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M/S INDIAN STEAMSHIP CO. LTD.

v.

UNION OF INDIA AND ANR.

APRIL 21, 1998

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[S.C. AGRAWAL, S. RAJENDRA BABU AND A.P. MISRA, JJ.]

Customs Act, 1962 :

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S.115(1) (e)—Confiscation of Conveyance—Several types of imported goods on vessel—Portion of one of the consignments found missing—Additional Collector of customs taking the view that “substantial portion” of imported goods was missing and holding the vessel liable to confiscation—Imposition of fine in lieu of confiscation—Held, expression “substantial portion” must be construed as referring to quantity as well as value of whole or substantial portion of the goods which have been imported in the vessel—

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Order of Single Judge of High Court setting aside imposition of fine upheld.

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The appellant-company was the owner of a ship which on its voyage from United Kingdom to Calcutta port touched some other ports of India. The ship was carrying cargo imported for delivery at different Indian ports including the port of Calcutta. When the ship reached the port of Calcutta, the Purser of the vessel handed over to the Customs Officer the bonded store list of the vessel indicating that there were goods on Board including 1,22,400 pieces of cigarettes placed in cartons. However, later when checked, it was found that on the basis of stock statement, there was a shortage of 45,000 cigarettes.

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A notice was issued to the appellant-company to show cause why the vessel should not be confiscated under s. 115(1)(e) and why penal action should not be taken under s. 112 of the Act as the cigarettes had been removed clandestinely from the vessel when she was in the port. The company contended that the shortage was inconsequential and insignificant as regards the value of the entire imported cargo carried by the vessel, namely, several tonnes of iron and steel, carbon blocks and plates, milk powder, machinery, spare parts equipments and other general cargo; and, therefore, s. 115(1)(e) was not attracted.

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The Additional Collector of Customs held that the expression

“substantial portion” in s. 115(1) (e) referred to the value of the missing goods in themselves ; that missing quantity of cigarettes was substantial portion of the imported goods and the amount of duty leviable thereon being more than Rs. 31,000, the loss or deficiency of the missing goods rendered the vessel liable to confiscation under s. 115(1)(e). He imposed a fine of Rs. 50,000 in lieu of confiscation and also imposed a penalty of Rs. 10,000 on the Purser under s. 112 of the Act. The company filed a writ petition before the High Court. The Single Judge accepting the case of the company allowed the writ petition as regards the order under s. 115(1)(e). However, on appeal, the Division Bench restored the order of the Additional Collector of Customs. Aggrieved, the Company filed the present appeal.

It was contended for the appellant that the expression “substantial portion” in s. 115(1)(e) of the Act must be construed to mean substantial portion of the goods imported in the vessel, as it could not be the intention of Parliament to provide for confiscation of the vessel in a case where a missing portion of a particular consignment, though substantial portion of that consignment, was insignificant as compared to the goods imported in the vessel.

Allowing the appeal, this Court

HELD : 1.1. The number of cigarettes that were found missing cannot be held to be a substantial portion, either in the matter of quantity or in the matter of value of the goods that were imported in the vessel. [1127-D]

1.2. The words “ such goods” in the expression whole or substantial portion of such goods” contained in s. 115(1)(e) of the Customs Act, 1962 refer to the goods which have been imported in the vessel therefore, the said expression must be construed as referring to the whole or substantial portion of the goods which have been imported in the vessel, keeping in view their quantity as well as value. Having regard to the quantity or the value of the goods imported, if it is found that the goods found missing were a substantial portion of the goods that have been imported the provisions of s. 115(1)(e) would be attracted. [1126-E-H]

1.3. The object underlying the provisions of s. 115(1)(e) is to check evasion of customs duty. But, at the same time, it cannot be ignored that the confiscation of the vessel would result in imposing a heavy financial burden on the owner of the vessel. In providing for confiscation of the vessel in s. 115(1)(e) it could not have been the intention of Parliament to penalise the

A owner of the vessel in a case where a portion, even though substantial, of a particular consignment of goods is found to be missing although the said consignment is only an insignificant part both in the matter of quantity as well as value of the goods that have been imported in the vessel. [1127-B-C]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2971A of 1986.

From the Judgment and Order dated 17.8.78 of the Calcutta High Court in A. No. 430 of 1977.

C Dipankar Gupta, Dilip Sinha and K.R. Nambiar for the Appellant.

Anoop Choudhary, M. Gaurishankar Murthy, S.D. Sharma and V.K. Verma for the Respondents.

The Judgment of the Court was delivered by

D S.C. AGRAWAL, J. This appeal raises a question relating to interpretation of clause (e) of sub-section (1) of Section 115 of the Customs Act, 1962 [hereinafter referred to as 'the Customs Act'] which provides for confiscation of "any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing unless the master of the vessel or aircraft is able to account for the loss of, or deficiency, in the goods".

F M/s India Steamship Company Limited, the appellant [herein, thereafter referred to as 'the appellant-company'] was the owner of the sea-going vessel known as 'M.V. Indian Resolve'. On its voyage from United Kingdom Continental ports to Calcutta Port it touched the ports at Bombay, Colombo, Madras and Visakhapatnam. The ship was carrying cargo imported for delivery at different Indian Ports including the Port of Calcutta. When the vessel arrived at the Port of Calcutta Peter Sherazee, the Purser of the vessel, handed over the Bonded Stores List of the vessel to the customs officer. The said list mentioned the items of bonded Stores and their respective quantities. The said Bonded Stores List stated that there was on board 1,22,400 pieces of cigarettes which were contained in unopened large cartons containing 5,000 cigarettes and also in smaller cartons and open cartons. On checking by the customs officer the unopened large cartons appeared to be intact and the customs officer locked up and sealed the Bond-Room of the vessel. On two occasions thereafter, on October 12 and October 16, 1974, Peter Sherazee took

out some cigarettes from the Bond-Room in the presence of the customs officer and on both these occasions the customs' seal on the Bond-Room was found to be intact. On October 28, 1974 one S.K. Mukherji took over charge as Purser of the vessel and on that day the customs officer accompanied S.K. Mukherji and Peter Sherazee for verification of the stock in the Bond-Room. Some cigarettes were taken out for consumption of the crew on the vessel. The large cigarette cartons still appeared to be intact. Thereafter the Bond-Room was duly locked and sealed. On November 4, 1974 S.K. Mukherji went with the customs officer to the Bond-Room for taking out a further quantity of Cigarettes. The seal of the Bond-Room was found to be intact. One of the large cartons, when opened in the presence of the customs officer, was found to be empty. Thereupon all the large unopened cartons were checked and it was found that nine of them were empty. On the basis of the stock statement as submitted there was a shortage of 45,000 cigarettes. On April 9, 1975 the Assistant Collector of Customs for Preventive (Adjudication), Calcutta, issued a notice to the appellant-company wherein it was stated that 45,000 cigarettes were found short in the Bond-Room of the vessel on November 4, 1974 and that no satisfactory explanation was forthcoming from the appellant-company for the alleged shortage. In the said notice it was further stated that it is reasonably believed that the said cigarettes had been removed clandestinely from the vessel while she was in port. By the said notice the appellant-company was called upon to show cause why the vessel should not be confiscated under Section 115(1)(e) and why penal action should not be taken under Section 112 of the Customs Act. The appellant-company submitted a reply to the said notice wherein the shortage of 45,000 cigarettes was not disputed but it was contended that the shortage was inconsequential compared to the value of the entire imported cargo carried by the vessel and, therefore, Section 115(1)(e) was not attracted. It was pointed out that the imported goods scheduled to be unloaded at the Port of Calcutta consisted of 847 tonnes iron and steel, 200 tonnes of carbon blocks and plates, 6 tonnes of milk powder, 976 tonnes of machinery, spare parts, equipments and other general cargo and as compared to the cargo to be untraded the missing goods, namely, 45,000 cigarettes, were inconsequential and insignificant. The Additional Collector of Customs, by order dated August 23, 1975 held that the terms "substantial portion" in Section 115(1)(e) referred to the value of the missing goods in themselves and that 45,000 cigarettes was substantial portion of the imported goods carried by the vessel and the amount of duty leviable on the missing quantity is more than Rs. 31,000 and he, therefore, held that the loss or the deficiency amounting to 45,000 pieces of cigarettes has rendered the vessel liable to confiscation under Section 115(1)(e) of the

- A Customs Act. The Additional Collector imposed a fine of Rs. 50,000 in lieu of confiscation and he also imposed a penalty of Rs. 10,000 on Peter Sherazee under Section 112 of the Customs Act. Feeling aggrieved by the said order of the Additional collector the appellant-company filed a writ petition in the Calcutta High Court which was allowed by the learned single Judge by judgment dated January 11, 1977 and the order dated August 23, 1975 passed by the Additional Collector of Customs in so far as it related to confiscation of vessel under Section 115(1)(e) of the Customs Act was set aside. The learned single judge held that 45,000 cigarettes which were found missing were insignificant portion of the imported goods which were being carried in the vessel and even if their loss was not duly accounted for, Section 115(1)(e) was not attracted for the confiscation of the vessel. The learned single Judge upheld the penalty of Rs. 10,000 imposed on Peter Sherazee under Section 112 of the Customs Act. The respondents filed an appeal before the Division Bench of the High Court assailing the said judgment of the learned single Judge. The said appeal was allowed by the Division Bench of the High Court by the impugned judgment dated August 17, 1978. The learned Judges on the Division Bench rejected the contention urged on behalf of the appellant-company that the words "substantial portion" means substantial portion of all the "imported goods" on the view that it leads to a difficulty as to whether these two words are to be understood with reference to the value of the imported goods or with the quantity of the imported goods. The learned Judges have said :-

- F "For prevention of smuggling the legislature has provided for confiscation of the conveyance itself. In these premises if we say that the words 'substantial portion' of imported goods in Section 115(1)(e) have to be read in the context of the totality of goods imported, the very object of the Act embedded in Section 11(2)(c) may be frustrated. Let us repeat the example we gave to Mr. Roy Mukherjee. A vessel may have imported 100 tonnes of wheat and 4 gold bars out of which 3 bars have been smuggled out. The owner of the vessel, if we go by quantity of imported goods, cannot be punished by confiscation of the vessel itself even though smuggling of a gold bars has taken place. We do not think that this was or could have been the intention of the legislature. In our opinion if a vessel has imported different items or varieties of goods and if either the whole or substantial portion of one of the items or varieties be found missing, the Customs authorities would be entitled to invoke Section 115(1)(e). If we do not adopt this interpretation, we shall not be giving effect to the object

the legislatures had in view, namely, the prevention of smuggling.” A

Feeling aggrieved by the said judgment the appellant-company has filed this appeal.

Shri Dipanker Gupta, the learned senior counsel appearing for the appellant-company, has urged that the expression “substantial portion” in Section 115(1)(e) of the Customs Act must be construed to mean substantial portion of the goods which have been imported in the vessel. The submission is that the learned single Judge was right in proceeding on that basis and that the Division Bench of the High Court was in error in reversing the said view of the learned Single Judge. It has been contended that it could not be the intention of Parliament to provide for confiscation of the vessel in a case where a portion of a particular consignment, which may be substantial portion of that consignment, is found missing if the said portion which is found missing is insignificant as compared to the goods that have been imported in the vessel. B C

Section 115(1)(e) of the Customs Act provides for confiscation of conveyances and reads as follows :- D

“115. Confiscation of conveyance, -(1) The following conveyance shall be liable to confiscation-

- | | | | | | | |
|-----|---|---|---|---|---|---|
| (a) | x | x | x | x | x | E |
| (b) | x | x | x | x | x | |
| (c) | x | x | x | x | x | |
| (d) | x | x | x | x | x | F |

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft able to account for the loss of, or deficiency in, the goods.” G

The said provision in Section 115(1)(e) differs from the earlier provision contained in clause (4) of Section 167 of the Sea Customs Act, 1878 which provided for the penalty of confiscation of the vessel in respect of following offences :-

“4. If any vessel which has been within the limits of any port in India H

A or within the Indian customs waters, with cargo on board, be afterwards found elsewhere in such waters or in any port, bay, river, creek or arm of the sea in India.

(i) light or in ballast, or

B (ii) with any part of such cargo missing,

and the master of the vessel is unable to give due account of how the vessel came to be light or in ballast, or of the missing cargo.”

C Under the said provision in Section 167 the vessel was liable to be confiscated if any part of the cargo was missing and the master of the vessel was unable to give due account of the missing cargo. Section 115(1)(e) reduces the rigour of the said provision by introducing the requirement that substantial portion of the goods must be found missing to attract the liability of confiscation of the vessel.

D Section 115(1)(e) contains the expression “any conveyance carrying imported goods”. These words refer to the goods which are being imported by the vessel in the country, i.e., the imported goods which are contained in the vessel. The words “such goods” in the expression “whole or substantial portion of such goods” refer to the goods which have been imported in the vessel and, therefore, the said expression must be construed as referring to the whole or substantial portion of the goods which have been imported in the vessel. This means that what should be found missing is the whole or substantial portion of the goods that have been imported in the vessel. The learned Judges on the Division Bench of the High Court have pointed out that a difficulty may arise in ascertaining whether the substantial portion of goods is missing by giving an illustration where 100 tonnes of wheat and 4 gold bars were imported in a vessel and out of the 4 gold bars 3 gold bars were found missing and have observed that in such a case if we go by the quantity of the imported goods the owner of the vessel can not be punished by confiscation of the vessel itself even though smuggling of 3 gold bars has taken place and that this could not have been the intention of the legislature.

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G In our opinion, the said illustration does not pose any difficulty because the expression “substantial portion of such goods” in Section 115(1)(e) has been used to mean substantial portion of the goods that have been imported keeping in view the quantity as well as the value of the goods that have been imported. If it is found that the goods found missing were a substantial
H portion of the goods that have been imported having regard to the quantity

of goods or the value of the goods imported, the provisions of Section 115(1)(e) would be attracted. The object underlying the said provision for confiscation of the vessel is to check evasion of customs duty. It seeks to achieve this object by ensuring that after the vessel has entered India the master of the vessel accounts for the goods which have been imported and by providing that if the whole or substantial portion of the imported goods is found missing and the master of the vessel is not able to account for the loss or deficiency in the goods, the vessel would be liable to be confiscated. But, at the same time, it cannot be ignored that the confiscation of the vessel would result in imposing a heavy financial burden on the owner of the vessel. In providing for confiscation of the vessel in Section 115(1)(e) it could not have been the intention of Parliament to penalise the owner of the vessel in a case where a portion, even though substantial, of a particular consignment of goods is found to be missing although the said consignment is only an insignificant part both in the matter of quantity as well as value of the goods that have been imported in the vessel.

Applying the aforesaid test, 45,000 cigarettes that were found missing cannot be held to be a substantial portion of the goods that were imported either in the matter of quantity or in the matter of value of the goods that were imported in the vessel.

We are, therefore, unable to uphold the impugned judgment of the High Court. The appeal is accordingly allowed, the impugned judgment of the Division Bench of the High Court is set aside and the judgment of the learned Single Judge is restored. No order as to costs.

R.P.

Appeals allowed.