SPEED POST

F. No. 373/362/SL/SZ/2018-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue. 15/04/25

Order No. 44 /25-Cus dated 15-04- 2025 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject	:	Revision Application, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. Sea.C.Cus II No. 632 of 2017 dated 25.09.2017, passed by the Commissioner of Customs (Appeals II), Chennai.
Applicant	:	M/s CMA CGM Agencies (India) Pvt. Ltd., Chennai.
Respondent	:	The Principal Commissioner of Customs (Preventive), Chennai.

ORDER

A Revision Application No. 373/362/SL/SZ/2018-RA dated 14.12.2017, has been filed by M/s CMA CGM Agencies (India) Pvt. Ltd., Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. Sea.C.Cus II No.632 of 2017 dated 25.09.2017, passed by the Commissioner of Customs (Appeals-II), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, partially allowed the appeal filed by the applicant to the extent of reducing the penalty amount from Rs. 85,00,000/- to Rs. 43,00,000/-. The Additional Commissioner of Customs (MCD), Chennai vide Order-in-Original No. 56606/2017 dated 04.07.2017 has vacated the seizure of 56.82 MT of HMS scrap and confiscated the 75 x 20' containers used to carry the aforesaid goods totally estimated value of Rs.37,50,000/- under section 118 (a) of the Customs Act, 1962, but allowed the goods on payment of redemption fine of Rs.5,00,000/- under section 125 of the Customs Act, 1962. A penalty of Rs.85,00,000/- was also imposed upon the Applicant, under Section 116 of the Customs Act, 1962 for not accounted for the "Heavy Melting Scrap" of 1657.449 MT with an invoice value of Rs.2,91,00,810.82/- involving a total duty of Rs.43,49,262.25/-.

2. Brief facts of the case are that, the Applicant had filed the IGMs mentioned in the impugned order for the import of "heavy melting scrap" contained in the 75X20' containers. Out of 75 containers, the goods in 45 Containers were imported by M/s OPG Metals Pvt. Ltd. and remaining 30 Containers were imported by M/s Kanishk Steel Industries Ltd. The 45X20' containers supposed to contain imported goods of M/s OPG Metals Pvt. Ltd. and 30X20' containers supposed contain imported goods of M/s Kanishk Steel Industries Ltd. along with the goods therein were seized under a Mahazar dated 17.08.2011 and 19.08.2011 respectively on a reasonable belief that they were liable for confiscation under Section 111(m) of the Customs Act, 1962. These containers along with the goods therein were handed over to the CFS authorities for safe custody. On weighment of all the 75 containers, the containers were found to have only 56.82 MT of heavy melting scrap instead of declared B/L weight of 1714.269 MT of heavy melting scrap and thus a shortage of 1657.449 MT in total was noticed. As the Applicant had made wrong declaration in the IGMs and did not account for a huge short landing to the tune of 1657.449 MTs of import goods involving a total duty

of Rs.43,49,262.25/-. The original authority adjudicated the case vide impugned Order-in-Original and ordered for confiscation of the 75X20' containers used to carry the aforesaid goods under Section 118 (a) of the Customs Act, 1962 and gave an option to redeem the impugned goods on payment of redemption fine of Rs.5,00,000/- under Section 125 of the Act ibid. A penalty of Rs. 85,00,000/- was also imposed against the Applicant under Section 116 of the Act ibid. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which was partially allowed to the extent mentioned in para 5.3 of the Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the order passed by the Commissioner (Appeals) is neither sustainable in law or on the facts and circumstances of this case; that the Commissioner (Appeals) failed to decide the issue in light of the particular facts and circumstances of the said case and had solely relied on the precedent relied upon in the order by the original authority; that the Commissioner (Appeals) failed understand that the facts of the cases relied upon him were not identical to the facts of the case on hand; that no disputed statements were made by the parties, during the course of investigation. The Applicant prayed to set aside the order passed by the Commissioner (Appeals) and drop the proceedings under Section 116 of the Customs Act,1962 against the Applicant.

4. Personal hearing in the matter was fixed on 11.12.2023 Sh. S. Ragunathan authorized representative of the applicant vide letter dated 06.12.2023 requested for adjournment of hearing due to their hearing of some cases in the Hon'ble High Court. The next personal hearing was fixed on 03.01.2024, Sh. S. Raghunathan, authorized representative of the Applicant appeared for personal hearing and reiterated his written submission as well as his submissions made vide email dated 28.12.2023. He stated that in respect of containerized cargo, the carrier is not responsible for short landing of goods if upon arrival, the seals are found intact. He quoted the judgement of Hon'ble Mumbai High Court and stated that the SCN itself mentioned that upon examination, the seals were found intact, hence the carrier is not liable. He further stated that the respective B/L were endorsed with the words 'said to contain' as well as 'Carrier not responsible'. He sought quashing of the case and setting aside of the penalty imposed. Ms. Viruda Ambikai, Deputy Commissioner appeared on behalf of

respondent department. In the Personal hearing fixed on 04.04.2025 Sh. S. Ragunathan authorized representative on behalf of the applicant stated that this being a case of containerised cargo, there is no liability on the carrier if the bottle seals are found intact. When asked about the basis on which freight was charged in this case, he stated that full weight has been charged on the declared quantity, though no documents are readily available for the same. He was asked how the carrier could be absolved of any responsibility when containers came virtually empty i.e. 56.82 MT against declared quantity of 1714.269 MT, he stated that the carriers are not involved at any stage except the actual journey, as all activities from picking up of empty container/s, loading & sealing, weighment and paper work etc are done by terminal operators or shippers and their tally clerks etc. He stated that the empty containers in this case were due to fraud committed at Mombasa, as stated by the representative of one of the consignees. He stated that they are not liable under Section 116 as that section deals with short landing of goods whereas this is a case where goods were not loaded at all owing to the fraud at Mombasa. When asked about the carrier's responsibility for correct filing of IGM he stated that Section 30 of the Customs Act does not expect the details to be sacrosanct as the section itself allows the IGM to be amended/supplemented if the intention is not fraudulent. He quoted the Shaw Wallace judgement in support. Finally, he requested for a lenient view and reduction in penalty. No one appeared on behalf of respondent department on the personal hearing fixed on 04.04.2025.

5. The Government observes that this is a case of short landing where empty containers have been brought in sealed condition, weighing just 56.82 MT as against a manifested quantity of 1714.269 MT, i.e. a whopping shortage of 1657.449 MT. It is not conceivable that a shortage of this magnitude was not noticed, especially when the on-board stacking plan of containers filled with a heavy commodity such as Heavy Melting Scrap would definitely be dependent upon the weight of the containers. The contention that the steamer Agent was completely unaware of the correctness of the declaration made by the supplier/shipper/consignor is not tenable, as it is not conceivable that such a huge difference between the declared weight and the actual weight of the containers would not have come to notice. The arrival of containers with the seals intact points to the fact that the cargo was not loaded from the load port itself. In such a scenario, when the carrier has charged the full freight on the declared

quantity, as confirmed during Personal hearing; they cannot absolve themselves of their responsibility for the accuracy of their declaration in the IGM, since in terms of Section 30(2) of the Customs Act, they are responsible for correctly declaring the particulars in the IGM. The applicants have contended that they are not liable u/s 116 of the Customs Act, 1962 as that section deals with short landing whereas this is a case where cargo was not loaded at all due to fraud. This argument is fallacious in view of the clear wording of Section 116 of the Customs Act, 1962, which squarely covers a case where the quantity brought into India is different from the quantity declared in the IGM. In this case, it was incumbent upon the person in charge of the conveyance that the huge difference in quantity amounting to 1657.449 MT be accounted for to the satisfaction of the proper officer of Customs. The applicants have attempted to dismiss the entire discrepancy by attributing the fraud to the supplier/consignor while refusing to accept any responsibility in the matter, while is unacceptable.

6. The Applicants have assailed the penalties under 116 on the grounds that for the movement of container cargo, cargo is accepted on the basis of particulars furnished by the shipper and are not checked by the carrier. Hence, they cannot be responsible for any short shipment or short landing. Secondly, they have contended that the seals of the container were intact and in terms of the *Hon'ble Bombay High Court judgment in the case of M/s Shaw Wallace & Co. Ltd.,* they are not liable to penalty under section 116 of the Customs Act, 1962. In this context, the Government observes that the commercial arrangements between private parties, i.e., the shipper/carrier/tally clerks (and or other personnel in charge of checking material particulars of the consignment) etc. does not absolve the person in charge of conveyance from the statutory obligation placed upon them under Section 116 read with Section 148 of the Customs Act, 1962.

7. The Appellate Authority in para 5.1 of the OIA has rightly observed that the facts of the present case are almost identical to the case of M/s Caravel Logistics case as that case also pertains to a huge shortage of Melting Steel Scrap when the seals on the containers were found intact. In this case the division bench of *Hon'ble High Court has,* after taking into consideration the single Judge order of *Hon'ble Bombay High*

Court in the case of M/s Shaw Wallace, has upheld the penalty imposed on the steamer agent under Section 116 of the Customs Act, 1962. The Government further observes that the Hon'ble Supreme Court has elaborated the scope of penalty under Section 116 in the case of *British Airways PLC. Vs. Union of India {2002 (139) ELT 6 (SC)}* in the 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, 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."

8. Further, 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 the case of British Airways PLC (supra) and repelled the challenge to penalty imposed upon agent of the person incharge of the conveyance under Section 116. Therefore, the contention of the Applicants are not applicable and the case laws are not applicable in view of the Apex Court judgment in the case of British Airways.

9. In view of these case laws (supra), the Government concurs with the finding of the Appellate Authority that there is no infirmity in the OIO as far as penalty is concerned.

10. As regards the quantum of penalty, the Government finds that the Appellate Authority, after due consideration, has already granted a significant reduction in penalty. However, in view of the facts and circumstances of the case, the penalty imposed is reduced from Rs.43,00,000/- to Rs.40,00,000/-.

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

15/4/2025

(Shubhagata Kumar)
Additional Secretary to the Government of India

M/s CMA CGM Agencies (India) Pvt. Ltd.,
No. 636/1, Seshachalam Centre, Anna Salai,
Nandanam, Chennai-600035.

Order No. 44/25-Cus dated 15-04-2025

Copy to:

1. The Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai-600001.
2. The Principal Commissioner of Customs (Preventive), Custom House, No.60, Rajaji Salai, Chennai-600001.
3. Sh. S. Raghunathan, Advocate, Haji S. Madharsha & Sons Building, 5th floor, 148 (Old No. 44), Second Line Beach, Chennai-600001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED
(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi