

(2016) 06 MAD CK 0024

In the Madras High Court

Case No : Writ Appeal No. 712 of 2013 and M.P. No. 1 of 2013 and C.M.P. No. 5880 of 2016

M/s. Caravel Logistics Pvt. Ltd.

APPELLANT

Vs

The Joint Secretary (RA)

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Customs Act, 1962 — Section 116, 148, 2(31), 30, 30(1), 31

Citation : (2016) 2 CWC 1 : (2016) 338 ELT 266 : (2016) 6 MLJ 33

Hon'ble Judges : Nooty Ramamohana Rao and M.V. Muralidaran, JJ.

Bench : Division Bench

Advocate : Mr. S. Murugappan, Advocate, for the Appellant; Mr. V. Sundareswaran, Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Nooty. Ramamohana Rao, J.—This appeal is preferred against the order and judgment rendered in W.P. No.24045 of 2012 on 09.01.2013 by our learned brother Justice R. Sudhakar dismissing the said writ petition.

2. W.P. No.24045 of 2012 is instituted calling in question the orders passed by the Government of India on 27.07.2012 dismissing the revision preferred under Section 129 DD of the Customs Act, 1962 (for short, henceforth referred to as "the Act"), which in turn was directed against the Order-in-Appeal passed by the Commissioner of Customs (Appeals), Custom House, Chennai on 08.03.2012, rejecting the appeal preferred against the Order-in Original passed by the Joint Commissioner of Customs, Manifest Clearance Department, Custom House, Chennai dated 29.10.2010.

3. It appears M/s Komal Enterprises, Fathe Nagar, Hyderabad imported 110 containers of MS Scrap/plates from UAE supplied by M/s Habih Ullah, Dubai. Out of the above 100 containers, 40 containers are stated to contain 797.37 MTS of MS Steel scrap valued at Rs.1,07,85,965/- and 302.29 MTS of MS Plates valued

at Rs.51,11,318/- involving a duty of Rs.26,31,318/-, shipped through the vessel "MAERSK UTAH" which arrived on 03.09.2009. M/s.Caravel Shipping Services, Chennai filed an "Import General Manifest (IGM)" No.15738/09 in terms of and in accordance with Section 30 of the Act for the aforementioned vessel. On investigation, it turned out that the entire manifested quantity of 797.37 MTS of MS Steel Scrap and 302.29 MTS of MS Plates, has not landed as all the 40 containers were found empty. When weighed the 40 containers, their weight was 100 MTS, thus reflecting their ordinary tare weight. Thus, penalty proceedings for short landing of the goods has been initiated under Section 116 of the Act. A show-cause notice dated 15.04.2010 was drawn proposing to impose the penalty. After considering the explanation offered and the submissions made at the personal hearing afforded on 27.07.2010, the Primary Authority passed the Order-in-Original on 29.10.2010 imposing a penalty of Rs.32,00,000/- under Section 116 of the Act for failure to account for short landing of 797.37 MTS of Steel Scrap and 302.29 MTS of MS Plates.

4. During the course of passing the said order, the Primary authority has found, as a matter of fact, that Bills of Lading have been duly countersigned by the Load port agent as token of loading of the cargo as detailed in the bill of lading and the freight has been prepaid for the full container load. The bills of lading have been signed by the Steamer agent, thus taking the responsibility for the veracity of the contents of the bill of lading. It was further found, as a fact, that the Steamer agent had given the seal to their agent for fixing upon the container after stuffing. Thus, as per the bill of lading 40 containers are supposed to contain 797.37 MTS of MS Steel Scrap and 302.29 MTS of MS Plates, but such imported cargo has not landed.

5. An appeal against the Order-in-Original dated 29.10.2010 has been preferred before the Commissioner of Customs (Appeals), Custom House, Chennai. The appellate authority has noticed that M/s Caravel Shipping Services Private Limited, Chennai has filed the Import General Manifest in terms of and in accordance with Section 30 of the Act and hence under Sub-section 2 of Section 30 of the Act, the person delivering the import manifest was required to make and subscribe to a declaration as to the truth of its contents and hence they are bound to account for the short landing of the cargo. The appellate authority, hence, found no merit in the assertion that the 40 containers have not been loaded at all with the cargo at UAE, the load port. In paragraph No.11 of the Order-in-Appeal, the Commissioner of Customs (Appeals) has clearly detailed that if empty containers and fully loaded containers were loaded in an improper and haphazard manner, then that would create imbalance in the load management of the vessel and optimum utilization of the space, which will definitely affect the smooth sailing of the vessel itself. Sailing load balance of the vessel can be monitored by the Master of the vessel by comparing the total loaded cargo weight + the tare weight of the vessel with the submergibility of the vessel in the sea water, applicable for each quantum of weight of the cargo loaded into the vessel, within the overall permissibility ratio of overall sailing

weight with that of the submergibility level. The appellate authority has found no merit in the appeal and rejected the appeal.

6. Then a revision was preferred before the Government of India under Section 129 DD of the Act and the Government of India by its order dated 27.07.2012 rejected the revision. During the course of the said order, it was noted that in view of the provisions contained in Section 30 of the Act and the Import Manifest (Vessel) Regulations, 1971, the Import Manifest is liable to be considered as a basic legal document and hence declarations made therein are bound to be taken into consideration for purpose of further action under the Act. In paragraph No.8.2 of the Order-in-Revision, it was noted that the steamer agent is an agent of the carrier, appointed under Section 148 of the Act and hence under Sub-section (2) thereof the liability of the agent appointed by the person-in-charge of the conveyance is coextensive and hence it found no merit in the revision preferred against the order passed in appeal by the Commissioner of Customs (Appeals). Thus, W.P.No.24045 of 2012 came to be instituted. Learned single Judge by his judgment, dismissed the said writ petition. Hence, this appeal.

7. Heard Sri. S. Murugappan, for the learned counsel for the appellant and Sri. V. Sundareswaran, learned counsel for the respondents.

8. It is urged before us by the learned counsel for the appellant that the seals applied to the 40 containers, which were unloaded were found to be intact and in such a case, no liability can be fastened on to the appellant. He placed reliance, in support of the above plea, upon the judgment rendered by the Bombay High Court in "Shaw Wallace & Co. LTD v. Assistant Collector of Customs and others (1986 (25) E.L.T. 948 (Bombay)). It was further contended that the appellant is not the person-in-charge and hence it cannot be rendered liable to pay the penalty. He placed reliance upon the judgment rendered by the Bombay High Court in "Seahorse Shipping & Ship-Management PVT. LTD v. Union of India" (2004 (163) E.L.T. 145 (Bombay)) and the judgment rendered by this Court in "Marine Container Services v. Deputy Commissioner of Customs and another" (2005 TIOL 89 (Madras)).

9. Per contra, learned counsel for the respondents, apart from subscribing to the reasoning applied by the learned Single Judge, placed reliance upon the Division Bench judgment of this Court rendered in "Chowgule Brothers v. Deputy Collector of Customs, Bangalore" (1996 (82) E.L.T. 204 (Madras)).

10. The principal question which requires to be answered is whether the imposition of penalty in terms of Section 116 of the Act is proper and justified or not?

11. The uncontroverted facts are:

(i) The Import General Manifest has been filed with a proper declaration vouching for the contents of the manifest (IGM).

(ii) The seals applied to the 40 containers are found intact.

(iii) But the 40 containers are found empty and thus the manifested cargo has not been delivered.

12. It is appropriate to notice in this context as to what consequences will flow from such default of not unloading the goods loaded in conveyance. Section 116 of the Act, which has provided for the consequences flowing from not accounting for the goods, reads as under:

"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 accounted 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."

13. From the above provision, it is clear that if any goods loaded in a conveyance for importation into India are not unloaded at their place of destination in India and the failure to unload is not accounted 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 to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded.

14. The argument of the learned counsel for the appellant has proceeded upon the premise that the above provision renders only the person-in-charge of the conveyance liable to the penalty but not an agent or any other person acting on behalf of the person-in-charge of the conveyance.

15. Various expressions found in the statute have been defined in Section 2 of the Act, which was ushered in by the Parliament to curb the dents on the revenue caused. Sub-section 31 of Section 2 defines the expression "person-in-charge" in the following words:

"(31) "person-in-charge" means,-

(a) in relation to a vessel, the master of the vessel;

(b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;

(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

(d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;"

16. It is true that the Master of the vessel answers the expression "person-in-charge" but not his agent. But, however, in this context, it will be appropriate to notice the provision contained in Section 148 of the Act, which spelt out the liability of the agent appointed by the person-in-charge of a conveyance as well, which reads as under:

"148. Liability of agent appointed by the person in charge of a conveyance.-

(1) Where this Act requires anything to be done by the person in charge of a conveyance, it may be done on his behalf by his agent.

(2) An 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 fulfilment in respect of the matter in question of all obligations imposed on such person in charge by or under this Act or any law for the time being in force, and to penalties and confiscations which may be incurred in respect of that matter."

17. Therefore, while deciphering the true import and impact of Section 116 of the Act, it is not merely enough to take in to account and consideration the meaning ascribed to the expression "person-in-charge" under Section 2 (31) of the Act, but Section 148 has also got to be read conjointly and it's contents are also to be noticed. Sub-section (1) of Section 148 of the Act sets out that where the Act requires anything to be done by the person-in-charge of a conveyance, the same may be done on his behalf by his agent. This provision is a mere reiteration of the 1st principle relating to Appointment and Authority of the agent contained in Section 182 of the Indian Contract Act, 1872, which clearly brings out that an "agent" is a person employed to do any act for another or to represent in dealings with 3rd persons. Sub-section 2 of Section 148 of the Act has certain bearing on the issue at hand, hence it is appropriate to notice the said provision.

18. A careful scrutiny of Sub-Section (2) of Section 148 of the Act makes it abundantly clear that an 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 fulfilment in respect of the matter in question of all obligations imposed on such person-in-charge by or under the Act. Thus, the liability to pay penalty set forth in Section 116 of the Act upon the "person-in-charge" is, therefore, liable to be fulfilled by the agent appointed by such person-in-charge of the conveyance as well. Sub-section (2) of Section 148 proceeded further and also rendered any person representing himself to any officer of customs as an agent of any such person-in-charge is also equally liable if he is

accepted as such by the officer of the customs. There is no dispute on the factual score that the appellant represented, before the officers of the Customs, on behalf of the person-in-charge and the officers of the Customs accepted it.

19. In this context, it would be appropriate to notice Sub-section (1) of Section 30 of the Act, which required the person-in-charge of a vessel carrying imported goods or any other person specified by the Central Government by notification, in the case of a vessel deliver to the proper officer an import manifest prior to the arrival of the vessel. Sub-section (2) thereof further required the person delivering the import manifest to make and subscribe to a declaration as to the truth of its contents. Thus, the import manifest is not a mere document of intimation of arrival of a vessel carrying imported goods but also contains a verified statement to vouchsafe for the truthfulness of the contents of the import manifest. The importance and significance of lodging import manifest can be gazed from Section 31 of the Act. Sub-section (1) of Section 31 of the Act renders it obligatory upon the Master of a vessel who incidentally is the person-in-charge as per Section 2 (31) of the Act, not to permit the unloading of imported goods until an order has been given by the proper officer granting entry inwards to such vessel. Sub-section (2) of Section 31 of the Act further makes it clear that no order under Sub-section (1) shall be given by the proper officer until the import manifest has been delivered. Hence, lodging import manifest under Section 30 of the Act has a direct bearing upon the controversy at hand. Thus, whoever lodges the import manifest with the proper officer of the Customs, acts as such, as an agent of the Master of the vessel.

20. From a conjoint reading of Sections 2 (31), 30, 31, 116 and 148 of the Act, it becomes clear that the person-in-charge of a conveyance together with the person acting on his behalf as his agent or for the matter any other person acting on his behalf by lodging import manifest under Section 30 of the Act, equally become liable for payment of the penalty.

21. In fact, the Supreme Court in "British Airways PIC v. Union of India" (2002 (2) SCC 95 = AIR 2002 SC 391) has considered the combined effect of Sections 2(31), 116 and 148 of the Act and held as under:

"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-in-charge of the conveyance shall be liable in terms of Section 116 of the Act. Besides the person-in-charge of the conveyance, the liability could be fastened upon his agent appointed under the Act or a person representing the officer-in-charge who has accepted as such by the officer concerned for the purposes of dealing with the cargo on his (officer-in-charge) behalf. Assuming that the appellants are neither the officer-in-charge within the meaning of Section 2(31) of the Act nor his agent, it cannot be denied that they shall be deemed to be a person representing the office-in-charge to the officers

of the customs as his agent for the purposes of dealing with the cargo off-loaded from the aircraft of the appellants carrier."

22. Learned single Judge has followed the above principle enunciated by the Supreme Court in British Airways PIC's case (referred to supra) while dismissing the present writ petition, from out of which the appeal arises.

23. In fact, the Central Government by its Notification No.111/2003 - Cus. (N.T.) dated 19.12.2003 as amended by Notification No.17/2004 - Cus. (N.T.), dated 16.02.2004 under Section 30 of the Act, specified that any person other than carrier, who is authorised to issue delivery orders in favour of an importer on the basis of which goods are permitted to be delivered to such importer by the custodian of the goods, as any other person for the purpose of the said section. Thus, whoever delivers the import manifest under sub-section (1) of Section 30, other than the person-in-charge of the carrier/conveyance falls within the expression "any other person". This notification issued by the Central Government is in fact in consonance with the principle set forth on 06.11.2001 by the Supreme Court in British Airways PIC's case (referred to supra).

24. Now turning to the Judgment rendered by the learned Single Judge of Bombay High Court in Shaw Wallace and CO. LTD's case (referred to supra), over which heavy reliance was placed by the learned counsel for the appellant it is clearly distinguishable.

25. Certain guidelines as agreed to/suggested by the counsel for both sides have been provided for in paragraph No.8 of the said judgment, for enabling smooth exercise of functions under the provisions of the Customs Act by all concerned including the persons-in-charge of the conveyance, their agents and the customs authorities. Guidelines formulated in a judgment are intended for guidance of all concerned in conducting their affairs. When statutory obligations and responsibilities have to be discharged, there, perhaps, cannot be an exhaustive list of guidelines that can be formulated. Courts, generally, do not lay down, very precisely, guidelines for universal application. The facts and circumstances of each case have got to be kept in view. Therefore, guidelines spelt out in Shaw Wallace and CO. LTD's case by the learned single Judge of the Bombay High Court cannot be treated as an exhaustive enumeration of all the legal principles applicable on the subject, but they should be understood and construed as sound and workable rules evolved for ironing out the creases noticed. By their very nature, guidelines are parameters to be kept in view while working out the provisions of a statute whole thing apart, it is cardinal principle that a judgment can not be read like a statute and a judgment is only significant for what it decides and lays down as ratio.

26. Similarly, the reliance placed upon the judgment in Seahorse Shipping & Ship-Management PVT. LTD's case and Marine Container Services case (referred to supra) is also not appropriate, particularly in view of the fact that these subsequent judgments have not noticed the binding judgment rendered by the

Supreme Court in British Airways PIC's case (referred to supra) earlier.

27. In view of what has been set out by us supra, we are of the opinion that the appellant, for all practical purposes, is liable to be treated as "any other person" if not as an agent of the "person-in-charge" of the conveyance and hence liable to suffer the penalty as provided for under Section 116 of the Act. We see no reason whatsoever to interfere with the order passed by the learned single Judge and this appeal fails. Accordingly, the appeal stands dismissed. No order as to costs. The miscellaneous petitions are closed.