed upon the agent of the person incharge of the conveyance under Section 116. Therefore, the present contention of the Applicant is not acceptable. Other case law relied upon by the Applicant is not applicable in view of declaration of law by the Apex court in *British Airways* case.

6. In view of the above, it is held that the penalty has been correctly imposed on the Applicant herein under Section 116 of the Act *ibid*. However, keeping in view, the facts and circumstances of the case, the penalty imposed is reduced from Rs. 6,12,574/- to Rs. 50,000/-.

7. The revision application is disposed of in above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India

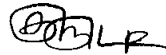
M/s PIL (India) Pvt. Ltd.,  
Diamond heritage  
10<sup>th</sup> floor, unit No. 1004 & 1005,  
16, Strand Road,  
Kolkata 700001

Order No. 53/22-Cus dated 18-02-2022

Copy to:

1. The Commissioner of Customs (Appeals), 3<sup>rd</sup> Floor, Customs House, 15/1, Strand Road, Kolkata-700001.
2. The Commissioner of Customs (Port), Customs House, 15/1, Strand Road, Kolkata-700001.
3. Sh. A.K. Das, Consultant, FD-469/2, Salt Lake, Kolkata -700106.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



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(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Revenue Deptt.)  
भारत सरकार, New Delhi, India  
मई दिनांक 2022