(1999) 09 DEL CK 0145

In the Delhi High Court

Case No : Civil Writ Petition No. 1852/99

Singapore Airlines APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 116, 148, 2(31), 42

Citation : (2000) 121 ELT 289

Hon'ble Judges : D.K. Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : M. Wadhwani, for the Appellant; Neeraj K. Kaul, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar, J.—Petitioner has challenged imposition of penalty u/s 116, Customs Act (hereinafter referred to as the Act) on account of goods short-landed. The contention of the learned counsel for the petitioner is that notice u/s 116 of the Act had to be issued to the person-in-charge of the conveyance and not to the owner of the conveyance, the petitioner is the owner of the conveyance and cannot be said to be the person-in-charge. Section 116 imposes liability on account of short-landing of goods on the person-in-charge of the conveyance. The expression person-in-charge has been defined in Section 2, sub-section (31) of the Act to mean : "(b) in relation to an aircraft, the Commander or pilot-in-charge of the aircraft." The aircraft in question had a pilot-in-charge and notice u/s 116 of the Act should have addressed to him rather than to the petitioner who is the owner of the conveyance.

2. We have heard the learned Counsel for the parties. Mr. Neeraj Kaul, the learned Counsel for the respondents submitted in reply to the above argument that in view of the provision of Section 148 of the Act, the owner of the conveyance is deemed to be the agent of the person-in-charge of the conveyance and Therefore, the notice was rightly served on the petitioner. The learned

counsel has pointed out various practical difficulties if the notice is required to be served only on the person-in-charge of the conveyance. The most important being that if a commander/pilot of the aircraft has to go through the proceedings envisaged in Section 116 of the Act, the flights will get unduly delayed, besides the fact that a commander or pilot will never accept V -such a responsibility.

3. It needs to be noted here that as a matter of fact, the person-in-charge of the aircraft does not deal with the cargo either for loading or for unloading. It is the grand staff of the airlines appointed by the airlines, who handles the cargo.

4. It is submitted by the learned Counsel for respondents that in view of Section 148 of the Act an implied agency of necessity has to be accepted. The owner of the aircraft must be held to be an agent of the commander/pilot of the aircraft for purposes of Section 116 of the Act. The departmental authorities as well as the Joint Secretary, Govt. of India who heard and disposed of the revision petition by passing the impugned order, have accepted this stand of the respondents. We find no reason to take a different view. We agree with the learned Counsel for respondents that in the context of action u/s 116, the notice was rightly served on the petitioner and the petitioner would be deemed to be an agent of the commander/pilot of the conveyance. Any others interpretation would cripple operations. If it is held that a pilot has to personally go through the lengthy process u/s 116 of the Act the aircraft will have to remain grounded.

5. Next it was argued that requirement of Section 42 of the Act has not been satisfied and, Therefore, the impugned action is vitiated. The relevant portion of Section 42 is reproduced as under :-

"42. No conveyance to leave without written order:

(1) The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

(2) No such order shall be given until -

(a) X X X (b) X X X (c) X X X (d) X X X (e) The person-in-charge of the conveyance has satisfied the proper officer that no penalty is livable on him u/s 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may directs.";

x x x x

6. As per the view we have taken about Section 116, the entire responsibility with respect to Section 116 action is taken over by the airlines which is the owner of the conveyance. Section 42 has to be interpreted accordingly, any other interpretation would mean that the aircraft may have to wait for the permission to depart a station till the completion of Section 116 proceedings. That would

lead to an impossible situation. Action u/s 116 may take long to finalise and an aircraft cannot be made to wait.

7. Lastly it was argued that short-landing of cargo was on account of pilferage at the destination station for which the responsibility could fall on various agencies working at the destination station and airlines cannot be made responsible. This is a question of fact and has been gone into by the respondents at various levels in the adjudication proceedings. We cannot go into this aspect, in a petition under Article 226 of the Constitution of India.

The writ petition is dismissed in limine.

