A SHESHANK SEA FOODS PVT. LTD. KARNATAKA ETC.

v.

UNION OF INDIA AND ORS.

NOVEMBER 19, 1996

B [S.P. BHARUCHA AND K.S. PARIPOORNAN, JJ.]

Customs Act, 1962 :

S.111(o)—Exemption Notification No. 116 dated 30.4.1988—Breach of conditions—Power of customs authorities to investigate into—Sought to C *be excluded on the ground that terms of Exemption Notification were made part of licence and, as such, the licensing authority alone had jurisdiction to investigate into the alleged breach—Held, merely because licensing authority is empowered to investigate, Customs authorities are not precluded from doing so—The breach is not only of the terms of the licence, but is* D *also of the Exemption Notification and, therefore, provisions of s.111(o) enable the Customs authorities to investigate.*

The appellant was availing the benefit of Exemption Notification No. 116 dated 30.4.1988 issued u/s 25(1) of the Customs Act, 1962. One of the conditions of the Notification was that the materials E **imported thereunder would not "be sold, loaned, transferred or disposed of in any other manner". The Customs authorities, on coming to know of cases of violation of the terms of the Notification, started investigation u/s 111(o) of the Customs Act, 1962.**

Writ petitions were filed before the High Court seeking a writ F **of prohibition restraining the Customs authorities from proceeding with search and seizure operations in the premises of the petitioners on the ground that raw materials had been imported under advance licence which incorporated the terms of the said Exemption Notification, and, therefore, only the licensing authority had the** G **jurisdiction to investigate the alleged violations. The High Court dismissed the writ petitions. Aggrieved, the appellant filed the present appeal before this Court.**

It was contended for the appellant that in view of paragraph 231 of the Import and Export Policy, 1989-91 and Paragraph 374 of H **the Hand Book of Procedure, April 1988-March 1991, issued by the**

Ministry of Commerce, Government of India, it was only the licensing authority which could investigate into alleged cases of domestic sale of exempt material and the jurisdiction of the Customs authorities to do so was ousted. Reliance was also placed on a communication dated 13.5.1969 issued by the Central Board of Excise and Customs in respect of which the Ministry of Law was stated to have advised that it would not be possible to take action u/s 111(o) of the Customs Act with respect to conditions of the licence relating to use of goods after they were cleared from Customs charge.

Dismissing the appeal, this Court

HELD: 1.1. There is nothing in the provisions of the Import and Export Policy 1988-91 or the Hand Book of Procedures issued by the Ministry of Commerce, Government of India, that even remotely suggests that the power of Customs authorities under s.111(o) of Customs Act, 1962 had been taken away or abridged or that an investigation into the alleged breach of the terms of the Exemption Notification, incorporated in the advance licence, could be conducted only by the licensing authority. That the licensing authority is empowered to conduct an investigation into cases of alleged domestic sale of exempt material does not by itself preclude the Customs authorities from doing so. [806 FG]

1.2. It is true that communication dated 13.5.1969 issued by the Central Board of Excise and Customs refers to the breach of the condition of a licence, and that the terms of Exemption Notification No. 116 dated 30.4.1988 were made part of appellant's licence and, in that sense, a breach of the terms of the Exemption Notification is also a breach of a condition of a licence, entitling the licensing authority to investigate. But the breach is not only of the terms of the licence; it is also a breach of the condition in the Exemption Notification upon which the appellants obtained exemption from payment of Customs duty and, therefore, the provisions of s. 111(o) enable the Customs authorities to investigate. [806 H, 807 A,B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1152 of 1992 Etc.

From the Judgment and Order dated 21.6.91 of the Karnataka High Court in W.A. No. 1312 of 1991.

A R. Thyagarajan, Joseph Vellapally, R. Mohan, V. Balachandran, R.P. Wadhwani, Ms. Bina Gupta, G. Prakash, V.K. Verma, P. Parmeshwaran and C.V.S. Rao for the appearing parties.

The Judgment of the Court was delivered by :

B **BHARUCHA, J.** The principal judgment was delivered by a Division Bench of the High Court of Karnataka in the case of *M/s. Kamath Packaging Limited* (Civil Appeal No.1153/92). In the other matters the High Court followed the aforesaid judgment.

A writ petition was filed by *M/s. Kamath Packaging Ltd.* before the C High Court seeking a writ of prohibition restraining the Customs authorities from proceeding with search and seizure operations in their premises. The writ petition was dismissed by a learned single Judge and the appeal therefrom by the Division Bench. The writ petition was filed upon the basis that the Customs authorities had no right or authority nor did the Customs Act, 1962, empower them to go into questions relating to the D utilisation of the raw materials that had been imported by the appellants under advance licences granted to them under the Duty Exemption Scheme. It was the case of the Customs authorities that the raw materials had been imported by the appellants without payment of duty by availing of the benefit of an Exemption Notification dated 30th April, 1988 (No. 116/ E 1988). The terms and conditions thereof had been violated by the appellants. Search and seizure operations in this behalf were, therefore, within their powers.

The said Exemption Notification was issued in exercise of powers conferred by Section 25(1) of the Customs Act and one of the conditions F thereof was that the materials exempted thereunder would not "be sold, loaned, transferred or disposed of in any other manner".

Learned counsel for the appellant submitted that the investigation by the Customs authorites was in respect of alleged violations of the terms of G the appellants' advance licences which incorporated the terms of the said Exemption Notification. Only the licensing authority had the jurisdiction to investigate the alleged violations. The Duty Exemption Scheme under which the licences had been issued was a code by itself and excluded any investigation by the Customs authorities. The bond that had been furnished by the appellants pursuant to the licences also provided for action by the H licensing authority.

Our attention was drawn by learned counsel for the appellant in support of his aforestated submissions to the Import and Export Policy, 1988-91, wherein Chapter XIX dealt with the Duty Exemption Scheme. Paragraph 231 stated that the licence holder should, before clearance of the first consignment of import, execute a bond with the requisite value of bank guarantee or legal undertaking, as the case may be, with the concerned licensing authority in the prescribed form. Paragraph 243 read thus :

> "If a licence holder fails to discharge the prescribed export obligation within the permitted time, the licensing authority shall initiate action against the licence-holder on the lines indicated in Chapter XIX of the Hand Book of Procedures, 1988-91. This shall, however, be without prejudice to any other action that initiated by the Customs authorities for recovery of Customs duty or other duties and interest thereon under Section 142 of the Customs Act, 1962."

Learned counsel drew attention to the Hand Book of Procedures, April 1988-March 1991, issued by the Ministry of Commerce, Government of India, Chapter XIX whereof also dealt with the Duty Exemption Scheme. Paragraph 374 dealt with the consequences of a licence holder failing to discharge the prescribed export obligation, either in full or in part. If this happened in such circumstances that "the licensing authority is satisfied that the exempt material has not been sold or misutilised for domestic production" the action that could be taken was set out. The learned counsel's submission, these provisions of the Import and Export Policy and the Hand Book of Procedures showed that it was only the licensing authority which could investigate alleged cases of domestic sale of exempt material and the jurisdiction of the Customs authorities to do so was ousted.

Learned counsel placed reliance upon a communication to all Collectors of Central Excise issued by the Central Board of Excise and Customs on 13th May, 1969, on the subject of whether, in the event of the contravention of a post-importation condition of an import licence, it was open to the Customs authorities the confiscate imported goods under Section 111(o) of the Customs Act. The said communication stated that before Section 111(o) could be attracted there had "to be an exemption, subject to a condition, from a prohibition. Where a valid licence has been issued, it is not a case of an exemption from the prohibition. Therefore, if a post importation condition of a licence is contravened, it cannot be said that any condition of exemption is contravened.

A For the reasons stated above, the Ministry of Law have advised that it may not be possible to take action under Section 111(o) with respect to the conditions of the licence relating to the use of goods after they are cleared from the Customs charge."

Section 111(o) is the sheet-anchor of the respondent's case. It reads B thus :

> "111. Confiscation of improperly imported goods, Etc.- The following goods brought from a place outside India shall be liable to confiscation—
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> C (b) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."
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Section 111(o) states that when goods are exempted from Customs duty subject to a condition and the condition is not observed, the goods are liable to confiscation. The case of the respondents is that the goods imported by the appellants, which availed of the said exemption subject to E the condition that they would not be sold, loaned, transferred or disposed of in any other manner, had been disposed of by the appellants. The Customs authorities, therefore, clearly had the power to take action under the provisions of Section 111(o).

We do not find in the provisions of the Import and Export Policy or F the Hand Book of Procedures issued by the Ministry of Commerce, Government of India, anything that even remotely suggests that the aforesaid power of the Customs authorities had been taken away or abridged or that an investigation into such alleged breach could be conducted only by the licensing authority. That the licensing authority is empowered G conduct such an investigation does not by itself preclude the Customs authorities from doing so.

The communication of the Central Board of Excise and Customs dated 13th May, 1969, refers to the breach of the condition of a license and suggests that it may not be possible to take action under Section 111(o) H in respect thereof. It is true that the terms of the said Exemption

Notification were made part of the appellant's licences and, in that sense, a breach of the terms of the said Exemption Notification is also a breach of the terms of the license, entitling the licensing authority to investigate. But the breach is not only of the terms of the license, it is also a breach of the condition in the Exemption Notification upon which the appellants obtained exemption from payment of Customs duty and, therefore, the terms of Section 111(o) enable the Customs authorities to investigate. A B

For these reasons, we find no merit in the appeals and dismiss them with costs.

R.P. Appeals dismissed.