A M/S. BRITISH AIRWAYS PLC.

v.

UNION OF INDIA AND ORS.

NOVEMBER 6, 2001

B [R.P. SETHI AND Y.K. SABHARWAL, JJ.]

Customs Act, 1962 :

Sections 2(31), 42, 116 and 148—Penalty—Aircrafts unloaded cargo at
C *the airport—Packages airlifted found short—Penalty imposed on the Airways—Upheld by the authorities and the High Court—On appeal, held the Airways liable as they are 'person' reprsenting the officer incharge to the officers of the customs as his agent for dealing with cargo off-loaded from the aircraft.*

D *Interpretation of Statutes—Court to keep in mind the consequences likely to flow upon the intended interpretation.*

Aircrafts of the appellants unloaded their cargo at the Airport. Thereafter, they were issued show cause notice alleging that some of the packages airlifted were found short and required from them as to why
E **penalty as detailed in the show cause notices be not imposed upon them. Not satisfied with the reply, Assistant Commissioner imposed the penalty on the appellant. Aggrieved, the appellant filed appeal before the Commissioner of Customs which was dismissed. The Joint Secretary (Revenue) and the High Court also confirmed the order. Hence the present appeal.**

F **Dismissing the appeal, the Court**

HELD : 1. Even though the appellants are neither the officer Incharge within the meaning of Section 2(31) of the Customs Act nor his agent, they shall be deemed to be person representing the officer incharge to the
G **officers of the customs as his agent for the purposes of dealing with the cargo off-loaded from the aircraft of the appellants' carrier. Therefore, the liability for shortages of off-loading the complete quantity of goods can be imposed upon in terms of Section 116 of the Customs Act, 1962.**

The scheme of the Act provides that the cargo must be unloaded at
H **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 incharge of the conveyance shall be liable in terms of Section 116 of the act. Besides the person incharge of the conveyance, the liability could be fastened upon his agent appointed under the Act or a person representing the officer incharge who was accepted as such by the officer concerned for the purposes of dealing with the cargo on behalf of the officer-in-charge. Further the process of unloading and accounting of the cargo clearly and unambiguously shows that the goods are handed over by such persons who are the representatives of the carrier and represent themselves as an agent of the "person incharge" of the conveyance and such person who represent themselves as agent of the office incharge of the conveyance are accepted as such by the officers of the respondents dealing with the carrier. [158-F; 159-F-G]

3. In the instant case all the authorities under the Act have found on facts that the cargo was being dealt with by the representatives of the officer incharge of the conveyance which was owned and are possessed by the appellant. the appellants have tried to take shelter under the technicalities of law to avoid their liability without disputing the fact that packages or quantities in the packages were found short. [159-H; 160-A]

4. Sections 42 and 116 of the Act are distinct as they deal with different contingencies. Even the officers contemplated under Sections 42 and 116 are different authorities or dealing with different situations. The purpose of Section 42 is to not detain the conveyance unnecessarily and pass an order for its departure on *prima facie* satisfaction that the person incharge of the conveyance has unloaded the goods which apparently do not show the levy of a penalty under Section 116 of the Act. Even after compliance of the provisions of Section 42 if it is found that the goods unloaded are short of quantity, the Designated Officer under Section 116 of the Act can proceed with the matter and impose penalty after following the procedure prescribed under the Act. Thus, the submission of the appellants that after the issuance of an order under Section 42 of the Act no proceedings could be initiated against the officer incharge of the carrier would amount to negating the working of the Act and defeating the object sought to be achieved by it. [160-B-D]

5. The submissions of the appellants that they were not the officer incharge would defeat the purpose of incorporation of Section 148(2) of

A **the Act and make the working of the Act impractical. Such an interpretation would be detrimental both to the carrier, the officer incharge on the one hand and the Revenue and Customs authorities under the Act on the other. Insistence of ascertaining the liability under Section 116 of the Act before passing an order in terms of Section 42 would mean not permitting**
B **the conveyance to depart from the customs station unless its officers have minutely examined the whole case and determining the consequences for not accounting of goods, which could not be the intention of the Legislature. [160-E-G]**

6. While interpreting a statute court should try to sustain its validity
C **and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a**
D **harmonious construction should be given. The well known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made**
E **in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation. [158-B-D]**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2762 of 2000.

From the Judgment and Order dated 29.9.99 of the Delhi High Court in C.W.No. 1528 of 1999.

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G Civil Appeal Nos. 2763, 3756 of 2000.

M. Wadhwani, Randhir K. Singh and Sanjeev Sachdeva for the Appellant.

Soli J. Sorabjee, Attorney General, Prateek Jalan and B. Krishna Prasad
H for the Respondents.

The Judgment of the Court was delivered by A

SETHI, J. The appellants are the aircraft carrier engaged in the business of international air transport of passengers and cargo across various countries. They are also operating in India under bilateral agreements executed between the countries of their origin and India. Claiming that as they are not the 'persons incharge' of the aircraft, no liability of shortages of off-loading the complete quantity of goods can be imposed upon them in terms of Section 116 of the Customs Act, 1962 (hereinafter referred to as "the Act"). It is contended that once the officer incharge of the aircraft is given a certificate under Clause (e) of Sub-section (2) of Section 42 of the Act, the authorities cannot re-open the issue. According to the appellants no penalty could be imposed upon either the owner of the aircraft or the carrier as the owner and the carrier cannot be deemed to be an agent of the person incharge of the conveyance under Section 148 of the Act. B C

It appears that the aircrafts of the appellants unloaded their cargo at the Indira Gandhi International Airport, Delhi. They were issued show cause notices alleging that some of the packages airlifted for India were found short and required from them as to why penalty as detailed in the show cause notices be not imposed upon them. The notices were appropriately replied disputing the facts stated therein and pleading that show cause notices had been issued to wrong persons because the appellants were not the 'person incharge' of the conveyance, liable to be dealt under Section 116 of the Act. It was further contended that the deficient quantities noticed in the cargo at the time of preparation of the segregation report were infact either pilferaged at Delhi Airport after the cargo had been unloaded from the conveyance and before the preparation of the segregation report under Section 45 of the Act or were not loaded on the conveyance at all. The Assistant Commissioner of Customs was not satisfied with the reply submitted to the show cause notice. The said appropriate authority imposed the penalty on the appellant against which they filed appeals before the Commissioner of Customs. On dismissal of their appeals by the Commissioner of Customs (Appeals), they preferred further statutory appeals before the Joint Secretary (Revenue) which were also dismissed. Dissatisfied by the orders passed by the authorities under the Act, the appellants filed writ petitions in the High Court of Delhi which were also dismissed vide the order impugned in these appeals. D E F G

Learned counsel appearing for the appellants has vehemently argued that H

A as his clients were not the "person incharge" within the meaning of Section 2(31) of the Act and the person incharge had obtained an order from the officer incharge in terms of Clause (e) of sub-section (2) of Section 42 of the Act, no liability could be fastened upon the appellants. Learned Attorney General for India who appeared for the respondents drew our attention to Section 148 of the Act and submitted that though strictly and technically speaking the appellants were not the persons incharge, yet they were 'such persons' as contemplated under sub-section (2) of Section 148 of the Act, liable to penalty and pay for the price for the shortages in unloading of the cargo.

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In order to appreciate the rival contentions of the parties, a reference may be made to various Sections of the Act which are relevant for the purpose of determining the controversy in these appeals.

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Section 2(31) of the Act defines "person incharge" to mean:

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

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(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;

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

Section 42 of the Act provides that the person incharge of a conveyance, which has brought any imported goods or off-loaded 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. Clause (e) of sub-section(2) of Section 42 prescribes that no such order shall be given until the person in charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 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 direct. Section 45 puts restrictions on custody and removal of the imported goods. Section 116 of the Act provides:

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"*116. Penalty for not account for goods*— If any goods loaded in a conveyance for importation into India, or any goods transhipped under

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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 Deputy Commissioner of Customs or Assistant 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."

Section 148 of the Act, reads:

"148. Liability of agent provided 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."

It may be noticed that Sub-section (2) of Section 148 was incorporated by way of an amendment. The Objects and Reasons for its incorporation were notified in Gazette of India on 14.12.1962, Part-II, S.2, Ext., P.368 as under:

"Clause 148. - Sub-clause (1) corresponds to the existing Section 5.

Sub-clause (2) is a new provision which makes the agent responsible

A for all the penalties and confiscations to which the person-in-charge of a conveyance may be liable. Since the person-in-charge of a conveyance has to leave with the conveyance, it is necessary that his agent in India should be made responsible for all the penalties and confiscations."

B While interpreting a statute the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that C effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked D up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation.

E 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 incharge of the conveyance shall be liable in terms F of Section 116 of the Act. Besides the person incharge of the conveyance, the liability could be fastened upon his agent appointed under the Act or a person representing the person incharge who has accepted as such by the officer concerned for the purposes of dealing with the cargo on his (person-in-charge) behalf. Assuming that the appellants are neither the person incharge G 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 person incharge 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.

It is found from the record that the mechanism of unloading and H accounting of the cargo prevalent at the airport is that on arrival of the aircraft

the carrier Airlines are not unloading the package and accounting the same airway bill wise as manifested in the cargo manifest. They bring out cargo in pallets and ULDs which contains many number of packages relating to number of Master Airways Bill and House Airways Bills. Thereafter they carry the pallets and the ULDs by their transport to the cargo terminal for handing over to the Airport Authority of India (the custodian). At this stage pallets and ULDs are opened and packages relating to each Master Airway Bill & House Airway Bill are unloaded to the ground and handed over to the custodian by the representatives of the airlines. At this stage the airlines tally the goods with the cargo manifest and a segregation report is prepared indicating the account of cargo handed over by the airlines. Any discrepancy in number of packages not handed over as found short against a particular airway bill or the package if found in damaged condition is recorded. The segregation report is jointly signed by the airlines, AAI and the customs. Before this stage the custodian have no mechanism to know as to how many packages are contained in the pallets and ULDs and as to whether they relate to cargo manifest or not. In such circumstance custody cannot be passed on to a custodian unless a person carrying the goods hands over by identifying to a document of account. The segregation report prepared by the airlines and the custodian is the document of accounting for the goods carried by the carrier and passing on the custody by the carrier to the custodian. The process of unloading is completed only when the cargo carried by the carrier airlines are put on the ground and handed over to the custodian accounting each package to an airway bill in conformity with the cargo manifest. Till then the cargo remains in possession and control of the carrier airlines and they all along have to keep the safety of the goods. If any loss or pilferage takes place prior to the handing over of the cargo to the custodian the goods cannot be taken as accounted for by the carrier. The process of unloading and accounting of the cargo clearly and unambiguously shows that the goods are handed over by such persons who are the representatives of the carrier and represent themselves as an agent of the "person incharge" of the conveyance. It is undisputed that such person who represent themselves as agent of the person incharge of the conveyance are accepted as such by the officers of the respondents dealing with the carrier.

All the authorities under the Act have found on facts that the cargo was being dealt with by the representatives of the person incharge of the conveyance which was owned and are possessed by the appellants. The appellants have tried to take shelter under the technicalities of law to avoid their liability

A without disputing the fact that packages or quantities in the packages were found short.

Accepting the submission of the appellants that after the issuance of an order under Section 42 of the Act no proceedings could be initiated against the person incharge of the carrier would amount to negating the working of the B Act and defeating the object sought to be achieved by it. Sections 42 and 116 of the Act are distinct as they deal with different contingencies. Whereas Section 42 puts the restriction that no conveyance shall be permitted to depart from the customs station until a written order to that effect is given by the proper officer under sub-section (2) of it, Section 116 deals with the penalty C for not accounting for goods unloaded at the intended destination. The purpose of Section 42 is to not detain the conveyance unnecessarily and pass an order for its departure on *prima facie* satisfaction that the person incharge of the conveyance has unloaded the goods which apparently do not show the levy of a penalty under Section 116 of the Act. Even after compliance of the D provisions of Section 42 if it is found that the goods unloaded are short of quantity, the Designated Officer under Section 116 of the Act can proceed with the matter and impose penalty after following the procedure prescribed under the Act. The officers contemplated under Sections 42 and 116 are different authorities, obviously for dealing with different situations.

E It may be noticed that sub-section (2) of Section 148 was enacted to give relief to the aircraft carrier and the officer incharge of a conveyance and permit him to leave with the conveyance by making his agent and person representing him responsible for all the penalties and confiscations. Accepting the submissions of the appellants in this context would defeat the purpose F of incorporation of sub-section (2) of Section 148 of the Act and make the working of the Act impractical. Such an interpretation would be detrimental both to the carrier, the *person* incharge on the one hand and the revenue and customs authorities under the Act, on the other. Insistence of ascertaining the liability under Section 116 of the Act before passing an order in terms of Section 42 would mean not permitting the conveyance to depart from the G customs station unless its officers have minutely examined the whole case and determined the consequences for not accounting of goods. Such could not be the intention of the Legislature.

Alternatively the learned counsel for the appellants referred to the facts H of the case to canvass that even if the appellants are liable under the law to be

served with the show cause notice, the respondents authorities have on facts not proved the averments made in the show cause notice. Such a submission is factually incorrect and legally impermissible. All the authorities on facts have found that the shortages had not been accounted for and actually not denied by the appellants. The findings of fact arrived at by all the authorities under the Act could not be disturbed by the High Court in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

There is no merit in these appeals which are accordingly dismissed with costs quantified at Rs.5,000 in each appeal.

N.J. Appeal dismissed.