IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06-07-2026

DELIVERED ON : 10-08-2026

CORAM

THE HON'BLE DR JUSTICE G. JAYACHANDRAN

AND

THE HON'BLE MRS.JUSTICE N. MALA

CMA No. 3675 of 2014

The Commissioner Of Customs
Seaport Import Customs House 60 Rajaji Salai
Ch-1

..Appellant(s)

Vs

1. Msc Agency India P. Ltd
   Rain Tree Place Level 2b 7c Mc Nicholas Rd
   Chetpet Ch-30.
2. The Customs Excise &service
   Tax Appellate Tribunal South Zonal Bench
   Shastri Bhavan Annexe 1st Floor 26 Haddows
   Rd Ch-6.

..Respondent(s)

CMA No. 3675 of 2014

Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, to set aside the order dated 23-10-2013 in Appeal No.40571/2013 passed by the CESTAT.

CMA No. 3675 of 2014

For Appellant(s):	M/s.Umesh Rao K Senior Standing Counsel For Sole Appellant
For Respondent(s):	M/s. P.Giridharan For R1

R2 - Tribunal

JUDGMENT

N.MALA, J.

(1) The Revenue, aggrieved by the order passed by the CESTAT, Chennai, in setting aside the order of the Commissioner of Customs, dated 27.11.2012, has preferred the above appeal.

(2) The gist of the facts necessary for the disposal of this appeal, are narrated hereunder:

(3) The 1st respondent/Company is a Private Limited Company, incorporated under the Companies Act, 1956. The 1st respondent is a Steamer Agent of M/s.Mediterranean Shipping Company, S.A., carrying on business as Containers Owners/carriers and other shipping related business with its Principal office at Geneva. On information received from various CFS about short landing noticed in the import of steel scrap, the Docks Intelligence Unit [DIU] examined the import consignments belonging to various importers. In the Report dated 06.08.2010, from M/s.ICBC Cfs, a huge discrepancy in the weighment of containers said to contain ''shredded steel scrap'', imported by various Firms, was noticed. It was found that the consignment of goods declared as ''shredded steel scrap''

were brought into the country under Bills of Lading issued by the Principals of the 1st respondent and declarations were also made in the Import General Manifest [IGM] that the goods were ''shredded steel scrap'' The weight of the declared goods in each of the containers was also declared. On examination of the goods in respect of 12 Bills of Lading, it was found that the containers largely contained broken roof tiles and there was substantial shortage in the quantity of the declared goods. It was also noticed that the actual weight of the containers was only 87.5% of the weight of the goods declared as per the Bills of lading and thereby, substantially fell short of the declared Bills.

(4) A Show Cause Notice dated 05.12.2011, was issued proposing to confiscate the goods under the provisions of the Customs Act, and to impose penalty on the 1st respondent and the importers under Sections 116 and 112 of the Customs Act. On adjudication of the show cause notice, the Commissioner ordered for [1] confiscation of the broken roof tiles weighing 365.545 Metric Tons and 54.21 Metric Tons of Heavy Melting Steel scrap, [2] confiscation of 150 Nos., of 20 feet shipping containers with a option to redeem the goods on payment of redemption fine of Rs.10 lakhs and [3] imposition of penalty of Rs.90,15,924/-

against the 1st respondent for not making the declaration in the Import Manifest and for not accounting for 3381.129 Metric Tons of shredded steel scrap and 162.71 Metric Tons of Heavy Melting steel scrap, involving a total duty of Rs.90,15,924/-.

(5) In his aforesaid order, the Commissioner, accepting the explanation of the importers that they were cheated by their supplier abroad and that, they had taken steps to recover the advance remittances made by them, dropped the proceedings against the importers. Aggrieved by the order of the Commissioner of Customs, dated 27.11.2012, the 1st respondent preferred the appeal before the CESTAT [in short ''the Tribunal'']. The Tribunal, on appreciation of facts and law, found that the Revenue had not placed any records to show that the shipping agent was aware of the misdeclaration regarding the containers since it was not in dispute that the containers were brought with seals intact. The Tribunal further found that since the importer and the shipping agent agreed that the misdeclaration of cargo happened before the goods were placed on board and before the custody was taken by the shipping agent, it was not a case of short landing, but a case of short shipment. The Tribunal, placing reliance on the judgment of the Bombay High Court in ***Shaw Wallace & Co Ltd Vs.***

Assistant Collector of Customs and Others, reported in ***1986 [25] ELT 948 [Bom],*** set aside the order passed by the Commissioner of Customs.

(6) Aggrieved by the order of the Tribunal, the Revenue has preferred the present appeal on the following substantial questions of law:-

> A) *Whether the Hon'ble CESTAT has erred by placing reliance on the decision of the Single Judge in the case of* ***Shaw Wallace & Co. Ltd Vs. Assistant Collector of Customs and Others, 1986 [25] ELT 948 [Bom],*** *since the same cannot be countenanced in view of the categorical finding of the Supreme Court in* ***British Airways PLC Vs. Union of India,*** *where they have harmoniously interpreted Sections 116 and 148 of the Customs Act, to hold that the steamer agent is equally responsible as a person-in-charge of a vessel / aircraft?*
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> *B) Whether the Hon'ble CESTAT ought to have taken into consideration the interpretation given by the Hon'ble Apex Court in the case of* ***British Airways PLC Vs. Union of India,*** *reported in* ***2002 [139] ELT 6,*** *wherein it was categorically stated that "besides the person in charge of the conveyance, the liability could be*

fastened upon his agent appointed under the Act or a person representing the officer in charge who has accepts as such by the officer concerned for the purposes of dealing with the cargo on his [officer-in-charge] behalf"?

C)Whether the Hon'ble CESTAT ought to have taken into consideration the conclusion arrived at by the Hon'ble Apex Court in the case of ***British Airways PLC Vs. Union of India,*** *reported in* ***2002 [139] ELT 6,*** *giving a quietus to the doubt as to who is the person in charge of the conveyance and whether liability can be fastened upon the officer-in-charge of the conveyance by holding that the liability can be fastened upon the agent of the person-in-charge appointed under the Act or a person representing the officer-in-charge who has accepted as such by the officer concerned for the purpose of dealing with the cargo on his behalf?*

D)Whether in the light of the judgment of the Hon'ble High Court of Madras vide order dated 09.01.2013 in WP.Nos.24045 and 24046 of 2012, wherein it was held that "...when the petitioner as a steamer agent files an Import General Manifest and represents before the

> *customs authorities as an agent of the shipper and conducts all affairs in compliance with the provisions of the Act, then the provisions of Section 116 read with Section 148 of the Act gets attracted automatically and as a result, penalty becomes leviable. The authorities below were justified in imposing penalty as contemplated under Section 116 of the Act", the order dated 23.10.2013 of the Hon'ble CESTAT setting aside the impugned Order-in-Original dated 27.11.2012, is maintainable in law?*
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> *E) Whether in these circumstances, it is just and necessary to set aside the order passed by the Hon'ble CESTAT on23.10.2013 as being bad in the eye of law?*

(7) The learned Senior Standing counsel for the appellant/Revenue submitted that the 1st respondent is a Steamer Agent and therefore, is equally liable as a person-in-charge of the vessel, in view of the judgment of the Hon'ble Supreme Court in ***British Airways case.*** The learned Senior Standing counsel further submitted that the Tribunal erred in placing reliance on ***Shaw Wallace and Co., Vs. The Assistant Collector of Customs and Others*** reported in ***1986 [25] ELT 48,*** totally ignoring the judgment of the Hon'ble Supreme Court in the case of ***British Airways***

PLC Vs. Union of India and Others, reported in ***2002 [2] SCC 95.*** The learned Senior Standing counsel submitted that in view of the judgment of the Apex Court in ***British Airways case [cited supra],*** not only the person-in-charge of the conveyance, but also his agent appointed under the Act, or any person claiming to be the representative of the person-in-charge and accepted as such by the officer concerned, is also liable for the penalty under Section 116 of the Act. The learned counsel further submitted that the 1st respondent lodged the Import General Manifest [IGM] and therefore, as a person, who has lodged the IGM with the officer of the Customs, it is deemed to act as an agent of the vessel and hence, liable under Section 116 of the Act. The learned Senior Standing counsel placed heavy reliance on the judgment of the Apex Court in the case of ***British Airways PLC Vs. Union Of India and Others [2002 [2] SCC 95]*** and the judgment of this Court in ***Caravel Logistics Private Limited Vs. General Secretary [RA], Government of India, Ministry of Finance, Department of Revenue, New Delhi and Others [MANU/TN/0959/2016],*** in support of his submissions.

(8) The learned counsel appearing for the 1st respondent, in contra, submitted that the 1st respondent cannot be held liable under Sections 116 and 148

of the Customs Act, inasmuch as the 1st respondent is only a carrier agent and not a party to the declaration of the contents in the containers. The learned counsel submitted that the 1st respondent lodged the IGM based on the particulars furnished in the Bills of Lading and in view of the stipulation in the Bills of Lading that the particulars furnished by the shipper were non-checked by the carrier, and the carrier was not responsible, the penalty imposed under Section 116 of the Act on the 1st respondent, was unsustainable and illegal. The learned counsel further submitted that the 1st respondent could, by no stretch of imagination, be construed as a person-in-charge of the vessel and that, since the seals of the containers delivered were intact, the 1st respondent could not be held liable for the shortage in weight, contents and value of the consignment, more so, when there was a specific stipulation in the Bills of Lading that the particulars furnished by the shipper were non-checked by the carrier and the carrier was not responsible for the contents in the containers. The learned counsel placed heavy reliance on the judgment of the Bombay High Court in the case of ***Shaw Wallace Vs. The Assistant Collector of Customs and Others*** reported in ***1986 [25] ELT 948 [Bom]*** and the judgments of this Court reported in ***AIR 2013 Mad 85 [Container***

Corporation of India Limited by its General Manager Vs. Priya Dyes & Chemicals rep.by its Authorised Signatory and Others] and in ***AIR 1983 Mad 105 [M/s.Thakur Shipping Company Limited, Bombay Vs Food Corporation of India].***

(9) We have considered the rival submissions and also perused the materials placed on record.

(10) Since the questions of law raised by the appellant in the present Civil Miscellaneous Appeal, are inter-related, they are not considered separately.

(11) From the questions of law framed, the primary issue that falls for consideration is *whether penalty under Section 116 of the Act is leviable against the 1st respondent herein, for not accounting for the goods as per the Import General Manifest.*

(12) The facts are undisputed. The 1st respondent is the agent/representative of MSC Agencies, who are the owners of the containers in which the consignments, namely, ''shredded steel scrap'' and ''heavy melting steel scrap'' were imported on payment of full pre-paid freight charges by the importers/consignees. While so, on inspection by the Docks Intelligence Unit [DIU], it was found that in the 150 containers, the declared goods,

namely, ‘’shredded steel scrap’’ and ‘’heavy melting steel scrap’’, were found in negligible quantity and that, the containers largely contained broken roof tiles. Therefore, a show cause notice was issued to both the importers as well as the 1st respondent, to which they replied. On adjudication of the show cause notice, the Commissioner of Customs, dropped the proceedings against the importers by accepting their explanation that they were cheated by their shipper/supplier. The Commissioner of Customs, however, on the basis of the materials on record, ordered for confiscation of the goods and also imposed penalty of Rs.90,15,924/- on the 1st respondent, invoking Section 116 of the Customs Act, on the ground that the 1st respondent failed to make a true declaration in the Import General Manifest and also, had not satisfactorily accounted for the shortage of 3381.129 Metric Tons of ‘’shredded steel scrap’’ and 162.17 Metric Tons of ‘’heavy melting steel scrap’’, involving total duty of Rs.90,15,924/-. The 1st respondent filed an appeal before the Tribunal and succeeded in the same and hence, the present Civil Miscellaneous Appeal, by the Revenue.

(13) Before adverting to the legal issues, the factual findings of the Commissioner of Customs are noted.

(14) The Commissioner of Customs, in his order, correctly understood the case of the Department that the issue was not whether the Steamer Agent / Carrier was a party to the fraud, but the issue was whether the Steamer Agent / Carrier, having failed to deliver the declared quantity of manifested goods and having failed to provide satisfactory answers for deficiency to the satisfaction of the Assistant Commissioner / deputy Commissioner of Customs, was liable for paying the penalty under the provisions of the Customs Act. Before the Commissioner of Customs, the fact that out of 150 x 20 feet containers, 143 x 20 feet containers contained 368.005 Metric Tons of broken roof tiles and 48.680 Metric Tons of ''Heavy Melting Steel Scrap'' instead of the declared goods of 3429.809 Metric Tons of ''shredded steel scrap''and that, in the remaining 7 x 20 feet containers, against the declared goods of 168.24 Metric Tons of ''Heavy Melting Steel Scrap'', only 5.33 Metric Tons of ''Heavy Melting Steel Scrap'' were found, was not disputed by th 1st respondent. Therefore, the Commissioner of Customs, in his order recorded that the 1st respondent instead of disputing the discrepancy in the weight as well as the misdeclaration of goods, tried to explain the

deficiency by taking umbrage under the stipulation in the Bills of Lading which stated that ''the particulars were furnished by the shipper and the goods were unchecked by the carrier''. The explanation of the 1st respondent for deficiency, was rejected by the Commissioner of Customs on the ground that the stipulations in the Bills of Lading would not prevail over the provisions of the Act, since Bills of Lading are only a contract between the shipper and the carrier. The Commissioner also found that the seals were given by the Steamer Agent/Carrier for affixing on the containers after stuffing and since the Steamer Agent/Carrier took charge of the sealed containers, they were bound to take the responsibility for the shortage of the goods. The Commissioner of Customs also found that the Steamer Agent/Carrier was liable to account for the declared quantity of goods, when the seals provided by them were used for sealing the containers. On such factual findings, the Commissioner found that the 1st respondent was liable for penalty under the provisions of the Customs Act.

(15) We find that, in contrast to the well considered order of the Commissioner of Customs, the Tribunal dealt with the matter in a very cavalier fashion. We find that the Tribunal failed to note that admittedly,

150 containers were shipped through the same shipping line and in all cases, the actual weight of goods unloaded was 12.5% [on an average] of the declared weight of the goods as per the Import General Manifest [IGM] and the Bills of Lading issued by the shipping line. The Tribunal, despite the aforesaid glaring facts, in a very cryptic manner, reversed the order of the Commissioner of Customs by applying the ratio laid down by the Hon'ble Bombay High Court in ***Shaw Wallace case [cited supra].***

(16) We find upon a perusal of the order-in-original that the Commissioner of Customs, on proper appreciation of the materials on record, rendered factual findings and applied the law correctly. However, the Tribunal even without examining the facts, in a very casual manner, over-turned the order-in-original. The materials on record reveal that in the IGM lodged by the 1st respondent, for the 150 containers shipped by them, the goods declared were 3429.809 Metric Tons of ''shredded Steel Scrap'' and 168.24 Metric Tons of ''Heavy Melting Steel Scrap''. However, on inspection by the DIU, it was found that in the 150 containers, the quantity of the declared goods was negligible and that, they contained large quantity of broken roof tiles. Hence, the 1st respondent was bound to explain the deficiency to the satisfaction of the Assistant Commissioner /

Deputy Commissioner of Customs. The Commissioner, in our view, rightly rejected the explanation of the 1st respondent that they were not liable for penalty in view of the specific stipulations in the Bills of Lading, on the ground that the stipulations in the Bills of Lading cannot override the provisions of the Act and that the Bills of Lading were only a contract between the shipper and the carrier.

(17) In the above noted factual scenario, the further legal question that arises for consideration is whether the 1st respondent can be held liable under the provisions of Section 116 of the Customs Act.

(18) The learned counsel for the 1st respondent submitted that the 1st respondent does not fall within the definition of ''a person-in-charge'' provided under Section 2[31] of the Act and therefore, the 1st respondent is not liable for any penalty under Section 116 of the Act.

(19) The Hon'ble Supreme Court, in the case of ***British Airways PLC Vs. Union of India and Others [2002 [2] SCC 95],*** considered the definition of ''person-in-charge'' defined under Section 2[31] of the Customs Act and discussed the inter-play of Sections 42, 116 and 148 of the Customs Act, and held as follows:-

> *''9.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-in-charge of the conveyance shall be liable in terms of Section 116 of the Act. Besides the person-in-charge of the conveyance, the liability could be fastened upon his agent appointed under the Act or a person representing the person-in-charge who has accepted as such by the officer concerned for the purposes of dealing with the cargo on his [person-in-charge's] behalf. Assuming the appellants are neither the person-in-charge 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-in-charge to the officers of the Customs as his agent for the purpose of dealing with the cargo offloaded from the aircraft of the appellants' carrier.''

(20) A Division Bench of this Court, in ***Caravel Logistics Private Limited Vs. The Joint Secretary [RA], Government of India, Ministry of Finance, Department of Revenue, and Others [MANU/TN/0959/2016],*** following the judgment of the Apex Court in ***British Airways case [cited supra],*** held that on a combined reading the provisions of Sections 2[31], 30, 31,

116 and 148 of the Act, and the judgment of the Hon'ble Supreme Court in ***British Airways case,*** along with the Notification issued by the Central Government dated 19.12.2003 in Notification No.111/2003, held as follows:-

> *''20.From a conjoint reading of Sections 2[31], 30, 31, 116 and 148 of the Act, it becomes clear that person-in-charge of a conveyance together with the person acting on his behalf as his agent or for the matter any other person acting on his behalf by lodging import manifest under Section 30 of the Act, equally becomes liable for payments of the penalty.*
>
> *21.In fact, the Supreme Court in ''British Airways PLC Vs. Union of India'' [MANU/SC/0712/2021 : 2002 [2] SCC 95 : AIR 2002 SC 391] has considered the combined effect of Sections 2[31], 116 and 148 of the Act and held as under:-*
>
>> *''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-in-charge of the*

> *conveyance shall be liable in terms of Section 116 of the Act. Besides the person-in-charge of the conveyance, the liability could be fastened upon his agent appointed under the Act or a person representing the person-in-charge who has accepted as such by the officer concerned for the purposes of dealing with the cargo on his [person-in-charge's] behalf. Assuming the appellants are neither the person-in-charge 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-in-charge to the officers of the Customs as his agent for the purpose of dealing with the cargo offloaded from the aircraft of the appellants' carrier.*

22.Learned Single Judge has followed the above principle enunciated by the Supreme Court in British Airways PLC's case [referred to supra] while dismissing the present writ petition from out of which the appeal arises.

23.In fact, the Central Government by its Notification No.111/2003-Cus.[N.T.] : MANU/CUSN/0120/2003 dated 19.12.2003 as amended by Notification No.17/2004 – Cus [N.T.] : MANU/CUSN/0024/2004, dated 16.12.2004, under

Section 30 of the Act, specified that any person other than carrier, who is authorised to issue delivery orders in favour of an importer on the basis of which goods are permitted to be delivered to such importer by the custodian of the goods, as any other person for the purpose of the said section. Thus, whoever delivers the import manifest under sub-section [1] of Section 30, other than person-in-charge of the carrier / conveyance falls within the expression ''any other person''. This Notification issued by the Central Government is in fact in consonance with the principle set forth on 06.11.2001 by the Supreme Court in British Airways PLC's case [referred to supra].''

(21) The Division Bench, in the aforesaid judgment, also held that the facts of each case have got to be kept in view and that the general guidelines spelt out in ***Shaw Wallace case [cited supra],*** is not an exhaustive enumeration of all legal principles applicable to the subject. The Court further found that it is the cardinal principle of law that the judgment cannot be read like a statute and that the judgment is only significant for what it decides and lays down as ratio.

(22) We are bound by the judgment of the Apex Court in ***British Airways case*** which was also followed by a coordinate Bench of this Court and

therefore, the contention of the 1st respondent that he cannot be construed as a ''person-in-charge'', as defined under Section 2[31] of the Act, cannot be accepted.

(23) One more aspect which will bring the 1st respondent within the ambit of ''a person-in-charge'' as defined under Section 2[31] of the Act, is the lodgment of the IGM by the 1st respondent. The importance and significance of the IGM was succinctly explained by the Division Bench of this Court in ***Carvel's case [referred to supra].*** The Division Bench of this Court, at paragraph No.19, held as follows:-

> *''19.In this context, it would be appropriate to notice sub-section [1] of Section 30 of the Act, which required the person-in-charge of a vessel carrying imported goods or any other person specified by the Central Government by notification, in the case of a vessel deliver to the proper officer an import manifest prior to the arrival of the vessel. Sub section [2] thereof further required the person delivering the import manifest to make and subscribe to a declaration as to the truth of its contents. Thus, the import manifest is not a mere document of intimation of arrival of a vessel carrying imported goods but also contains a verified statement to vouch safe for the truthfulness of the contents of the import manifest.*

The importance and significance of lodging the import manifest can be gazed from Section 31 of the Act,. Sub-section [1] of Section 31 of the Act renders it obligatory upon the Master of the vessel who incidentally is the person-in-charge as per Section 2[31] of the Act, not to permit the unloading of imported goods until an order has been given by the proper officer granting entry inwards to such vessel. Sub-section [2] of Section 31 of the Act further makes it clear that no order under Sub-section [1] shall be given by the proper officer until the import manifest has been delivered. Hence, lodging import manifest under section 30 of the Act has a direct bearing upon the controversy at hand. Thus, whoever lodges the import manifest with the proper officer of the Customs, acts as such, as an agent of the Master of the vessel.''

(24) In the present case, the 1st respondent has admittedly lodged the IGM as required by Section 31 of the Act. The respondent has also subscribed a declaration to the truth of its contents as required by sub-section [2] of Section 30 of the Act. Further, the 1st respondent was also accepted by the officers concerned as an agent of the Master of the vessel for the purpose of dealing with cargo, and therefore, for such reason also, he is construed as a ''person-in-charge''. Therefore, as per the aforesaid

Ruling of the Division Bench, the 1st respondent being acted as an agent of the Master of the vessel has to be held liable for penalty for his failure to to file accurate and complete IGM, as an agent of the person-in-charge.

(25) Further, the explanation offered by the 1st respondent for the deficiency in the manifested goods was found unsatisfactory by the Authorities under the Act. Therefore, as an agent of the person-in-charge, the 1st respondent is liable to pay the penalty under Section 116 of the Act.

(26) At the risk of repetition, it is observed that 150 containers were shipped through the same shipping line and in all cases, the actual weight of the goods unloaded was just 12.5% [on an average] of the declared weight of the goods as per the import general manifest and the Bills of Lading issued by the shipping line. As contended by the appellant, such a huge difference in weight could not have gone unnoticed had the shipping line been diligent. Admittedly, the 1st respondent as an Agent of the shipping line, has filed the IGM, and has represented before the Customs authority as the agent of the shipper, conducting all affairs in compliance of the provisions of the Customs Act. Also, since the 1st respondent failed to satisfactorily explain the deficiency in the declared goods, in our

considered view, cannot escape from the penal provisions of Section 116 of the Act. We accordingly answer all the questions of law raised in the appeal, in favour of the Revenue.

(27) In fine, the Civil Miscellaneous Appeal is **allowed** and the order of the Tribunal dated 23-10-2013 in Appeal No.40571/2013 is **set aside** and the order-in-original of the Commissioner of Customs dated 27.11.2012 in No.19826/2012, is **restored.** The 1st respondent is directed to comply with the Order-in-Original of the Commissioner of Customs, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

(G.J.,J.) **(N.M.,J.)**
10-08-2026

Index: Yes
Speaking order
Neutral Citation: Yes
Internet : Yes

AP
To

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   Rain Tree Place Level 2b 7c Mc Nicholas Rd Chetpet Ch-30.
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DR.G.JAYACHANDRAN J.
AND
N.MALA J.

AP

Judgment in
CMA No. 3675 of 2014

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