(2005) 06 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No. 374 of 1998

Marine Container Services (South) Private Limited — APPELLANT

Vs

Deputy Commissioner of Customs, (Manifest Clearance Department) and Union of India (UOI) — RESPONDENT

Date of Decision : 13-06-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 116

Citation : (2005) 06 MAD CK 0016

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : T.K. Ramkumar, for the Appellant; Udayakumar, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The petitioner has challenged the order dated 18.2.1997 passed by the second respondent imposing penalty under the

following circumstances :-

The petitioner carries on business as a steamer agent for several foreign and Indian ship owners and particularly for M/s. Bengal Tiger Lines, which

operates common feeder shipping services between Madras/ Singapore and Madras/Colombo. The feeder services are utilised by various shipping

lines for transhipping loaded containers from Singapore/Colombo to Madras and from Madras to Singapore/Colombo. On the particular occasion,

the petitioner has acted as steamer agent for the vessel Tiger Bridge owned by M/s. Bengal Tiger Lines. For International shipping traffic, the main

ports of call in South Asia are Colombo and Singapore. Cargo bound for other ports are discharged at these ports and transhipped through feeder vessels. The main liner carrier however remains contractually liable to the consignor/consignee for performance of the entire contract and for

issuance of Bill of Lading for the entire voyage. The transhipment from Singapore/ Colombo to Madras is based on a separate contract of carriage

between the Main line carrier and the petitioner''s principals. In course of such operations, the petitioner''s principal''s vessel m.v Tiger Bridge in its

voyage No.189 arrived at Madras on 10.2.1992 with loaded containers belonging to various main line carriers. As per the practice prevailing at

the Port of Madras and as per the requirements of Customs Act and Major Port Trust Act, the Import General Manifests relating to particular

articles were filed by M/s. Prabhu Shipping Services Pvt. Ltd., covering the disputed cargo of one carton of spares for caterpillar equipment under

Line No.671 of the Manifest for which NTR Container Lines Inc., Panama issued Bill of Lading. After discharge of various cargos including the

disputed cargo, the container under Line No.671 remained unclaimed for a long period. Subsequently, when the container was destuffed by the

Madras Port Trust, one carton of spares for caterpillar equipment was found to be short. Thereafter, the Assistant Collector of Customs, issued

Show Cause Memo No.00475 dated 20.10.199 3 calling upon the petitioner to show cause as to why penalty should not be levied u/s 116 of the

Customs Act for short landing of one package under Line No.671 of the Import Manifest. The petitioner forwarded the Show Cause Memo to

M/s. Prabhu Shipping Services Pvt. Ltd., on the footing that the subject cargo was covered by Bill of Lading issued by NTR Container Lines Inc.,

and the Manifest had been filed by their agent, namely, M/s. Prabhu Shipping Services Pvt. Ltd.. However, no reply was filed taking any particular

stand either by the petitioner or by M/s. Prabhu Shipping Services Pvt. Ltd. The Assistant Collector of Customs by order dated 29.3.1995

imposed penalty of Rs.3,33,000/- because of the shortlanding of one package as no reply had been submitted.

2. Appeal was preferred by the petitioner with the Collector of Customs, who by his order dated 12.6.1995 remanded the matter for fresh

disposal. The only ground on which the order of remand was passed is to the effect that Line No.671 was covered by Import Manifest filed by

M/s. Prabhu Shipping Services Pvt. Ltd., and therefore, accountability for the shortlanding lies on M/s. Prabhu Shipping Services Pvt. Ltd., which aspect has not been considered by the lower authority. Thereafter, the original authority took up the matter for fresh disposal. The present

petitioner appeared through Advocate and contended that delivery order for clearance of the cargo was issued by M/s. Prabhu Shipping Services

Pvt. Ltd., and the petitioner was not concerned with the cargo under Line No.671. It was further contended that as per the Madras Port tally sheet

the Container No.ITLU 6746240 covered by Line No.671 was landed with seals in tact. The subject consignment was stuffed by the shippers into

the containers at their premises and the container was carried by the ship on Full Container Load (FCL) terms. The petitioner''s responsibility was

not involved as the ship was not party to the stuffing of the cargo into the container and on such basis, proceedings should be dropped aga inst the

petitioner.

3. The original authority considered two issues, namely, whether there had been any shortlanding of the goods and whether the liability for

shortlanding was of the petitioner or of M/s. Prabhu Shipping Services Pvt. Ltd., which has filed the cargo declaration. The authority took note of

the contention of the petitioner that the Manifest clearly shows that the container has FCL and the tally sheet indicated that the container had

landed with seals intact, and therefore, there is no liability of the petitioner. The original authority, by relying upon Section 116 of the Customs Act

and another decision of the Commissioner (Appeals), came to the conclusion that as per Section 116 of the Customs Act penalty is leviable on the

person in charge of the conveyance and not on any other person and the steamer agent is considered as the person in charge of the conveyance,

and therefore, the steamer agent is liable. Accordingly, the original authority imposed penalty of Rs.3,33,000/-. Thereafter, the petitioner filed

appeal. The appellate authority modified the penalty amount as Rs.2,50,000/-, but observed that such penalty is to be paid by the present

petitioner in view of the provisions contained in Section 116 of the Customs Act. The petitioner filed Revision before Respondent No.2, which has

been dismissed under the impugned order.

4. The main contention raised by the petitioner is to the effect that since the transhipment was of Full Container Load and the seals were intact, the

steamer agent, namely, the petitioner, cannot be held responsible.

5. Section 116 of the Customs Act is to the following effect :-

116. Penalty for not accounting for goods If any goods loaded in a conveyance for importation into India, or any goods transhipped 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 if the failure to unload or the deficiency is not account 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 transhipped 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.

6. A perusal of the aforesaid provision makes it clear that if the quantity unloaded is short of the quantity to be unloaded at the destination and the

deficiency is not accounted for to the satisfaction of the Assistant Collector of Customs, the person-in-charge of the conveyance shall be liable for

the penalty.

7. In the present case, the revisional authority by considering the fact that transhipment was of FCL / LCL basis, relying upon a Bombay High

Court decision reported in Shaw Wallace and Co. Ltd. Vs. Assistant Collector of Customs and others, , has come to the conclusion that in the

present case, the transhipment was not merely FCL, but it was FCL/LCL and since at the time of unloading of LCL container, seals were intact

and such seals were intact even at the time of destuffing of the container, the carrier was responsible.

8. The Bombay High Court decision has laid down the following prepositions in respect of Cargo brought in container :-

(a) Cargo brought in container. F.C.L. Container (Full Container Load)

(1) A full container load when unloaded from the vessel and the seals are found

intact, then the vessel owner shall not be held responsible for any

short landing or be made liable to pay penalty.

(2) In case where the seal is found broken, the survey report will be prepared of the contents of such container in the presence of Customs Officer

and this survey should be carried out within 72 hours after the container is unloaded and seal is found broken. The Customs Officer and the Port

Trust authorities should ensure that the container is re-sealed after completion of the survey reports of the contents. Any shortage noticed in such

survey report will have to be accounted for by the carrier and the liability for such shortage will be solely of the carrier.

(b) L.C.L. Container (Less Container Load)

(1) At the time of unloading of the L.C.L container, if the seals are intact and again at the time of de-stuffing the container, the seals are found

intact, then the carrier should be responsible to account for the difference between the manifested quantity and the destuffing tally.

(2) In case, the seals of the L.C.L. containers at the time of unloading are found to be intact, but are broken or tampered with at the time of de-

stuffing then the responsibility for difference between the manifested quantity and de-stuffing quantity would be that of the Port Trust authorities and

not of the carrier.

9. In the present case, it appears that the authorities have considered that it was not a clear case where the cargo had been brought in Full

Container Load and on the other hand at the time it was unloaded at Madras, it had assumed the character of Less Container Load and since seals

were found intact at the time of unloading and at the time of destuffing, the carrier was found responsible. This conclusion is based on certain

factual conclusions. In the absence of any apparent error in such factual conclusions, it is difficult to come to a different conclusion while deciding

the matter under Article 226 of the Constitution.

10. It is also important to notice that even though an opportunity of show cause had been given, the present petitioner had not taken any specific

stand explaining the matter and it had only forwarded the show cause notice to M/s. Prabhu Shipping Services Pvt. Ltd., merely because,

according to the petitioner, explanation was to be given by M/s. Prabhu Shipping Services Pvt. Ltd. Even after the matter was remanded, it was never contended in specific terms that transhipment was on FCL basis throughout and it was never specifically contended that at Singapore the Full

Container Load container was again transhipped through the present petitioner. The original authority as well as the appellate authority and the

revisional authority have considered the relevant aspects and have come to a definite conclusion. The factual conclusion arrived at by them cannot

be said to be perverse warranting any interference. On the basis of such factual conclusion, it is apparent that Section 116 of the Customs Act was

applicable and imposition of penalty on the petitioner cannot be said to be illegal.

11. In view of the above discussion, the writ petition is liable to be dismissed. However, the issue as to whether the short fall was on account of the

petitioner''s default or on account of the default of M/s. Prabhu Shipping Services Pvt. Ltd., is a matter between the petitioner and M/s. Prabhu

Shipping Services Pvt. Ltd., and it would be open to the petitioner to recover the amount from M/s. Prabhu Shipping Services Pvt. Ltd., by

proceeding in accordance with law.

12. With the above observation, the writ petition is dismissed. No costs.