

PETITIONER:
M/S. MOHAN MEAKIN LTD.

Vs.

RESPONDENT:
THE COMMISSIONER OF CENTRAL EXCISE, KOCHI

DATE OF JUDGMENT: 14/12/1999

BENCH:
S.P.Bharucha, R.C.Lahoti

JUDGMENT:

SANTOSH HEGDE, J.

The appellant in these appeals manufactures beer in its Solan and Ghaziabad Breweries for which it uses Lupofresh aromatic hop pellets which is normally imported from abroad. For their requirement of abovementioned hop pellets they used to place orders with an agent by name M/s. Pyarelal Sarin (Agencies) Private Limited, New Delhi, who, in turn, used to arrange for supply of hop pellets required by the appellant. On 11.6.1991 the appellant was informed that 2000 kg. of hop pellets had been despatched to their brewery which was received by them on 20.7.1991. The hop pellets so received by the appellant were from M/s. Arusan Industries who, in turn, had received the same from M/s. Integrated Exports, Madras. In view of certain raid conducted by the Directorate of Revenue Intelligence in the premises of the appellant with regard to the said hop pellets, they came to know that there was certain investigation being conducted by the Customs Department with reference to the said consignment of hop pellets. Since the appellant was a bona fide purchaser in the ordinary course of its business, it made enquiries with M/s. Integrated Exports as to the legality of the import of said hop pellets. They were informed by the said Integrated Exports as per their letter dated 11.2.1992 that the consignments from which the appellant was supplied the hop pellets were the subject-matter of certain proceedings initiated under Section 111(d) of the Customs Act, 1962 (for short the Act) and after the said adjudication made by the Department at the time of import, the goods in question were redeemed by them on payment of redemption fine. Hence, after the said redemption the importation had become licit and there could be no problem with the purchase of hop pellets made by the appellant. However, in the meantime, the appellant received a show-cause notice dated 24.3.1992 wherein it was stated that the import of the entire consignment of hop pellets made by the importers, a part whereof was purchased by the appellant, was also in contravention of Section 111(m) of the Act. Hence, the appellant was asked to show cause why the hop pellets purchased by it not be confiscated and action taken for imposition of penalty under Section 112(b) of the Act. The appellant filed its reply wherein, inter alia, it pleaded before the Collector of Customs, Cochin, who had issued the show cause notice, that they are

bona fide purchasers of the goods in question in the normal course of their business and they had come to know that the goods in question was the subject-matter of an earlier proceeding under Section 111(d) of the Act; consequent to which the goods in question were released on payment of redemption fine and the purchase made by them was subsequent to the said redemption order made under Section 125(2) of the Act. Therefore, it is impermissible to subject the same goods for confiscation for a second time and further subject it to a fresh levy of redemption fine, penalty or duty. The appellant had also contended that since it is only a purchaser from an importer who had redeemed the goods under Section 125(2) of the Act, hence there could be no liability which could be fastened to it. In regard to duty payable, if any; at the most action could be taken under Section 28 of the Act against the importer for recovery of duty either not levied or short-levied. The contention of the appellant was rejected by the Collector who vide his order dated 25.11.1992 released the goods by imposing a redemption fine totalling Rs. 3.25 lacs which was appropriated from the securities furnished by the appellant during the course of the proceedings. Being aggrieved by the said order of the Collector, the appellant preferred appeals before the Customs, Excise & Gold (Control) Appellate Tribunal, Madras (for short the tribunal) wherein the appellant raised the following contentions :- (1) The goods had already been confiscated under Section 111(d) and the same could not be confiscated second time over under Section 111(m). (2) Duty could not be demanded from the appellants as the provisions of Section 28 of the Customs Act, 1962 were available for demanding duty from the importers. 2(a) Proceedings could not have been drawn against the appellants without the issue of show cause notice to the importers. (3) Duty could not be demanded from the appellants as there was no order of confiscation in respect of the goods under Section 111(m) of the Customs Act, 1962. (4) Differential duty could not be fastened on the appellants for reason of being owner of the goods when the provisions of Section 28 are available for demand of duty from the importers.

On behalf of the Department it was argued before the tribunal that after the goods in question were released on payment of redemption fine, it was found as a result of the investigation that the said goods were heavily undervalued. It was contended that the subsequent proceeding was an independent proceeding, therefore, the same was liable for confiscation for violation of Section 111(m) of the Act and consequently fresh proceedings contemplated under Sections 112 and 125 of the Act were permissible since the subsequent proceedings were for a different violation of the Act and had nothing to do with the earlier proceedings. We have heard learned counsel for the parties. It is seen that under Section 111 of the Act, the goods which were brought in contravention of Clauses (a) to (p) of that Section are liable for confiscation. Relevant sections for the purpose of our consideration are Section 111(d) and (m) of the Act which read thus : 111. Confiscation of improperly imported goods, etc. The following goods brought from a place outside India shall be liable to confiscation

x x x

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition

imposed by or under this Act or any other law for the time being in force;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof;

Section 125 of the Act empowers the authorities after adjudication to release the goods to the person from whose possession the same has been seized, on collection of redemption fine in lieu of confiscation. But such redemption of the goods is subject to the owner being called upon to pay any duty and charge that is payable in respect of such goods. The proviso to Section 125(1) also makes it obligatory on the adjudging authority to evaluate the fine which shall not exceed the market price of the goods confiscated (emphasis supplied). Therefore, there is a mandatory requirement on the adjudicating officer before permitting the redemption of goods, firstly, to assess the market value of the goods and then to levy any duty or charge payable on such goods apart from the redemption fine that he intends to levy on sub-clause (1) of that Section. In the instant case, it is an admitted fact that after issuing a notice as contemplated under Section 124 of the Act, to the importer of the goods in question and adjudication proceeding under Section 125 had been conducted and the goods in question were released on payment of redemption fine, in such an event it matters little whether the adjudication was under which sub-clause of Section 111 because whichever is the sub-clause, there was an obligation on the adjudicating authority to find out the market value of the goods so imported and to collect all duty and other charges payable on the goods in question before releasing the goods on payment of redemption fine. Having released the goods thus into the market and permitting the sale of the same, in our opinion it is not open to the Collector to initiate another proceedings under another clause of Section 111 to recover the so-called difference in valuation of the imported goods from the ultimate bona fide purchaser for value. If the Collector failed to make a proper enquiry as to the market value of the goods and released the same after a half-hearted adjudication, we fail to see why a subsequent purchaser be saddled with the liability of under-valuation; more so in the background of the fact that the appellant had no role to play either in the import or earlier adjudication proceedings. That apart, it is rather surprising that the fresh proceeding under Section 111(m) is not initiated against the original importer inspite of the provisions of Section 28 of the Act. Counsel for the respondent is unable to convince us why no notice under Section 124 is issued against the original importer who was permitted by the Department to redeem the goods under Section 125 of the Act and sell the same in the open market. In this background, we are of the opinion that the action of the Department to initiate proceedings against the appellant, who is a bona fide purchaser of the redeemed goods for value, is unjust and hence not sustainable in the facts and circumstances of this case. For the reasons stated above, we are of the opinion that the initiation of proceedings under Section 111(m) of the Act is liable to be quashed. Consequently, we allow these appeals, quash the orders impugned herein and the fine and duty, if any, collected from the appellant for redemption of the goods is directed to be refunded. No

costs.

JUDIS