(1986) 07 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No''s. 1236 of 1981 and 1354 of 1984

Shaw Wallace and Co. Ltd. APPELLANT

Vs

Assistant Collector of Customs and others RESPONDENT

Date of Decision : 17-07-1986

Acts Referred:

Carriage of Goods by Sea Act, 1925 — Section 6
Contract Act, 1872 — Section 151, 152, 161
Customs Act, 1962 — Section 116, 124, 152, 28, 30(1)

Citation : (1987) 3 BomCR 151 : (1986) 10 ECC 191 : (1988) 18 ECR 384 : (1986) 25 ELT 948

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. These two petitions and several other companion petitions are placed before me for final hearing and Shri Venkiteswaran, learned counsel appearing on behalf of the petitioners, Shri Bulchandani, learned counsel appearing for the Collector of Customs, and Shri Makhija, learned counsel appearing for the Bombay Port Trust, informed me that apart from considering the validity of the order passed by the Collector of Customs levying penalty u/s 116 of the Customs Act (hereinafter referred to as the "Act"), it is necessary to provide guide-lines in respect of steps to be taken by the ship-owners, by Bombay Port Trust authorities and Collector of Customs so as to avoid daily friction and uneasy feeling and levy of penalties without proper application of mind or without giving enough opportunities. In view of the fact that large question is involved in this group of petitions, I heard two petitions at great length and, therefore, it would be convenient to deliver main judgment in these two petitions.

2. It would be appropriate to set out briefly the facts leading to filing of these two petitions. The petitioners - M/s Shaw Wallace & Company Limited are a Company incorporated under the Companies Act, 1956 and carry on business as ship-owners'' Agents in respect of their vessels arriving at Port of Bombay. The petitioners were agents in respect of a vessel M.T. "Al Khafji" and as such Agents

were responsible for the discharge of the cargo from the said vessel and for complying with other formalities under the Customs Act. The said vessel had brought Aviation Gasolene for M/s Indian Oil Corporation and the vessel arrived in Bombay in second week of April 1980. Aviation Gasolene was loaded on board the said vessel from the port of Mellini in Italy and the ullage report evidenced that the quantity was 2988.14 metric tonnes. Upon arrival of the vessel at Port of Bombay, the quantity on board was again measured and was certified to be 2973.5 metric tonnes. The quantity mentioned in the Bill of lading and load port quantity was 2988.878 metric tonnes and 2988.14 metric tonnes respectively, while the quantity on the arrival at Bombay was 2972.411 metric tonnes. The Indian Oil Corporation there upon requested the Master of the Vessel to comment on the difference is 16 metric tonnes being short. The vessel completed discharge between April 22, 1980 and April 28, 1980, and after the cargo was discharged the cargo tanks where the oil was stored were inspected and found dry and dry tank certificates were prepared and signed both by the First Officer of the vessel and the representative of the Indian Oil Corporation.

3. The Customs authorities issued a show cause notice to the petitioners on June 5, 1980 stating therein that the outturn of the vessel discloses a short of 16.040 metric tonnes and called upon to explain why penalty should not be imposed u/s 116 of the Act. The petitioners gave reply pointing out that it is impossible to measure the exact quantity of a cargo loading in the case of a bulk cargo and, particularly, in the case of liquid cargo and that is why the bills of lading in the class belonging to bulk cargo is always subject to an exemption u/s 6 of the Carriage of Goods by Sea Act. The petitioners pointed out that the bill of lading quantity is only an indication of the quantity said to be loaded and is not to be treated as evidence of the quantity actually loaded at the load port. The petitioners also pointed out that the vessel carried out entire discharge of oil in the presence of Customs Officer on Board and the fact that the tank was dry and also noted and the consignee has not made any claim for short delivery and in such circumstances, the show cause was notice was mis-conceived and the penalty should not be levied. The petitioners also forwarded ullage report at the load port and the dry tank certificates duly certified. The Deputy Collector of Customs, Oil Unit, by order dated July 23, 1981 held that the petitioners have not been able to satisfactorily account for shortage of 16.040 metric tonnes of Aviation Gasolene and in the circumstances, the petitioners are liable to pay a short landing penalty of Rs. 22,174/- in accordance with Section 116 of the Act. The Deputy Collector placed reliance on the outturn report and came to the conclusion that there is difference between the quantity of bill of lading and the outturn report and the difference is not explained. The Deputy Collector felt that the bills of lading and the out turn report are conclusive evidence and that evidence over-rides the ullage report and the port outturn. The order of the Deputy Collector is under challenge in Writ Petition No. 1236 of 1981.

4. M/s. Shaw Wallace & Company Limited were Agents in respect of Indian Flag vessel named m.v. "RATNA KIRTI" and the said vessel called at the Port of

Bombay in third week of August 1981. The petitioners filed the requisite import general manifest dated August 21, 1981 with the Customs authorities setting out therein the cargo on board the vessel meant for discharge at Bombay. The vessel commenced discharge on August 22, 1981 and completed the discharge operations on August 30, 1981. The cargo, inter-alia, consisted of rolls of news-prints which were manifested under Items Nos. 8, 9, 11 and 31. The cargo is discharged and given into the custody and control of the Port Trust authorities as statutory bailees. The Port Trust Authorities at the time of discharge maintains a landing tally of the cargo and issues tally sheets mentioning therein the quantity of the cargo discharged. The cargo remained in the custody and control of the Port Trust authorities after the date of discharge. The Bombay Port Trust authorities issued out turn report dated June 5, 1982 indicating that Item No. 8 was short. Further out turn report issued by the Port Trust authorities indicated that Item No. 9 was short and so also Item No. 31. The petitioners received show cause notice dated July 28, 1983 from the Assistant Collector of Customs stating therein that the Port Trust authorities by their out turn report indicated certain goods as having been short landed from the vessel and the goods short landed are 25 rolls of news-print under Item No. 8; 3 rolls under Item No. 9 and 11, and 4 rolls under Item No. 31 of the Import General Manifest. The petitioners were called upon to give a satisfactory account for the short landing or to explain why penalty should not be imposed u/s 116 of the Act.

The petitioners sent a reply that after the discharge, the cargo remains in sole custody and control of the Port Trust authorities and neither the petitioners, nor the vessel, nor the owners have any control over the goods after the time of discharge. The petitioners pointed out that when the consignee of the cargo approaches the Port Trust authorities to clear the cargo from the Docks, the Port Trust authorities issue the out turn report indicating the quantity cleared by the consignee. The clearance of the goods from the Docks takes several weeks or months and in the meanwhile, the goods are stolen or damaged and in such cases, if the consignees are unable to take delivery, then the liability for such loss cannot be foisted upon the petitioners or the ship or the owners and the Customs authorities cannot levy penalty for short landing. The petitioners also pointed out that the Port Trust has been requested to amend the out turn reports and pointed out that the authorities sold the news-prints in auction for failure to take delivery by the consignees.

The Deputy Collector of Customs, Manifest Clearance Department, by order dated March 20, 1984 imposed a penalty of Rs. 32,677/- on the petitioners u/s 116 of the Act. The Deputy Collector came to the conclusion that the short landing as mentioned in the out turn report issued by the Bombay Port Trust authorities is conclusive evidence for levying penalty on the petitioners. The petitioners carried an appeal before the Collector of Customs (Appeals), Bombay, but the appeal ended in dismissal by order dated April 18, 1984 passed by the Collector of Customs. The appellate authority took the view that short landing stand established by out turn report and out turn reports are treated as authentic and it is not permissible to investigate about the accuracy or otherwise of such report. The Collector also held that the Steamer Agents are a party to the out turn reports which are based on tally taken when the goods are discharged and if the goods were in possession of the Port Trust authorities in the capacity as the bailees, the out turn reports should be accepted as conclusive. The order of the authorities below is under challenge in Writ Petition No. 1354 of 1984.

5. Before adverting to the submission advanced to challenge the impugned order in these two petitions, it is necessary to set out the relevant provisions of the Customs Act to appreciate the hardships which are faced by the ship agents, by the vessels and their owners, and the consignees in respect of import of goods in Bombay Port. The Bombay Port Trust is statutory authority constituted under the provisions of the Major Port Trust Act, 1963 and Section 28 of the Act enables the Board to make regulations for carrying out the duties prescribed under the Act. Chapter V prescribes for Works and Services to be provided at Ports and u/s 25A, the Board of Trustees are conferred with the power in respect of landing places. Section 37 confers power on the Board to order sea-going vessels to use docks, wharves, etc. Section 43 provides that the responsibility of the Board for loss, destruction or deterioration of the goods of which it has taken charge shall be that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words "in the absence of any special contract" in Section 152 of the Act. Section 44 of the Act requires the Board to provide accommodation for Customs Officers in respect of performance of the duties under the provisions of the Customs Act.

Chapter VI of the Customs Act, 1962 deals with provisions relating to conveyances carrying imported goods and Section 29 prescribes that the person-in-charge of a vessel entering India shall not permit the vessel or call or land at any Port other than the customs port. Section 30(1) of the Act prescribes that the person-in-charge of a conveyance carrying imported goods shall within twenty-four hours after arrival at the Custom Station, deliver to the power officer an import manifest making and subscribing a declaration as to the truth of its contents. The imported goods are not permitted to be unloaded until an order has been passed by the proper Officer granting entry inwards to such vessel u/s 31 of the Act. Section 32 of the Act provides that no imported goods required to be mentioned under the regulation of an import manifest shall except the permission of the Officer be unloaded at any Customs Station. Section 34 of the Act sets out that the imported goods shall not be unloaded from any conveyance except under the supervision of the proper officer, but the proviso enables the Board to give general permission for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer. Section 42 of the Act prescribes that the person-in-charge of a conveyance which has brought any imported goods shall not cause or permit the conveyance to depart from that custom station until a written order to that effect has been given by the proper officer. Chapter VII deals with the subject of the clearance of imported goods and Section 45, inter-alia, provides that all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused in accordance with the provisions of Chapter VIII. The custody of the goods unloaded is with the Bombay Port Trust authority which is constituted under the provisions of the Major Port Trusts Act. Sub-section (2) of Section 45 of the Act demands that the Port Trust authorities shall keep a record of such goods and send a copy thereof to the proper Officer. It also provides that the Port Trust authorities shall not permit such goods to be removed from the customs area except under and in accordance with the permission given by the Customs Officer. These Sections of the Act clearly indicate that a vessel carrying imported goods requires permission for landing at the Bombay Port and imported goods are required to be unloaded and given in the custody of the Bombay Port Trust authorities before clearance is granted to the consignees. The report which the Port Trust authorities forward to the Customs authorities u/s 45(2)(a) is known as Port out turn report. Section 116 of the Act provides that if any goods loaded in a conveyance for importation into India are not unloaded at the place of destination in India and if the failure to unload is not accounted for to the satisfaction of the Assistant Collector of Customs, then the person in charge of the conveyance shall be liable to a penalty. This section makes it clear that it is necessary that all goods loaded in a foreign Port and meant for Bombay Port shall be unloaded in Bombay and if any goods are short landed and the deficiency is not accounted for, then the liability to pay penalty is on the ship-owner. In the proceedings adopted by the Customs authorities for levy of penalty u/s 116 of the Act, the crucial question which arises for determination is how short landing is to be ascertained and at what point of time.

6. Shri Venkiteswaran complained that ascertainment of short landing is done on arbitrary basis and the person-in-charge of the conveyance is called upon to explain the short landing long after the vessel leaves Bombay Port. The learned counsel urged that the short landing is ascertained on the basis of the out turn report submitted by the Bombay Port Trust authorities and the Customs authorities refused to look into several facets of the matter which would establish that in fact there was no short landing at the time of unloading of the goods. Shri Venkiteswaran is right in his submission that it is necessary to ascertain whether there is short landing immediately after the unloading of the cargo from the vessel. The learned counsel is also right in his submission that in case it is noticed that there is short landing of goods, then proceedings should be commenced within a short duration from the time of unloading. The complaint of Shri Venkiteswaran is that the Customs authorities merely look into the quantity mentioned in the Bill of lading and compare it with the quantity of the goods shown in the out turn report and thereafter assumes that the person-in-charge of the conveyance is responsible for short landing. The learned counsel urged that the Customs authorities overlook the ullage report and the fact that several consignments are stolen while in custody of the Port authority and the fact that in respect of damaged consignments or the consignments which did not bear any

mark, are disposed of by the Port Trust authorities by holding auction. The learned counsel urged that it is not correct for the Customs authorities to claim that the fact of short landing would be ascertained only by reference to the out turn report and the Customs authorities would not bother to find out whether the goods were in the fact unloaded from the vessel. There is considerable merit in the submission of the learned counsel.

7. The cargo which is imported in Bombay Port can conveniently be divided into five categories;

(A) Liquid cargo in bulk,

(B) Cargo brought in containers,

(C) Dry bulk cargo,

(D) General cargo, and

(E) Hazardous cargo discharged in Barges and Lighters.

Shri Makhija, learned counsel appearing on behalf of Bombay Port Trust authorities submitted that at the time of unloading of the cargo, the Port Trust authorities prepare tally sheets, also known as landing tallies, and in these sheets columns are provided for recording marks under which the goods are landed, the number of packages, the description of the goods, the weight and the remarks, if any. The goods which are unloaded in torn or damaged conditions are set out in the remarks column. These tallies are recorded at the wharf or at the entrance of the landing shed and after the completion of the tallies, the goods are taken into the landing shed. Shri Makhija submitted that the goods remain in the landing shed till they are removed by the consignee after completing the Customs and other formalities, the copies of the tally sheets are sent to the vessel Agents within 48 hours from the time of carrying out of the tallies and since June 1983, the xerox copies are forwarded to the Agents. If the Agent of the vessel finds any discrepancy, then the Port Trust authorities physically check the goods and verify the correctness of the complaints and as such cases supplemental landing tallies are issued. Shri Makhija pointed out that about a week after the landing, the goods are removed from the landing shed to the uncleared warehouse and the consignee is required to take delivery thereafter from such warehouse. The remark list is also prepared by the Port Trust authorities and it is a summary statement prepared from the tally sheets and in this remark list are recorded the number of packages which are landed in torn or damaged condition and in respect whereof remarks are made at the time of landing. Subsequently, out turn report is prepared in respect of each item of the Import General Manifest and the documents considered for preparation of out turn report are tally sheets and shed delivery orders. The out turn report is prepared after a considerable delay because the consignees who complain that entire consignment is not delivered are offered goods which are in custody of the Port Trust but without any marks. Shri Makhija pointed out this procedure as set out in the return dated July 11, 1986 filed by M.V. Sathe, the Principal Officer of the Port Trust authorities, to highlight the claim that the Port Trust authorities are not necessarily responsible for short landing of the goods complained by the consignees. Mr. Makhija had obviously no explanation about the complaint that large number of goods are stolen from the area of the Port Trust save and except stating that complaints are lodged with the Police in respect of these thefts. Shri Makhija accepted that the Port Trust authorities auction the goods which are not claimed by the consignees and which do not bear any marks of identification on are in damaged condition. It was not disputed that while ascertaining whether the goods are short landed, the fact that certain goods are auctioned or stolen is not taken into account because that fact is not reflected in the out turn report, the said report merely setting out the cargo which was cleared by the consignees.

Shri Bulchandani, learned counsel appearing on behalf of the Customs authorities, accepted that the Customs authorities proceed to levy penalty purely on the basis of the out turn report. Shri Bulchandani submitted that the provisions of sub-section (2) of Section 45 of the Act require the Port Trust authorities to forward report and the Customs Officer relies upon that report and declines to take into consideration any other material. Indeed, even in an enquiry for levy of penalty u/s 116, the person-in-charge of the conveyance is not permitted to produce any evidence or to cross-examine the Officers of the Port Trust for challenging the accuracy of the out turn report. In these circumstances, Shri Venkiteswaran is right in his submission that the ascertainment of short landing of goods is done without proper application of mind and the penalty is levied u/s 116 of the Act in an arbitrary fashion.

8. After detailed arguments and considering all the pros and cons of the matter, it was agreed by the counsel that it is necessary to set out the guidelines for the benefit of the Customs authorities, Bombay Port Trust authorities and the persons-in-charge of the conveyance and their agents so as to provide for smooth exercise of functions under the provisions of the Customs Act as well as to ensure that injustice is not caused to any of the authorities or to the person-in-charge of the conveyance. After discussions, the counsel agreed that following guide-lines should be provided :

(A) Liquid Cargo in bulk :

(1) The quantity shown in the Bill of lading reflected in the Import General Manifest should be prima facie accepted as the cargo on board the vessel brought for unloading at the Port of Bombay.

(2) In case, the person-in-charge if the ship or his Agent produces the ullage survey report prepared at the Port of loading and certified by an independent Surveyor, then the quantity mentioned in the ullage survey report should be accepted as the correct quantity brought by the vessel for unloading.

(3) The vessel should be permitted to discharge liquid cargo only after a ullage survey is carried out under the supervision of the Customs Officer and such

survey report is signed by the Customs Officer, by the ship owner and the consignee.

(4) After the discharge of the liquid cargo from the vessel, a fresh survey should be carried out in the presence of the Customs Officer and this discharge completion survey report should be signed by the Customs Officer, the ship-owner, and the consignee.

(5) In case of any difference between the bill of lading, quantity or the ullage survey report of the Port of loading quantity and the discharge port ullage survey report quantity, then such difference shall be considered as short landed quantity and for which the ship owner should be held responsible.

(B)(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 cases 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)(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 of the container, the seals are found intact, then the carrier should be responsible to account for the difference between the manifest quantity and the de-stuffing 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.

(C) Dry Bulk Cargo

(1) In respect of dry bulk cargo, an independent survey report should be prepared by the carrier and the consignee and such report should be counter-signed by the Customs Officer before discharge of the cargo. Such report should accepted for the purpose of ascertaining the actual cargo unloaded.

(2) The Bombay Port Trust authorities should not issue out turn report on the basis of actual weightment after landing in cases where the survey report is prepared and counter-signed by the Customs Officer, carrier and the consignee.

(D) General Cargo

(1) The Port Trust authorities shall maintain tally at the time of landing of the cargo with appropriate marks in respect of cargo without any remarks or numbers.

(2) A copy of the tally sheets shall be furnished to the carrier or its agent and the Customs Officer at the earliest. The tally sheets shall be rectified or amended, if any discrepancy is brought to the attention of the Port Trust authorities and the Customs authorities.

(3) The Customs authorities shall ascertain whether any cargo was short landed on the basis of the copy of the tally sheets furnished by the Port Trust authorities and not on the basis of any out turn report forwarded by the Port Trust authorities long thereafter.

(4) In respect of bulk cargo in bags, if the bags or packages are found in intact condition, it should be so shown in the tally sheets. If the packages or bags are found in damaged or torn condition, the survey shall be carried out immediately and the survey report should indicate the short landed quantity. Such survey report should be carried out as far as possible within 48 hours of unloading.

(5) In the case of cargo containing the packages or bags and found damaged, the Customs authorities shall also take into consideration the sweepings on the wharf and in the ship for ascertaining whether the quantity could be accounted for.

(6) Even if the cargo is landed without any marks or numbers, it should be accepted on account of the cargo referred to in the manifest, it is established that the cargo landed from the particular vessel.

(E) Hazardous cargo discharged in Barges & Lighters

(1) In cases where the hazardous cargo is discharged in lighters and barges, the stevedores who unload the cargo shall prepare the tally sheets and unloading in lighters and barges shall take place under supervision of the Customs Officer.

(2) Such tally sheets should be included in the boat-note signed by the Master of the ship, the Master of the barge, the stevedores and the Customs Officer.

(3) The boat note along with the tally sheet shall be the basis for ascertaining whether the cargo has been short landed and the quantum thereof.

In cases these guidelines are carried out by all the concerned parties both in its letter and spirit, then it is expected that much of the problems facing the Customs Officers, the Bombay Port Trust authorities, the ship-owners and their Agents would be reduced, if not to tally eliminated. The Customs authorities and the Port Trust authorities are directed to carry out these guide-lines while ascertaining whether any cargo was short landed and whether the ship owners are liable for penalty for such short landing u/s 116 of the Act.

9. It is also necessary to give direction as to how the Customs authorities should

deal with the proceedings commenced u/s 116 of the Act by service of show cause notice on the ship owners of their Agents. Shri Venkiteswaran complains that the Customs Officer who is exercising quasi judicial authority does not permit the persons served with show cause notice to lead evidence and the request for summoning witnesses is also turned down. It is obvious that the proceedings commenced by the Customs Officer for levying penalty are of quasi-judicial nature and Section 124 of the Customs Act prescribes that no order imposing a penalty shall be made unless such person is given a reasonable opportunity of being heard in the matter. The reasonable opportunity of hearing will also include an opportunity to such person to give evidence or to summon witnesses to give evidence in support of his contention. The Customs Officer, obviously, cannot turn down the request of the person to lead evidence, though it is the discretion of the Customs Officer to determine whether such evidence should be permitted or whether any witness is to be summoned as demanded by taking into account the facts and circumstances of a particular case. It hardly requires to be stated that the Customs Officer while exercising quasi-judicial powers should exercise discretion judiciously before passing adverse order against the person, confiscating the goods or imposing penalty u/s 116 of the Act. In my judgment, these directions and the guide-lines set out herein above would enable all the concerned parties to carry out their duties efficiently and to the satisfaction of everyone concerned.

10. Now, turning to the challenge to the order of the Deputy Collector of Customs in Writ Petition No. 1236 of 1981, it is obvious that the impugned order cannot be sustained. As set out herein above, the shortage in respect of Aviation Gasolene was ascertained by the Customs Authorities solely on the basis of out turn report, the Deputy Collector of Customs refused to place any reliance on the ullage report prepared at the time of loading in the Port at Italy and the report prepared after the unloading at the Bombay Port. In case, the ullage reports are accepted, the shortage was only 15.73 metric tonnes. The difference between the bill of lading quantity and the quantity as per the ullage report is only 1646 metric tonnes and it is not disputed that both the quantities are within permissible limits. It also cannot be overlooked that the Consignees i.e. Indian Oil Corporation did not raise any complaint about short landing of the goods. It is required to be stated that 1% of the loss is allowed and while ascertaining the short landing of Aviation Gasolene that shortage is treated as within permissible limits. The Deputy Collector ignored all these facets and merely proceeded to levy penalty on the ground that out turn report given by the Port Trust authorities is conclusive evidence and that conclusion is merely erroneous. The Deputy Collector also accepted that the ship-power had no control over the goods once it left its permanent hose connections, but inspite of it levied the penalty. In my judgment, the order of the Deputy Collector, Customs, cannot be sustained and the petition must succeed.

11. Accordingly, rule is made absolute in terms of prayer (a). In the circumstances of the case, there will be no order as to costs. The amount of

penalty deposited by the petitioners with the Prothonotary and Senior Master in pursuance of the interim order passed by this Court to be refunded. The Prothonotary and Senior Master to act on minutes.

12. Turning to Writ Petition No. 1354 of 1984, it is obvious that the impugned orders cannot be sustained. The Deputy Collector as well as the appellate authority had proceeded to levy the penalty only on the basis of out turn report submitted by the Port Trust authorities. The appellate authority felt that these out turn reports as authentic and it is not possible to investigate into the accuracy of the same. The approach is totally incorrect and the orders cannot be sustained. The petitioners have brought on record that the claim of short landing is incorrect because the Port Trust authorities held an auction and disposed of several rolls of newsprints. The Port Trust authorities have filed the return and accepted the fact that the rolls of news-prints were disposed of because they bore no marks of identification. In these circumstances, it is difficult to hold that the goods were short landed and ship-owners were responsible for the same. The levy of penalty u/s 116 of the Act on the petitioners is obviously unsustainable and the petitioners are entitled the succ

13. Accordingly, rule is made absolute in terms of prayer (a). In the circumstances of the case, there will be no order as to costs.

