IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.11.2010

CORAM:

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Writ Petition Nos. 8823 to 8825 and 15772 of 2009
and connected miscellaneous petitions

1. Container Shipping Lines Association
(CSLA) (India)
No.7, Nicholas Road, Chetpet
Chennai - 31.

2. MSC Agency (India) Pvt. Ltd.,
Vakils House, 3rd Floor,
18, Sprott Road, Ballard Estate,
Mumbai - 400 001
rep. By Mohan Menon,
Branch Manager

.... Petitioners in W.P.Nos.8823 to 8825/2009

1. Container Shipping Lines Association
(CSLA) (India)
3rd floor, Mackinnon Mackenzie Building,
Ballard Estate, Mumbai - 400 001.

2. MSC Agency (India) Pvt. Ltd.,
MSC House, Andheri Kurla Road,
Andheri (E)
East Mumbai - 400 059.

.... Petitioner in W.P.No.15772/2009

Vs.

1. Union of India, Ministry of Finance
Nirman Bhavan, New Delhi.

2. The Chief Commissioner of Customs (Sea),
Ministry of Finance, Government of India,
Customs House, Rajaji Salai,
Chennai - 600 001.

3. Commissioner of Customs,
Customs House, No.33, Rajaji Salai,
Chennai - 600 001.

4 Ministry of Finance,
Department of Revenue,
Office of the Commissioner of Customs (Import)
Chennai - 600 001.

5. The Chennai Customs House Agents Assn,
No.40, Moore Street, Chennai - 600 001
rep. By its President Shri P.S.Krishnan

6. Hindustan Chamber of Commerce,
rep. By its Secretary,
Greams Dugar, 5th Floor, South Wing,
149, Greams Road, Chennai - 6.

7. M/s.SBS Overseas Pvt. Ltd.,
rep. By its Authorised signatory
Mr.Mayank Lath
Plot No.1/1 Appartment, Amritha Nagar,
Numbal, Thiruverkadu, Chennai.

.... Respondents in W.P.Nos.8823 to 8825/2009

(R5 impleaded vide order dated 25.6.2009
R6 impleaded vide order dated 19.10.2009)
R7 impleaded vide order dated 30.11.2010

.... Respondent in W.P.No.8823 of 2009

1. The Chief Commissioner of Customs,
Ministry of Finance, Government of India,
Customs House, Rajaji Salai,
Chennai - 600 001.

2. Commissioner of Customs,
Customs House, No.33, Rajaji Salai,
Chennai - 600 001.

3. Ministry of Finance,
Department of Revenue,
Office of the Commissioner of Customs (Import)
Chennai - 600 001.

4. The Chennai Customs House Agents Assn,
No.40, Moore Street, Chennai - 600 001
rep. By its President Shri P.S.Krishnan

5. M/s. Coastal Overseas Trade Corporation,
No.24, Narayana Sarang Garden Street,
Chennai - 600 001.
rep. By its Manager Shri V.Rajasekar Reddy.

6. South India Importer's Association,
(Steel-Scrap Imports),
No.117, 2nd Floor, Trade Centre,
Walajah Road, Chennai - 2.
rep. By its General Secretary,
Mr.Shashi Kumar.M.

7. Hindustan Chamber of Commerce,
rep. By its Secretary,
Greams Dugar, 5th Floor, South Wing,
149, Greams Road, Chennai - 6.
.... Respondents in W.P.No.15772/2009

(R4 to R7 impleaded vide order dated 19.10.2009)

W.P.No.8823 of 2009:

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 3rd respondent relating to the impugned orders being Public Notification No.48/2008 dated 22nd April, 2008 and quash the same and direct the respondents not to alter with the Import General Manifest.

W.P.No.8824 of 2009:

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 3rd respondent relating to the impugned orders being Public Notification No.71/2006 dated 05th June, 2006 and quash the same.

W.P.No.8825 of 2009:

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 4th respondent relating to the impugned orders being Public Notification No.45/2007 dated 30th March, 2007 and quash the same and direct the respondents not to alter with the Import General Manifest.

W.P.No.15772 of 2009:

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to permit the petitioners' members to move the containers to the Container Freight Station notified by the ship owners or the Agents in the Import General Manifest as per the provisions of the Customs Act and further forbear the respondents from permitting movement of the containers to a Custom Freight Station not notified by the

members of the petitioner in the Import General Manifest or contrary to the code numbers given in the Import General Manifest without the consent and concurrence of the members of the petitioner Association either at the instance of the customs clearing house agents or on their own.

For Petitioners (in all W.Ps) : Mr.A.L.Somayaji, Senior Advocate for M/s.Narmada Sampath

For Respondents : Mr.Ravichandra Babu, Senior Panel Counsel – for R1 to R4 in W.P.Nos.8823 to 8825/09 & for R1 to R3 in W.P.No.15772 of 2009)

: Mr.Yashod Vardhan, S.C. for M/s. Satish Sundar - R4 to R6 (W.P.No.15772/09) & for R5 in W.P.Nos.8823 to 8825/09)

: Mr.Habibullah Badsha, S.C. for Mr.Ilias Ali For R6 in W.P.Nos.8823 to 8825/09 & for R7 in W.P.No.15772 of 2009

: Mr.Abudukumar Rajarathnam for R7 in W.P.Nos.8823 to 8825/2009

C O M M O N O R D E R

The Customs Act 1962 and other laws of the country regulate the entry/exit of all goods from the country by way of import or export. The Customs Act, 1962 lays down the procedure by which the goods can enter the country and get cleared for home consumption after fulfilling the requirements of law, as regards payment of the applicable import duties.

2. Under the Customs Act, 1962, goods entering into Indian territory become imported goods, chargeable to duty under Section 12 of the Customs Act, unless they are exempt from payment of duty under any specific provision. Goods are allowed for import or export at notified places only. Custodians are appointed under Section 45 of the Customs Act for safe storage of goods till they are cleared for home consumption or for warehousing. Chapter III of the Customs Act (Sections 7 to 10) deals with appointment of Customs ports, airports, warehousing stations etc. Section 7 of the Customs Act empowers the Central Board of Excise and Customs (hereinafter referred to as the Board) to appoint Customs Ports, Customs Airports, places for Inland Container Depots, Coastal Ports, etc. Section 7(aa) of the Customs Act authorises the Board to appoint Inland Container Depots (ICD) for

unloading of imported goods and loading of export goods. Under these provisions, ICDs have been appointed at various places. Under Sub Section (b), the Board is empowered to appoint places which shall be land customs stations, for the clearances of goods imported or to be exported and under sub section (c), the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India or to or from any land customs station from or to any land frontier.

3. Section 8 of the Customs Act authorises the Commissioner to (a) approve proper places in any customs port or customs airport or coastal port for the loading and unloading of goods or for any class of goods and (b) specify the limits of customs area. Sub Section (11) of Section 2 of the Customs Act defines "customs area" as the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities. Section 2(12) of the Customs Act defines "customs port" as any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot (ICD). Section 2(13) defines "customs station" as any customs port, customs airport or land customs station. CFSs are specified as customs area under Clause (b) of Section 8. In terms of the aforesaid provisions, ICDs and CFS are appointed at various places and they function like dry ports. They offer all services for customs clearance like any other port facilities for handling temporary shortage of imported/export goods and empty containers. In Circular 69/99 dated 06.10.1999, the Central Board of Excise and Customs has given the detailed procedure on the transporting of imported goods to the CFS.

4. Chapter VI of the Customs Act (Sections 29 to 43) contains provisions relating to conveyances carrying imported or export goods. Section 33 of the Customs Act specifies that "except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods." Section 34 of the Customs Act prescribes that "imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer." Section 32 of the Customs Act specifies that "no imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station." Every ship which enters the Indian waters with the intention of discharging cargo, is statutorily bound to deliver the application for entry inward, along with the detailed report of the goods on board, in a report called IGM, in accordance with Section 30 of the Customs Act, 1962. The primary liability to file the IGM is on the person in charge of the Vessel or aircraft in accordance with

the form provided under the Import-Manifest (Vessels) Regulations, 1971. The import manifest of the Vessel is required to be delivered to the Customs Officer in terms of Section 30 of the Customs Act. The shipping lines/steamer agent has to declare in the IGM, general declaration, cargo declaration, ship stores declaration etc., of particulars of goods to be unloaded for the cargo. As the declaration has legal consequences which bind the carrier, any misdeclaration will attract penal provisions of Sections 111(1) and 112. Section 31 of the Customs Act specifies that only those goods as are mentioned in the Import Manifest would be unloaded and at the place which is approved for that purpose.

5. Chapter VII of the Customs Act (Sections 44 to 51) contains provisions regarding clearance of imported goods and export goods.

6. Under Section 45 of the Customs Act, it is stated that all imported goods unloaded in a customs area shall remain in the custody of the Customs Authorities as are approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII. Sub-Section (2) to Section 45 of the Customs Act stipulates that the person having custody of the imported goods in a customs area must keep the record of such goods and send a copy thereon to the proper officer and shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer. If any of the imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1) to Section 45, that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or as the case may be, an import report to the proper officer under Section 30 for the arrival of the conveyance in which the said goods were carried.

7. Section 49 of the Customs Act deals with the storage of imported goods in warehouse pending clearance. The storage may be in public warehouse or in a private warehouse. On the adjudication and on clearance by the proper officer of the Customs Department, the goods are allowed for clearance. Hence, till such time the goods are cleared and are in warehouse, be it a public or private warehouse, which is an extension of the customs port, the goods continued to be under the control of the Customs Department, by virtue of the statutory provisions.

8. Going by the provisions in the above Chapters, it is clear that all goods imported by Vessel or Aircraft, entering from any place outside the Country, have to land at the customs port or customs airport with the permission of the Customs Officer (Section 29). Unloading of imported goods can take place only after an order permitting entry toward inwards of the Vessel has been given by the

Vessel Officer in terms of Section 31 of the Customs Act. Importers desiring to take the consignment to the CFS must name the CFS in the IGM before the Customs Authorities in the Port. After getting the permission from the Assistant Commissioner/Deputy Commissioner, the container moves to CFS under customs escort or under bond and bank guarantee. The goods unloaded at the ports are brought to the CFS and stacked therein after verification by the Customs Authorities. In respect of import consignments, the CFS allow destuffing of goods and after the formalities of assessment and payment of customs duty are made, the Customs give out-of-charge orders. The custodian releases the goods from the CFS by issuing the gate pass. As provided under Section 46, goods can be cleared by the importer by filing a bill of entry for home consumption or warehousing, pursuant to which, clearance of goods is granted under Section 47 by the Customs Officer.

9. Thus it is clear that unloading of the imported goods can take place only after the Customs Officer permitting entry and after Import Manifest had been delivered. With the obligation on the part of the Customs Officer to consider as to whether the goods are imported or attempted to be imported or brought within the Indian Customs water for the purpose of being imported in accordance with the provisions of the Customs Act, unloading of only those goods are permitted, as are mentioned in the Import Manifest.

10. Section 141 of the Customs Act states that all conveyances and goods in the customs area, for the purpose of enforcing the provisions of the Act, are subject to the control of the officers of the Customs.

11. Chapter V of the Major Port Trusts Act, 1963, lists out the services to be provided by the Board of Trustees at the Port. Section 42 of the Major Port Trusts Act, 1963, details the performance of services by Board, one of which, as per sub section (b), is receiving, removing, shifting, storing, transporting or delivering goods brought within the Board's premises. Sub Section (7) states, after any goods have been taken charge of and a receipt given for them under the Section, no liability for any loss or damage which may occur to them, shall attach to any person to whom a receipt has been given or to the Master or Owner of the Vessel from which goods have been landed are transshipped. Section 43 of the Major Port Trusts Act, 1963, deals with the responsibility of the Board for the loss etc. of goods. Provision of Sub Section (1) of Section 43 states, no responsibility under that Section shall attach to the Board until a receipt is given by the Board as contemplated under Section 42(2) of the Act. After the expiry of the period as prescribed in the Regulations from the date of taking charge of such goods by the Board, the Board shall not be, in any manner, liable for the loss or destruction, unless notice of such loss or damage is given within such period as has been prescribed under the Regulations.

12. In the decision reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.), the Supreme Court had an occasion to consider the issue as regards the services offered by the Port Authorities in unloading the goods from the ship and the status of the Steamer Agent vis-a-vis the Port Trust as bailor and bailee of the goods unloaded. The said issue arose in the context of the liability of the steamer agent to meet the idle labour charges.

13. The facts therein are that, in exercise of its power under Section 42 of the Madras Port Trust Act (II of 1905), the Chennai Port Trust made certain amendments to the Madras Port Trust Scale of rates in 1958, by which, Scale E was added under Chapter V. The modified Labour Requisition Form to be submitted by the steamer-agents contained an undertaking on the part of the steamer-agents for the payment of the charges laid down in the Board's scale of rates from time to time in respect of labour rendered idle or not properly utilised and also for working more than one hook simultaneously at the hatch. The streamer-agents challenged the amendments that idle labour charges cannot be recovered from the steamer agents.

14. In considering the said issue on the liability of the steamer agents, the Supreme Court held that the Board is not an agent of the consignee for the purpose of taking delivery of the goods, because the delivery to the importer - consignee is to be on the presentation of the bill of lading. Sub-section (3) of Section 39 of the Major Port Trusts Act empowers the Board to take charge of the goods for the purpose of performing certain services, which do not include taking delivery of the goods from the ship-owner. The Supreme Court pointed out:

> "38. ... It is true that on the Board's taking charge of the goods and giving a receipt about it to the ship-owner, the master or the owner of the vessel is absolved from liability for any loss or damage which may occur to the goods which had been landed, but this provision by itself does not suffice to convert the receiving of the goods by the Board after they had been landed by the ship-owner to the Board's taking delivery of those goods on behalf of the consignee. The Board simply takes charge of the goods on being required by the steamer-agent to take charge of it.
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> 39. Section 40 speaks of the responsibility of the Board for the loss, destruction or deterioration of the goods of which it has taken charges as a bailee under Sections 151, 152 and

> 161 of the Indian Contract Act. Section 148 of the Contract Act states that a bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the bailor and the person to whom they are delivered is called the bailee. It is clear therefore that when the Board takes charge of the goods from the ship-owner, the ship-owner is the bailor and the Board is the bailee, and the Board's responsibility for the goods thereafter is that of a bailee. The Board does not get the goods from the consignee. It cannot be the bailee of the consignee. It can be the agent of the consignee only if so appointed, which is not alleged to be the case, and even if the Board be an agent, then its liability would be as an agent and not as a bailee. The provisions of Sections 39 and 40, therefore, further support the contention that the Board takes charge of the goods on behalf of the ship-owner and not on behalf of the consignee, and whatever services it performs at the time of the landing of the goods or on their removal thereafter, are services rendered to the ship.

The Supreme Court held that, the ship-owner is the bailor and the Port Trust is the bailee. Whatever services it performs at the time of landing of the goods or on their removal thereafter, are services rendered to the ship.

15. Thus the Supreme Court held that the charges for labour rendered idle and for labour working more hooks simultaneously, are not charges for services rendered subsequent to the landing of the goods. These are charges which are incurred at the last stage of the process of landing of the goods and therefore prior to the actual landing of the goods. The Supreme Court held that they are for services rendered to the Master of the ship whose liability for loss or damage continues upto the placing of the goods on the quay and their receipt by the Board. The Supreme Court further pointed out to the decision reported in [1895] 2 Q.B.D. 294,(Peterson v. Freebody & Co.) that the ship owner must put the goods in such a position that the consignee can take delivery of them. It is useful here to repeat and extract the judgment of Lord Esher as quoted in the decision of the Apex Court, which clearly touch on where the ship owner's responsibility ends:

> "Wherever the delivery is to be, the shipowner, on the one hand, must give delivery. If he merely puts the goods on the rail of his ship, he does not give delivery : that is not enough. If, on the other hand, the consignee merely stands on the other ship, or on the barge or lighter, or on the quay, and does nothing, he does not take delivery. The shipowner has performed the principal part of his obligation when he has put the goods over the rail of his ship; but I think he must do something more - he must put the goods in such a position that the consignee can take delivery of them. He must put them so far over the side as that the consignee can begin to act upon them; but the moment the goods are put within the reach of the consignee he must take his part in the operation. At one moment of time the ship-owner and the consignee are both acting - the one in giving and the other in taking delivery; at another moment the joint act is finished."

The Board stores the goods till the consignee appears to take delivery on the basis of the delivery order by the steamer-agent, which is usually an endorsement on the bill of lading, and the quay be considered a part of the ship. The only reasonable conclusion in the circumstances can be, charges for that are levied from the person, who required that labour, is responsible for its remaining idle.

16. In considering the question of liability of the Customs Authorities as well as the Port Authorities as regards the loss or damage in respect of the goods, which are taken charge of by the Board and thereafter under the control of the Officers of the Customs, in the decision reported in 1988 (35) ELT 244 (Oswal Spinning and Weaving Mills v. CCE), the Apex Court pointed out that once the goods are unloaded from the ship in the customs area and were not handed over to the custody of the Port Trust for its handling, it is the Customs Authorities, who are in possession and control of the goods in question; the loss or damage of the goods, while in the control of the Customs Department, are entirely under the responsibility of the Customs Department to pay the value of the goods as damages in order to compensate the importer. It is only when the goods have been taken charge of and receipt given by the Port Trust under Section 42(7) of the Major Port Trusts Act, the liability for any loss or damages accrues to the Port Trust. The Supreme Court pointed out that the Port Trust is not liable for the loss or damage to the goods while they are under the custody of the Customs Authorities.

17. Thus reading Sections 42 and 43 of the Major Port Trusts Act along with Sections 126 and 141 of the Customs Act, the Supreme Court held that under the provisions of Sections 42 and 43 of the Major Port Trusts Act, the Board of Trustees under the Act would be liable to recompense the loss or damages in respect of goods, which have

been taken charge of by the Board. Once the goods are kept unloaded in the customs area and confiscated, the Customs Authorities alone are liable for any loss or damages that had been caused to the importer by the destruction of the imported goods from their custody and possession. Since the importer had agreed to pay redemption fine as directed by the Tribunal, the only question therein was the availability of the goods returned to the importer and when the goods, either in whole or in part, are not traceable, the goods, being in the custody of the Customs Department, any loss or damage, hence, has to be met only by the Customs Department.

18. The substance of the decisions of the Apex Court referred to above is that while the unloading charges are to be borne only by the steamer agent and that in the process of unloading, the Port Trust is the bailee and the steamer agent, the bailor, the moment the goods are unloaded, the liability to pay the storage and demurrage charges rested on the consignee.

19. It is no doubt true that in the decision reported in (2008) 4 SCC 87 (Forbes Forbes Campbell & Co. Ltd. Vs. Board of Trustees, Port of Bombay), the Apex Court doubted the correctness of the decision reported in (1997) 10 SCC 285 (Trustees of Port of Madras Vs. K.P.V. Sheik Mohd. Rowther & Co. Pvt. Ltd. and another), wherein, the Apex Court considered the issue as to the right of the Port Trust to collect the demurrage charges from the consignee and not from the steamer agent. Holding that the decision reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.) related to the services rendered by the Port Trust at the time of landing of the goods and that those charges were taken to be for the benefit of the steamer, the Supreme Court distinguished the said decision in the decision reported in (1997) 10 SCC 285 (Trustees of Port of Madras Vs. K.P.V. Sheik Mohd. Rowther & Co. Pvt. Ltd. and another). The Supreme Court pointed out that after the goods had come into the custody of the Port Trust, on the default of the consignee to satisfy the Customs Authorities that the import was authorised, the liability to pay the storage and demurrage charges rested on the consignee.

20. The Apex Court pointed out that how the delivery is to be made, depends on the terms of the bill of lading and the custom of the Port. Keeping the above-said decisions of the Apex Court at the background, the scope of Section 30 of the Customs Act as to the filing of the IGM by the steamer agent, needs to be seen.

21. Section 30 of the Customs Act is a specific provision as regards the filing of the Import General Manifest or Import Report. The primary responsibility to file a declaration under Section 30 is on the person in charge of the Vessel. The declaration must be filed within 24 hours of the arrival of the Vessel or Craft. The Section also permits filing of the Import Manifest prior to the arrival of

the Vessel and in the event of belated filing beyond 24 hours, the Section also recognises the authority of the Officer in Charge to extend the time for filing the same. Section 148 of the Customs Act allows all acts to be done by a person in charge of conveyance to be done by his agent also. Thus the person, who represents himself as an agent and accepted as such by the proper officer, will be liable for fulfilment of all obligations and is also exposed to penal consequences in the event of any untrue or incorrect statement, as the case may be. The person delivering the import manifest must subscribe to the declaration as to the truthfulness of its contents. Since the declaration filed has a legal consequence which binds the carrier, any misdeclaration attracts penal provision under Section 111(f) and Section 112 of the Customs Act. Amendment to the IGM particulars are allowed only on a written request of the Assistant Commissioner or Deputy Commissioner (Imports). Additional entries in the IGM are allowed only in bona fide cases, giving reasons for non-inclusion of entry at the first instance and the reason for delayed submission of additional entry.

22. In the EDI system, the steamer agent gets the manifest filed from the EDI or by using the service centre of the Customs House and the noting aspect is checked by the system itself, which generates the bill of entry number. Thereafter, it is forwarded electronically or manually to the concerned person, grouped in the customs house, dealing with the commodities sought to be cleared.

23. Where the goods are cleared through the EDI system, no formal bill of entry is filed, as it is generated by the computer system. The importer is required to file a cargo declaration having prescribed particulars required for processing of the entry for customs clearance. Under the EDI System, the importer submits declarations in electronic format containing all the relevant information, to the service centre. After verification, the system generates a bill of entry number which is endorsed on the printed check list and imported by the importer/CHA. No original documents are taken at this stage, but are taken at the time of examination. The first stage of processing of bill of entry is what is termed, noting of the bill of entry, vis-a-vis IGM, filed by the carrier.

24. On the satisfaction recorded by the proper officer that there was no fraudulent intention in furnishing the incorrect or incomplete manifest, he may permit the person concerned to amend or supplement the same.

25. It is not denied by the petitioners that the declaration in the form of an IGM is a statutory declaration. The purpose of filing the IGM is to ensure that all imports of a Vessel are duly accounted for; all the obligations imposed on the Master/Steamer Agent of the Vessel under Sections 30 and 42 of the Customs Act are duly fulfilled and all the documents relating to an import are declared. The

declaration has to be in conformity with the Import Manifest (Vessels) Form Regulations, 1976 and is required to be filed within 24 hours of the arrival of the Vessel in the Customs Station.

26. As already pointed out, Section 30 of the Customs Act also contemplates that the declaration made in the IGM must reflect the true state of affairs and any misdeclaration attracts penal consequence. Along with the IGM, the Steamer Agent also has to enclose the documents on a written request to the Assistant Commissioner/Deputy Commissioner (Imports), seeking amendment of IGM particulars, giving the reasons therefor. The granting of such permission is subject to the Officer satisfying that there is no fraudulent intention behind the filing of the amendment or supplement. On the filing of the IGM, a number is allotted to the said declaration. With the introduction of the EDI System, the IGM has to be filed in the computer in the EDI Service Centre at the terminal.

27. It is stated that in case of advance filing of IGM, after the entry inwards of the Vessel is granted, all the documents filed, including Bill of Entry, get automatically regularised. There is no separate filing of a bill of Entry. Circulars are frequently issued as regards the filing of Manifest before the proper officer for adjudication. The Board also stated that all amendments to the IGM have to be considered on the basis of the provisions under Section 30 (3) of the Customs Act.

28. In Public Notice No.48 of 2008, it is specifically stated that Steamer Agents and Shipping Lines could obtain the IGM well in advance; that even though the IGM at that point may be incomplete, yet, amendments are regularly carried on, prior to the arrival of the Vessel and on amendment that is carried on, the ICES system sends the amended IGM messages to the custodians. Considering the auto approval system operating, the Public Notice stated that the IGM messages, henceforth, should be transmitted only after the entry inwards is granted to the Vessel, which means, till it processes the entry inwards and ready for an auto approval, an incomplete IGM, wanting in any particulars, which does not go to the root of the content of the IGM, could be amended.

29. Circular No.13 of 2005 dated 11th March, 2005, issued by the Central Board of Excise and Customs, stated that the incomplete or incorrect filing of IGM should not be treated as proper filing of IGM and that, only on filing the same in the proper format or after the amendment, IGM be treated as proper filing. It further pointed out that the amendments that are normally carried out are divided as major and minor amendments, which are as follows:

MAJOR AMENDMENTS:
(i) Addition of extra entries (Line numbers in the IGM)
(ii) Amendment in the quantity of goods already declared;
(iii) Changing the date of the Bill of Lading mentioned in the IGM;
(iv) Changing the Importer's/consignee name;
(v) Commodity description; and
(vi) Conversion of general description of goods from cargo to un-accompanied baggage and vice-versa.

MINOR AMENDMENTS:
(i) Changing the Importers address only;
(ii) Correcting any spelling mistakes;
(iii) Conversion from one unit of measurement to another;
(iv) Change in the container number (only alphabetic prefix and the last 10th test numerical);
(v) Change/addition of marks and numbers;
(vi) Conversion from local to T.P./SMTP and vice-versa;
(vii) Port of Loading;
(viii) Size of Containers (provided there is no change in the weight of the consignment);
(ix) Port of discharge;
(x) Type of packages;
(xi) No. of Packages (provided there is no change in the weight); and
(xii) Seal Number.

30. The circular further states that no penalty should be imposed if the import manifest/import report is corrected before the deadline for filing the import manifest/import report, as provided in law, leading to minor amendments. As stated in the Circular, minor amendments are to be carried out with the permission of the proper officer, but without any adjudication. The major amendments could be made with the prior permission of the proper officer and adjudication of the same. Where there is an incomplete or incorrect filing of the import report or manifest by a person required to file the same as per the provisions of Sub-Section (1) to Section 30 of the Customs Act, penalty should invariably be visited on the person concerned when the Manifest is not corrected within the permissible time limit.

31. Taking into consideration the said guidelines issued by the Board, it is clear that minor amendments are not viewed seriously for any penal consequence, since the same does not get into the core of the declaration having revenue implication to make them untrue.

32. It is stated that with the growing volume of international trade, the need for expeditious clearance at the Port within minimum possible time has been growing in importance. With the Ports facing congestion of goods, that are landed at ports, need to be evacuated straight away without loss of time. Accordingly, the concept of CFS has grown in importance along with the growth and development of

ports. CFS are specified as customs area under Section 8(b) of the Customs Act. The goods container landed at ports are immediately taken straight to CFS which are treated as an extension of a customs station set up with the main object of decongesting the ports. An analysis of the provisions of Sections 7 and 8 of the Customs Act reveals that Container Freight Station with a customs area located in the jurisdiction of Commissioner of Customs exercising control over the specified customs port, airport, ICD, by itself, does not have an independent existence. It has to be linked to a customs station within the jurisdiction of the Commissioner of Customs. It is an expansion of customs station set up with the main object of decongesting the ports, where, only the part of the customs process, namely, the examination of goods, is normally carried out by Customs. Goods are stuffed or destuffed into the containers or therefrom and aggregation and segregation also take place in such place. Given the aforesaid aspect of CFS being the extension of port, airport, ICD, the customs work relating to the processing of manifest, that are filed by the carrier and assessment of bill of entry/shipping bill, are performed in the customs house or at customs office that exercise the jurisdiction over the parent port, airport to ICD, ICS, to which the CFS is attached. Movement of goods from a Port to CFS is akin to a local movement from a customs area of the customs station to another customs area of the same station. Such movement is covered by the local procedure evolved by the Commissioner of Customs and covered by bonds, bank guarantees, etc. The person undertaking the transhipment has to follow the procedure prescribed by Circular No.46 of 2007, Customs, dated 24.11.2005 and Circular No.79 of 2001, Customs, dated 7.12.2001. Thus all the related activities, stuffing, destuffing on the clearance of goods for home consumption, re-export, warehousing, temporary storage for on-hand transit to outright export and transshipment, take place from these dry ports, which are the extended arms of the Port. Till the outward clearance comes from the Customs Authorities, the goods continue to be under the control of the Customs Authorities. Thus clearance from the CFS is an important point of consideration for trade in respect of import /export cargo, as it is the final customs contact point.

33. It is an admitted fact that keeping in mind the necessity to regulate and facilitate easy flow of container movement beneficial to all stakeholders, public notices are issued by the Commissioner of Customs, Chennai. The public notices are the result of the deliberations between the various stakeholders, viz., the representatives of Custom House Agents, steamer agents, CCTL, CFS, various Trade Associations and the Customs Department. These consultative process take into account the necessary procedural changes that may be required for the sustained growth in the import volume and for customs compliance and ultimately, on a consensus reached, trade notices are issued. Accordingly, Public Notice No.71 of 2006 dated 05.06.2006, effective from 15.6.2006, was issued on the procedure relating to movement of containers to CFS. The public

notice further stated that the circular would be reviewed after 3 months. One of the clauses relevant herein in this case, reads as follows:

> "v) All Shipping Lines/Steamer Agents will be required to compulsorily indicate in the IGM against each line, the name/code of the Container Freight Station where the imported cargo is proposed to be delivered. The importers and CHAs are advised to intimate the Shipping Lines about the destination CFS before the departure of the Vessel from load Port. For the containers where the CFS Code has not been indicated, the Shipping Lines will be required to declare the name of one Container Freight Station where all such unlisted containers will be transported for delivery. In case such a declaration is not forthcoming up to the point of entry inwards of the vessel, CCTL will be free to choose the Container Freight Station where all such unlisted containers will be moved, under intimation to the concerned Shipping Lines/Steamer Agents.
> vi) No amendments of the IGM for change of the CFS will be permitted once the Vessel has berthed. "

34. In accordance with the decision to review after 3 months, once again, after inviting suggestions from the various stakeholders, deliberation and consensus reached among the various stake holders, on 30.3.2007, the Government of India, Ministry of Finance, through the Commissioner of Customs, Chennai, issued Public Notice No.45 of 2007. Based on the suggestions and consultations that took place among the various stakeholders during the meetings on 21.3.2007, 28.3.2007 and 29.3.2007, the amendments, as agreed upon, were introduced to Public Notice No.71 of 2006. Accordingly, Part 3(IV) of Public Notice No.71 of 2006 stood amended.

35. The substance of the amendment is that the moment the goods are imported, the same have to be removed from the container yard to CCTL to a CFS, as declared in the IGM, for customs clearance within 48 hours of the landing or to the importer's premises. The Notification further contemplated that the CFS operators have enough free voyage time after the receipt of the containers listed in the Bill of Lading. Part 3(V) of the Public Notice also went in for an amendment, which pointed out that all Shipping Lines or Steamer Agents have to necessarily and compulsorily indicate the name/code of CFS in the IGM opted for and intimated by the importers/the Customs House Agents (CHA), for the delivery of the imported cargo. The amendment further stipulated that the importers/CHAs have to intimate their preference of the CFS to the Shipping Lines at least 72 hours before the arrival of the Vessel in Chennai. Where the intimation is

not received prior to 72 hours of the arrival of the Vessel entry inwards, the Steamer Agent may declare the name of any of the CFSs to which the containers can be transported for delivery. In case neither of them act to name the CFS upto the point of entry inwards, CCTL will be free to choose the CFS, and on intimation to the Shipping Lines, the containers should be moved. The said Public Notice was to come into effect on 1st April 2007. The Public Notice further stated that the working of the facilitation, as envisaged under Public Notice No.71/06 and the amended Public Notice No.45/07, would be reviewed after 3 months. The said notice further stated that any view or suggestions in this regard would be forwarded to the Commissioner of Customs (Import).

36. In the background of this Public Notice, the third notice issued on 05.02.2008 in Public Notice No.14 of 2008 has to be seen. Referring to computerised filing and processing of the IGMs and the movement of containerised import cargo from the sea port to CFS, the notice referred to the need for streamlining the management and monitoring of various aspects of cargo movement and modification to ICES application. Public Notice No.48 of 2008 deals with the amendment of IGM filing, particularly with reference to the procedure for movement of containerised import cargo from the terminal to CFS. The Public Notice states that in order to streamline and monitor the movement of the containerised cargo, modifications are issued, so that there is smooth functioning of the container movement to the respective Freight Station.

37. The Public Notice further states that the auto approval facility to move the containers from the terminal to CFS is implemented in transhipment of the cargo from the Port. The movement of shipping request has to be made, which shall be part of the IGM filing process. The Importers/CHAs have to give the code of destination CFS, as provided for in the Annexure and the same must be clearly mentioned in the IGM, so that the auto approval for the movement is hassle free and is available at the time of grant of entry inward itself, as given in the Public Notice. It pointed out to the incomplete IGMs and the need for regulating the filing, as follows:

> "3. IGM Message Transmission: At present, the IGM Messages are being sent by Customs to the Custodians, i.e., Chennai Port Trust and CCTL as soon as the IGM is submitted by the Steamer Agents/Shipping Lines in the ICES System. It is observed that IGM, although incomplete, is filed and a IGM No. is obtained by the Steamer Agents/ Shipping lines well in advance and amendments are being filed regularly even after the arrival of the vessel. Whenever there is an amendment, the ICES System sends the amendment IGM messages to

the Custodians. Thus the IGM messages sent to custodian are substantially incomplete. Henceforth the IGM messages shall be transmitted to the Custodians only after the "entry inwards: is granted for the Vessel.

38. The notice stated that IGM/consol amendments applied before the grant of Vessel entry inwards in system do not require approval of the Assistant Commissioner, but all amendments made after grant of Vessel entry inwards will require the approval of the Assistant Commissioner. The Public Notice also instructed that importers, CHAs, Steamer Agents/shipping lines have to ensure that the code of the destination CFS should be clearly mentioned in the IGM, so that auto approval for movement of import containers from the Port/Terminal to the CFS is granted by the ICES itself at the time of grant of "entry inwards" in the ICES system. The notice provided for the procedure for amendment of CFS movement approval after auto approval. Any amendment after the auto approval is permissible only in the stated circumstances. The notice pointed out the need for cooperation from all the stake holders for the functioning of the automated system for movement of containers from the terminal to CFS and that the difficulties in the implementation be brought to the attention of the Joint Commissioner (Systems). The notice was to come into effect from 1.5.2008. The notice listed out as many as 26 CFSs in Chennai.

39. As rightly pointed out by the third respondent in its counter, all the three public notices are the result of the consensus reached among all the stake holders and are related to customs approval of movement of import containerised cargo from the container terminal within the Chennai Port to various CFS within Chennai where the imported goods would be available to customs examination. The second public notice elucidates the role of each of the stake holders in declaring the destination CFS. The third one deals with the simplified approval system. It is stated by the Revenue that the system thus agreed upon and notified under the public notices are working successfully as of today. A reading of the above-said circulars shows that the naming of the CFS is the primary responsibility of the importer, failing which, first the steamer agent and thereafter with CCTL; that amendment to the IGM by changing the CFS could be made even after auto approval as per the procedure laid down in the Public Notice.

40. A reading of the public notices thus makes two things clear, namely, the filing of IGM with blanks as to the destination CFS codes does not make the filing of the IGM an untrue declaration and the movement request could be made by the Importer or a Clearing Agent or a Steamer Agent before it gets into an auto approval for movement of the imported containers from the Port to the CFS. An amendment to the proposed CFS is possible before the auto approval is granted and as well after the approval is granted, only subject to certain

conditions. Whether the IGM contains the details as to the CFS or not, the movement request would be part of IGM filing process.

41. Thus, reading Public Notice No.48 of 2008 dated 22.4.2008 and Public Notice No.45 of 2007 dated 30.3.2007, it is clear that these Public Notices regulate the filing of requisition as to the choice of the CFS; that the first preference to the movement of the imported cargo to the named CFS has to be exercised by the importer/CHA within 72 hours prior to the approval of the Vessel entry inwards and that in the event of the importer not quoting the same, the Shipping Lines/ Steamer Agents could declare the name of any one of the CFSs in the IGM. In both the cases, an amendment as regards the particular CFS could be brought before the documents go for auto approval. The amendment in this regard must necessarily come from the importer/ CHAs or Steamer Agents or Shipping Lines. The amendment to be brought on the CFS movement, after auto approval is granted, must fit in with the Regulations given therein. It is averred in the counter by the third respondent that it is a well established practice that the import container is moved out of the terminal, whether any delivery order is issued for the said containerised cargo or not. Within 48 hours of the containerised import cargo arrival at the terminal, the same will be moved to the named destination CFS. It is stated that the custodian, i.e., the terminal, does not wait for the delivery order for the movement of the containerised cargo from the terminal to the CFS/ICD. Where direct delivery is to be given to the consignee within the Port, the terminal insists upon a delivery order. In the event of the import containers remaining undelivered within 48 hours of the discharge from the Vessel, the terminal has the choice of moving the same to a CFS selected by the terminal. With the regulations thus implemented, congestion in the port, at present, is stated to have been reduced to a large extent.

42. Given the object of creating these CFSs as a facility to ease out the congestion and as an extension of the Customs Station, the movement of goods from the Port to the CFS is like movement from a Customs Area of a Customs Station to a Customs Area of the same Customs Station. The naming of a CFS at the choice of the importer or CHA or by way of an amendment to the named CFS either before the auto approval or even thereafter subject to certain conditions stated therein in the public notice and the failure to mention the CFS in the IGM not having any revenue implication, the aforesaid state of affairs vis-a-vis the IGM, is not viewed seriously in the sense of rendering the IGM given by the steamer agent as not satisfying Section 30 of the Customs Act, to attract penal consequences by treating the IGM an untrue declaration, exhibiting a fraudulent intention; thereby, the truthfulness as to a statement in the IGM and fraudulent intention as regards the details given therein necessarily has its relevance to that part of the declaration viz.,

as to the goods brought into the country having a bearing on the provisions of the Customs Act.

43. The petitioners herein are Container Shipping Lines Association and a Shipping Company. The petitioners contend that the public notices referred to above have created adverse circumstances in terms of compliance of the Customs Act provisions, contractual obligations by virtue of shipping bills and applicable carrier laws, apart from damage suffered by the shipping lines to bear logistic burden on the implementation of the public notices without any benefit to the petitioners.

44. It is contended that the public notices have no legal sanctity to prevail over the provisions of Section 30 of the Customs Act and that alteration in the IGM with reference to the CFS cannot be made unilaterally by the Customs Department at the instance of the consignee against the specific entries made by the ship owner or his agent. Thus the alteration without the knowledge and concurrence of the ship owner or his agent cast heavy legal obligations on the ship owner, besides exposing them to penalty and prosecution. Since the obligation of the ship owner or his agent ceases only on the delivery of the goods in accordance with the terms in the bill of lading, the amendments thus brought to the IGM with reference to the CFS named by the ship owner or his agent without the concurrence of the ship owner or his agent, infringes the provisions of the Customs Act and the [The Indian] Bills of Lading Act, 1856 and the Carriage of Goods by Sea Act, 1925.

45. Elaborating on the contentions thus taken in the petition, learned Senior Counsel appearing for the petitioners submits that, except to the extent that an amendment to the IGM under Section 30 of the Customs Act is permissible, the Public Notices issued by the Customs Department, which have no statutory status, cannot be taken to validly bestow any authority on the Customs Department to amend the IGM filed in terms of Section 30 of the Customs Act. Secondly, the role of the Customs Authorities as regards the content of the IGM, is very limited. Section 30 of the Customs Act does not provide for any amendment to change the CFS at the instance of the Customs Authorities or the importer. Given the object of the Customs Act, the Customs Authorities cannot act beyond what has been the stated object, to the extent of amending the CFS named in the IGM to interfere with the rights of the petitioners herein.

46. Learned senior counsel further referred to the provisions of Section 157 of the Customs Act relating to the authority of the Board to prescribe Rules and issue circulars. By amending the IGM, all that the Customs Authority has done herein is to superimpose the contract on the petitioners, which violates the contractual rights and obligations between the petitioners and the other authority. The provisions of Section 30 of the Customs Act do not provide for any

amendment to the IGM at the behest of the consignee or any other body. The responsibility of the petitioners as an agent of the consignor extends upto the CFS, as given under the IGM. The amendment on IGM thus resting with the petitioners herein, the unilateral alteration of the IGM, taking refuge under the impugned notices and without notification to the shipping lines, is violative of Article 14 of the Constitution of India. Further, through Public Notices, it is not open to the Customs Authorities to amend the IGM, since the power as regards the amendment to the IGM is traceable to Section 30 of the Customs Act and nothing beyond.

47. In this connection, learned senior counsel placed reliance on the decision reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.) as to the role of the Port Trust and (1968) 2 MLJ 199 (The Union of India represented by the Regional Director, Southern Region V. Rally Brothers Ltd.; (2008) 4 SCC 87 (Forbes Forbes Campbell & Co. Ltd., V. Board of Trustees, Port of Bombay); (1997) 10 SCC 285 (Trustees of Port of Madras V. K.P.V Sheik Mohammed Rowther & Co.) and AIR 2002 Calcutta 179 (Board of Trustees for the Port of Calcutta and another etc. V. M/s. Seahorse Shipping and Ship management and others); as to the scope of Section 30 of the Customs Act, only to emphasize the absence of jurisdiction of the Customs Authorities to deal with the IGM, once it is lodged by the shipping line.

48. Countering the claim of the petitioners, Mr.Habibullah Badsha, learned Senior Counsel appearing for the Hindustan Chamber of Commerce, the sixth respondent in W.P.Nos.8823 to 8825 of 2010, defended the impugned notices, stating that the trade notice was the result of a consultative process, in which all the stakeholders participated and the first petitioner was also one of those who participated in the meeting. Considering the role of the shipping line operators and the choice of the CFS ultimately with the consignee, it is not for the petitioners to restrict the same. In the circumstances, learned senior counsel pointed out that the petitioners have no legal right which could be stated to have been infringed. Going through Sections 8 and 30 of the Customs Act, he submitted that the decision reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.) relied on by the learned senior counsel appearing for the petitioners, has no relevance to understand the scope of the Customs Act. The Writ Petitioners should first establish the loss that they suffered on account of changing the CFS so as to sustain the right to challenge the public notice. Secondly, considering the deliberation that had taken place in formulating the very notice and the petitioners being a party to that, they are bound by the notice. Consequently, no case has been established, for the petitioners to succeed in the Writ Petitions.

49. Mr.Yashod Vardhan, learned senior counsel appearing for the contesting respondents, The Chennai Customs House Agents Association; M/s. Coastal Overseas Trade Corporation and South India Importer's Association, (Steel-Scrap Imports), submitted that the mere amendment to the named CFS in the IGM, per se, does not, in any manner, affect the liability of the shipping line operator. In any event, there is no substantive amendment or alteration to the IGM to raise a grievance. More so, when the public notices are the result of a consultative process in which the petitioner association had also taken part, the present allegations made, have no legal substance. Section 30 of the Customs Act does not prohibit any amendment by the consignee, particularly in the matter of choosing the CFS, which has no revenue implications, to make the IGM untrue to attract the penal provisions under Section 30 of the Customs Act.

50. Referring to Sections 33 and 45 of the Customs Act, learned senior counsel pointed out that when the Commissioner has every authority to specify the CFS, taking note of the traffic in the Port Trust, a conscious decision was taken after due consultative process of all the stake holders, as had been stated in the Notification. The contention that the contract of the petitioners for unloading would be seriously interfered with by taking the goods to a different CFS, is totally unsustainable. Once the goods are unloaded, it is the Customs Authorities, who exercise the jurisdiction to move the goods to be kept under their control. In this, the liability of the consignor is nowhere in the picture.

51. Learned senior counsel placed reliance on the decision reported in 1988 (35) ELT 244 (Oswal Spinning and Weaving Mills v. CCE) only to contend that the decision relied on by the learned senior counsel appearing for the petitioners reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.) has absolutely no relevance herein. Under the Major Port Trusts Act, the only authority, who is entitled to receive the imported goods on unloading, is the Container Terminal Authority. The Act does not contemplate a CFS to be the authority to deal with the goods imported. However, the moment it is taken out of the ship, it comes under the control of the Customs Authorities to be kept under CFS until the clearing process is over. Consequently, naming of the CFS in the IGM is a mere option, which is amenable for an amendment either at the instance of the Customs Authorities or at the instance of the consignee. Hence, going by the provisions of Section 30 of the Customs Act and the trade notice issued, there is no violation in making an amendment to the IGM.

52. Mr.Ravichandra Babu, learned standing counsel appearing for respondents-1 to 4 in W.P.Nos.8823 to 8825 of 2010 and respondents 1 to 3 in W.P.No.15772 of 2010, submitted that the trade notice was

issued only for the benefit of the exporters and importers; hence, as a trade facility to decongest the Container Terminal, so that there is easy flow of container cargo, the trade facility was issued after a good amount of deliberation and negotiation with all the stakeholders and hence, the petitioners are estopped from questioning the authority of the respondents, or about the merits of the trade notice. Considering the purport of the notice thus issued and hence not a circular or notification under Sections 157 or 158 of the Customs Act, the challenge now made by the petitioners is totally unsustainable. The jurisdictional Commissioner is empowered to issue guidelines by virtue of the powers conferred under Sections 8(a), 33, 45 and 141 of the Customs Act. In any event, only after assessing the local conditions and after consulting all the stake holders on an agreement reached, that the public notices were issued. Thus these notices lay down the procedure to resolve a local problem. The Public Notice issued to resolve the decongestion, hence, does not result in an amendment of IGM in strict sense of the term, since all the material particulars in the IGM for the purposes of the Customs Act application, remain intact. Hence there is no need to look at any provision of the Act to sustain the public notices, quite apart from the fact that the procedure arrived at is the result of the consensus among the various stake holders. The incorporation of CFS code in the IGM is only a procedural one and does not make a substantial amendment to the IGM, which has an implication on the contents that go for the adjudicatory process under the Customs Act. He pointed out that contrary to assertion of the petitioner, the rights and obligations of the petitioners vis-a-vis the goods have not been taken away under the Trade Circular issued.

53. Learned standing counsel referred to the decisions reported in 2008 (232) ELT 22 (Mad.) (Board of Trustees of the Port of Madras V. Shaw Wallace & Co. Ltd.); (1997) 10 SCC 285 (Trustees of the Port of Madras through its Chairman V. K.P.V. Sheikh Mohd. Rowther & Co. Pvt. Ltd., and another) and (2003) 12 SCC 627 (Union of India and others V. C.Krishna Reddy) as to when a Writ of Mandamus would lie and submitted that a CFS is an extended Port. The IGM, in the given format, gives the Port of discharge and the CFS as indicative of the place where the goods would be kept until clearance by the Customs Authorities.

54. In the circumstances, learned standing counsel pointed out that the Customs Department has not brought in any change to the IGM under Section 30 of the Customs Act to make the change in the destination of CFS and amendment as fundamentally altering the IGM to interfere with the obligations of the petitioners.

55. During the pendency of the Writ Petition, Mr.Abudukumar Rajarathnam, learned counsel appearing for one of the importers, by name, M/s.SBS Overseas Pvt. Ltd. filed a petition to implead themselves as a respondent. This Court allowed the impleading

petition and heard the counsel. Learned counsel submitted that the petitioner in the impleading petition being importers in steel scrap, are unable to move the containers to the CFS of their choice. He further submitted that the Notification had been implemented and the importers were permitted to designate the CFS of their choice. The Notifications were the result of deliberations with the various stakeholders. Consequently, there is no case made out by the petitioners to sustain their objection.

56. Replying to the submissions made by the counsel for the respondents and that of the counsel for the impleading parties, learned senior counsel appearing for the petitioners pointed out that the decision reported in 1988 (35) ELT 244 (Oswal Spinning and Weaving Mills v. CCE) must be read in the context of the purpose of the Customs Act, specifying the CFS as well as Section 30 of the Customs Act regarding filing of IGM. He pointed out that only on the delivery of the goods to the importer at the named CFS, that the obligation of the shipper as regards the transport of goods is discharged. The role of the Customs Authorities is only to assess the duty payable thereon; hence, by no stretch of any of the provisions of the Customs Act, could it be said that the Customs authorities took charge of the goods, the moment it reached the CFS.

57. He emphasized that the trade notice issued, has no binding effect herein; that the same cannot be read as a circular for the purpose of any implementation. When once the statute prescribes the format and the same had been filed, without adopting the procedure under Section 30 of the Customs Act, it is not open to the Customs Department to tinker with the statutory format. Having regard to the admitted status of the public notices, learned senior counsel appearing for the petitioners submits that the trade notice be set aside and the Writ Petitions be allowed.

58. Learned senior counsel appearing for the petitioners pointed out that even though anybody could name the CFS, it is only the Shipping Line and not anybody else, which includes the Importer as well as the Customs Authorities. Considering the liability of the ship owner to deliver the cargo to the consignee in good condition, the duty as regards naming the destination CFS lies only with the Shipping Lines to find out the facilities available at the CFS, the quality of service provided by such CFS, the infrastructure available at the CFS and above all, the distance between the Port and the CFS, so that the cargo could be delivered in good condition to the consignee. So far as the responsibility of the Steamer Agent is concerned, as far as safe delivery, the exclusive right of the ship owner to indicate the particular CFS cannot, in any manner, be interfered with by the Customs Authorities at the behest of the importer/clearing agents. Consequently, the action of the respondents in allowing the consignee, or at his instance, the agents, to bring amendment to the IGM, is contrary to the law. On the

aspect of the Steamer Agent's responsibility, that contractually such amendments allow the importer/CHAs to have the charge of the container without a delivery order, as a custodian of the goods brought in, without a valid shipping line delivery, the proposed action would expose the petitioners to great prejudice and harm, apart from claims from the shipper at the Port of loading in the Bill of Lading obligations.

59. Apart from this, learned senior counsel appearing for the petitioners also highlighted the risk attached from the point of view of safety and security that the container could be used by the terrorists to illegally transport the objectionable materials into the country.

60. I do not agree with the submissions of the petitioners. The consistent stand of the respondents is that, as per the Bill of Lading, the liability of the Carrier/Shipping Line ends with the discharge of the cargo at the Port itself and the container shipments are Port to Port shipments. CFSs are the custodians of the cargo from the terminal gate of the Port, till its delivery. The concerned CFS takes the responsibility of the cargo by executing the transit bond for the goods in transit and that the goods reached the off-docks Customs Area safely. It is not denied by the petitioners that the CFS is an extended area of the Port. The respondents state that the petitioners are liable to collect the Bill of lading and issue delivery order at the Port itself; thus their responsibility ends thereon. The Customs Department is the controlling authority for all the cargo till it passes out of charge as given by the proper officer under the Customs Act.

61. Read in the context of the Customs Act and the services rendered by the Port Trust as regards receiving the goods on its unloading, the decision of the Apex Court, as referred to above, has relevance as regards the role of the Port Trust in receiving the goods from the Steamer Agent only to the extent of unloading on its onward journey for its adjudication by the Customs Authority. Thus, except to the extent of giving its services for unloading the goods in the case of an import or loading in the case of an export, the role of the Port Trust Authorities as regards the movement to the CFS, is not of any importance or relevance in deciding the issue before this Court. Hence, to the limited extent alone, the Port is a bailee of a Ship Owner and nothing beyond. As pointed out by the Apex Court, the Port Trust Authorities are not the bailee of the consignee.

62. As already pointed out in the decision reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.), it was pointed out that it is the responsibility of the ship owner or his agent to put the goods in such a position that the consignee can take delivery of them. The

delivery of the goods to the consignee depends on the law of the Port and the laws of the country into which the goods are imported. Given the fact that clearance of the goods by the consignee is subject to the compliance of the procedure under the Customs Act till the Customs Department gives the out of charge orders, the goods are under the control and custody of the Customs Department.

63. Section 141 of the Customs Act provides that the goods in the customs area shall be subject to the control of the Officers of the Customs. Once the goods are unloaded from the ship, they enter the Customs Area; that these goods come under the control of the Officers of the Customs. The imported goods are not handed over to the custody of the Port Trust. In the decision reported in 1988 (35) E.L.T. 244 (S.C.) Oswal Spinning & Weaving Mills Ltd. Vs. Collector of Customs and another), the Apex Court pointed out that when the goods are taken charge of and receipt given for them under Section 42 (7) of the Major Port Trusts Act, the liability for any loss or damage accrues to the Port Trust; that the loss or damage in respect of the goods which are taken charge of by the Board has to be compensated by the Board. Admittedly, the goods imported can be unloaded only with the permission of the proper officer (refer Section 33 of the Customs Act). Unloading can be only at the place approved under Section 8(a) of the Customs Act. As already pointed out, CFS is an extension of the Customs Station and the goods continue to be under the control of the Customs Department even when the containerised cargo are removed to the designated CFS. Hence, reading the above-said decisions of the Supreme Court, I do not find that the decision reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.), on which heavy reliance was placed by the petitioners, advances the cause of the petitioners in any manner, nor does it deal with the status of the Customs Department vis-a-vis the ship owner or the agent. On the other hand, as already pointed out in the preceding paragraph dealing with the decision of the Apex Court reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.), the moment the goods come into the customs area and the importer takes steps towards customs clearance, to which end the goods are kept in the customs station or customs area, the consignor delivers and the consignee takes delivery, in the sense of taking such steps as are necessary to go for clearance of the same. In that, the need for considering the bailor-bailee relationship does not arise at all. In deciding the issue now as to the changing of the CFS from the one mentioned in the IGM, it is not necessary to get into the question as regards the shipping line as a bailor, the Port Trust as a bailee or as regards the consignee on the one hand, giving instructions to the Customs Authorities to have the movement of the containerised cargo to the CFS of his choice and the Customs Department effecting the change. The decision reported in 1988 (35) E.L.T. 244 (S.C.) Oswal Spinning & Weaving Mills Ltd. Vs. Collector of Customs and another)

and the decision reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.) deal with two different situations and both of them have to be read in the context of the facts prevailing therein. At the same time, it must be pointed out that the decision reported in 1988 (35) E.L.T. 244 (S.C.) Oswal Spinning & Weaving Mills Ltd. Vs. Collector of Customs and another) emphasizes the fact that on unloading, the Customs Authorities are under the direct control of the imported goods and the consignee is not at liberty to deal with the imported goods in any manner.

64. The second decision relied on by the learned Senior Counsel appearing for the petitioners reported in (1968) 2 MLJ 199 (The Union of India represented by the Regional Director, Southern Region Vs. Rally Brothers Ltd.) relates to the loss and damage suffered to the goods imported. Referring to the decision of the Supreme Court reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman Vs. K.P.V. Sheik Mohammed Rowther & Co.), this Court reiterated the principle that the Port Trust is a bailee of the Shipping Lines.

65. As already pointed out, goods imported into the country must pass through the provisions of the Customs Act and the entry inward of the Vessel itself is under the permission granted by the Customs officer. The unloading and the onward movement are also subject to the supervision of the Customs officials. The interposition of the Customs Department till the delivery is given to the importer is more by reason of the statutory requirement and not as a bailee of the consignee either. The statutory requirement of the goods to pass through the Customs Authorities before clearance, hence, has to be viewed from the object of the provisions of the Customs Act and the jurisdiction of the Customs Department to deal with the imported goods. Nevertheless, as pointed out in the decision of the Apex Court reported in 1988 (35) ELT 244 (Oswal Spinning and Weaving Mills v. CCE), so long as the goods are in the custody of the Customs Department, their safety has to be ensured by the Department, which means, when the goods are in the particular CFS, the said CFS is contractually and statutorily bound to ensure the safety of the goods lodged therein and any loss or damage to the goods while in the custody of the Customs Department has to be made good by the Customs Department only and hence answerable to the consignee.

66. I hold that while there is nothing in the decision reported in (1963) Supp 2 SCR 915 (The Trustees of the Port of Madras, by its Chairman V. K.P.V. Sheik Mohammed Rowther & Co.) to support the case of the petitioners as regards the dispute raised herein, at the same breath, I must point out that it does not, in any manner, offend or improve the case of the petitioners, or for that matter, pronounce the case of the respondents, for the reason that the whole issue has

to be approached from the point of importance of the IGM and whether changing the name of the CFS would amount to an amendment at all to result in the IGM being looked at with a suspicious eye as to the truthfulness of the contents of the IGM.

67. Learned senior counsel appearing for the importers referred to Notification 26 of 2009 dated 17.3.2009 made under Section 141(2) read with Section 157 of the Customs Act relating to "Handling of Cargos in Customs Areas Regulation, 2009". A reading of the said Notification reveals that the Regulations provide for the manner in which the imported goods/export goods shall be received, stored, delivered or otherwise handled in a customs area. It also deals with the responsibility of persons viz., the Customs Cargo Service Providers engaged in the aforesaid activities.

68. The Regulations apply to the Customs Authorities as well as to the Cargo Service Providers. Regulation 3 applies to handling of imported goods/export goods by the Customs Cargo Service Providers in the customs area specified under Section 8 of the Customs Act. The above Circular issued makes an elaborate reference to a Regulation that persons who hold the custody of the goods pending clearance, hold the same as custodians on behalf of the Customs Department. The Regulations further provide for a complete procedure as regards the CFS operating under the control of the Customs Authorities. Regulation 6 speaks about the responsibilities of the Customs Cargo Service Providers. It is further seen from Circular No.13 of 2009 issued by the Central Board of Excise and Customs, Ministry of Finance, Government of India, dated 23rd March 2009 on the subject of the above-said Notification, that the Customs Cargo Service Providers, as referred to in the Regulations, include the custodians holding custody of import/export goods and handling such goods and all persons working on behalf of such custodians, like material handling, equipment operators, etc. The responsibilities prescribed in Regulation 6 apply to all custodians and persons who provide various services in holding custody of the goods in the customs area till the disposal of these goods. It is stated that the Regulations apply to handling of imported and export goods in the customs area as specified under Section 8 of the Customs Act, which would cover all customs facilities, such as ports, airports, ICDs CFS and Land Customs Station (LCS). Paragraph 4.2 states that all major Ports notified under the Major Port Trusts Act, 1962 and the Airports notified under the Airports Authority of India Act, 1994 will continue to be authorised to function as custodians under the respective Acts. The Regulation shall not impact their approval as a custodian. Referring to Section 45 of the Customs Act, making an exception to these custodians who are otherwise approved under any other law for the time being in force, the Port Trust, of the notified major Ports and Airports Authority of India are not required to make an application under Regulation 4 or 9 for approval or renewal under these Regulations. However, they would be required to

discharge the responsibilities cast upon them as specified in Regulation 6.

69. Learned Standing Counsel appearing for the respondents pointed out that in the face of the notification thus issued in exercise of the authority under Section 141(2) of the Customs Act and Trade Notice issued for the benefit of the trade to remove decongestion in the Port Container Terminal, it is incorrect to state that the public notices are without the authority of law.

70. As already pointed out, going by the very purport of the Customs Act and the Major Port Trusts Act and the facility thus offered to decongest the Ports, and the notification thus made as referred to above, on the goods entering into the harbour area and unloaded on the orders of the Customs at the specified customs area, the imported consignments are under the custody of the Customs and CFS, being an extended arm of the Customs Area, the issue of bailor-bailee relationship between the Steamer Agent and Port Trust/Customs Department, has to be viewed in a limited sense of discharge of their respective statutory duties and figuratively speaking, the Steamer Agent continues to be the bailee of the consignor till such time the consignee takes delivery of the goods after fulfilling the statutory formalities under the Customs Act.

71. In the above circumstances, the contention of the petitioners as to whether the Port could be seen as a bailee of the consignee, or for that matter, the Customs Department as a bailee of the consignee, does not arise for consideration or have any relevance, in so far as either the importer or the Customs Department naming the destination CFS, resulting in an amendment to the Manifest. It is no doubt true that the petitioners had arrangements with 28 of the CFSs operating herein. The fact that the Steamer Agent is contractually under the obligation with the CFS, does not mean that the same could bind, in any manner, an importer to name the CFS, or for that matter, the Customs Department changing the CFS as against the one given under the IGM. Secondly, the CFS is not an agent of the petitioners herein. On the other hand, the existence of the CFS itself is dependent on the Customs Department approving it as an authorised Customs Cargo Service Provider and the CFS to be treated as a Customs Station.

72. Contrary to the assertion of the petitioners herein, changes made in the IGM as regards the CFS given therein, by itself, does not result in an amendment to the IGM. It does not fall either under major or minor amendment and such change does not make the IGM an untrue declaration by the Steamer Agent to fall under Sub-Section (3) to Section 30 of the Customs Act, to result in a penal consequence. The movement of the goods from the Port to the CFS is only to facilitate an adjudication process and the facility to decongest a Port. Given the fact that the Public Notifications are as a result

of a consensus reached among the various stakeholders, the contention now put forth by the petitioners that it interferes with their statutory obligations, does not merit any acceptance. When the Customs Department has specifically referred to what are major and minor amendments to the IGM and the fact that even non-mentioning of the CFS would not make the IGM as incorrect or incomplete, for the simple reason that the omission by the steamer agent to name the CFS is made good by the CCTL, I fail to understand the logic of the petitioners' contention that such changes would attract penal action. If threat of penal action on this front is the only great apprehension of the petitioners, then, with the circular of the Customs Department listing out the major and minor amendments and changing the CFS not being one to be treated as an amendment to the IGM and with the line of contention taken in these Writ Petitions by the Revenue, that this does not amount to any amendment, then I do not find there exists anything for the petitioners to complain. It is a well settled principle of law that the understanding put forth by the highest statutory body to the provisions of the Act are good guide to the understanding one would have to have, on the scope of the provisions of the Act. In the circumstances, going by the purport of the IGM filing and the declaration as to the content of the goods carried by the Vessel to be unloaded, the truthfulness of the declaration and the bona fides or otherwise of the declaration found untrue to attract the penal consequences, has to be seen from the substantive content of the declaration from the angle of the Customs Act provisions and not from the procedural content relating to the movement of the unloaded goods to a customs station like the ICD or the CFS, which is under the effective control of the Customs. If the petitioners can have no objection to the Customs keeping the goods in the custody of the Port as a custodian pending clearance from the Customs, equally so to a CFS named by the consignee.

73. It is no doubt true that the obligations of the Steamer Agent extend till the date of delivery to the consignee; but at the same time, till such time the adjudication process is over, for a limited period and for a limited purpose, the custody of the goods and responsibility of the Steamer Agent is taken over by the Port Trust Authorities as well as by the Customs Authorities. The ship owner or his agent has nothing to do with the adjudication process or as to any claim that may arise on any damage suffered by the goods while under the control of the Customs Department.

74. Given the fact that the responsibility of the Steamer Agent lies only as regards the filing of the IGM within 24 hours after the arrival of the Vessel in the Customs Station or within such time as may be permitted by the Authorised Officer, making a true declaration on the details as provided for under Section 30 of the Customs Act, and in accordance with the bill of lading, the purport of the declaration, hence, has to be viewed not from the point of the goods moving to a CFS, but from the point of the import as in accordance

with the provisions of the Customs Act and as to whether the import manifest declaration matches with what is declared in the Bill of Lading. Further, given the fact that CFS is an extended Customs Station and the loading and unloading therein and the movement from the Port are under the supervision of the Customs Authorities and the retention of the CFS is equally within the control of the Customs Department, the apprehension of the petitioners, particularly in paragraph 30 of the affidavit filed in W.P.No.15772 of 2009, appears to be a far-fetched one, apart from it being a superfluous one. In the event of transporting goods which are prohibited or which are injurious to the safety of the nation and on the unloading at the Port, with the rights of the Port Authorities and the Customs Authorities to check thereon, the further unloading would not be permitted at all. I do not find any justifiable ground to accept the contention that allowing the importer to name a CFS as against the one named by the petitioners, would cause damage to the security of the nation or in transporting of some prohibited item. Such line of reasoning, apart from being highly imaginative, is totally uncalled for, given the fact that the unloading from the Vessel is made only after the Customs Authority has granted the permission and the further movement to the CFS being under the approval and control of the Customs Official. The responsibility of the Steamer Agent, thus starting from the Port of loading, continues to the Port of landing and for a temporary period, the responsibility for a safe custody and delivery gets suspended, in the sense, that it is taken over by the Port Authorities and thereafter by the Customs Authorities and on the consignee making his endorsement in the Bill of Lading, legally and otherwise, the duty of the Steamer Agents come to an end. Till the goods are handed over to the consignee, as laid down by the Apex Court in the decisions referred to above, any damage or loss caused to the goods imported while in the custody of the Port Trust or the Customs, is to be met only by those respective authorities, depending on where the goods are at the time when the damage or loss is caused to the goods. On the unloading of the goods, the anxiety to have the clearance of the imported goods at the earliest and on the rates and provisions relied on, rests on the importers and not on the petitioners. Whatever be the nature of contractual obligations that the petitioners might have with a particular CFS, when the goods come into the custody of the Customs, it is open to the Customs Authorities to give such directions as regards the handling of the cargo. Further, as already pointed out, when the failure to quote the CFS code number in the IGM is not viewed seriously either as a major or minor omission, or as an obligation imposed under the statute to be fulfilled by the ship owner or the agent, I do not find that changing the CFS in the IGM has to be treated as an amendment, inviting serious consequences at the hands of the Customs authorities and the omission is often made good by the CCTL. Even assuming that changing the CFS by the consignee would amount to an amendment of IGM under Section 30(3) of the Customs Act, in the unreported decision in W.P.No.11044 of 2009

dated 31.8.2009 relied on by respondents 4 to 6, this Court pointed out as follows:

> "10. The language of sub-section (3) of Section 30 is not direct and personal but is impersonal and indirect, in the sense that it does not give a clue as to the person who is entitled to seek much amendment or supplementation. In other words, in refers to the act of amendment and the author who is empowered to carry out the act. But it does not speak about the person at whose instance it shall be carried out. The sub-section does not restrict the entitlement to seek amendment or supplementation, to the consignor or consignee or the person-in-charge of the vessel, aircraft or vehicle. The question of locus is not dealt with in sub-section (3), but is perhaps left to be decided by the proper officer."

75. In the light of the above-said facts, I do not find any merit in the contentions of the petitioners that the Public Notifications issued by the Customs Department are arbitrary and that they have no legal status in permitting the amendment to the IGM. I further reject the contention that the Public Notices have the effect of amending the content of IGM, as provided for in Section 30 of the Customs Act, or for that matter, the Public Notices suffer arbitrariness, since the same interferes with the contractual obligations and their agreement with the named CFS. In the circumstances, all these Writ Petitions stand dismissed. No costs. Connected Miscellaneous Petitions are closed.

Sd/
Deputy Registrar

/true copy/

Sub Asst.Registrar

sl/ksv

To

1. Union of India,
   Ministry of Finance,
   Nirman Bhavan, New Delhi.

2. The Chief Commissioner of Customs (Sea),
   Ministry of Finance, Government of India,
   Customs House, Rajaji Salai, Chennai - 600 001.

3. Commissioner of Customs, Customs House,
No.33, Rajaji Salai, Chennai - 600 001.

4 Ministry of Finance, Department of Revenue,
Office of the Commissioner of Customs (Import)
Chennai - 600 001.

5. The Secretary,
Hindustan Chamber of Commerce,
Greams Dugar, 5th Floor, South Wing,
149, Greams Road, Chennai - 6.

1 cc To M/s.Narmadha Sampath, Advocate, SR.85480.
2 cc To Mr.Ilias Ali, Advocate, SR.85080.
3 cc To Mr.B.Sathish Sundar, Advocate, SR.85129.
1 cc To Mr.Adukumar Rajarathnam, Advocate, SR.85251.

W.P.Nos. 8823 to 8825 and
15772 of 2009 and connected
miscellaneous petitions

KM, RL(CO)
RVL 09.12.2010