

Mohan Meakins Ltd.

Vs

Commissioner of Central Excise, Kochi

Civil Appeals Nos.7687-88 of 1997

(S. P. Bharucha, R. C. Lahoti, N. Santosh Hegde JJ)

14.12.1999

JUDGMENT

SANTOSH HEGDE, J. –

1. The appellant in these appeals manufactures beer in its Solan and Ghaziabad breweries for which it uses Lupofresh aromatic hop pellets which are normally imported from abroad. For their requirement of the above-mentioned hops they used to place order with an agent by the name of 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 dispatched 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 a 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 enquiry with M/s Integrated Exports as to the legality of the import of the 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 11(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 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 impetration 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(d) 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 were 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 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

(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;

(e)-(1)

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(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; "

6. Section 125 of the Act empowers the authorities after adjudication to release the goods to the person from whose possession the same had 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 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 under sub-section (1) of the section.

7. 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 clause of Section 111 because whichever is the 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 recharges 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 purchase 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 undervaluation; 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 in spite of the provisions of Section 28 of the Act. Counsel for the respondent is unable to convince us why on 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.

8. 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.

