

## **Union Of India & Anr vs M/S Mustafa & Najibai Trading Co., & Ors on 16 July, 1998**

**Equivalent citations: AIR 1998 SUPREME COURT 2526, 1998 (6) SCC 79, 1998 AIR SCW 2530, (1998) 4 ALLMR 323 (SC), (1998) 5 JT 16 (SC), (1998) 3 SCR 708 (SC), 1998 (5) ADSC 481, 1998 (5) JT 16, 1998 (3) SCR 708, 1998 (4) ALL MR 323, 1998 (4) SCALE 141, (1998) 101 ELT 529, (1998) 77 ECR 624, (1998) 5 SUPREME 482, (1998) 4 SCALE 141, (1998) 4 BOM CR 678, 1998 (3) BOM LR 360, 1998 BOM LR 3 360**

**Author: S.C. Agrawal**

**Bench: V.N. Khare, S.C. Agrawal**

PETITIONER:  
UNION OF INDIA & ANR.

Vs.

RESPONDENT:  
M/S MUSTAFA & NAJIBAI TRADING CO., & ORS.

DATE OF JUDGMENT: 16/07/1998

BENCH:  
S.C. AGARWAL, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

**J U D G M E N T** S.C. AGRAWAL, J. :

This appeal, by special leave, has been filed by Revenue against the judgment of the Bombay High Court dated may 14, 1987 whereby the High Court, while allowing Civil Writ No. 6142 of 1986 filed by the respondents, has set aside the order dated April 6, 1984 passed by the Collector of Customs (Preventive), Bombay [hereinafter referred

to as 'the Collector'] as well as the order of the Customs, Excise and Gold (Control) Appellate Tribunal [hereinafter referred to as 'the Tribunal'] dated November 26, 1985. By the said order of the Collector dated April 6, 1984, which was affirmed in appeal by the Tribunal, goods valued at Rs. 59,53,560/- c.i.f. (Rs. 1,78,60,680/- at the Indian market rate) were confiscated under clauses (d) and (f) of Section 111 of the Customs Act, 1962 [hereinafter referred to as 'the Act']. The gunny bags, white cloth wrappings, wooden cases and the cartons which were used for keeping the seized goods were also confiscated under Section 118(1) of the Act.

The vessel, MANSCO-3, containing the said goods was confiscated under Section 115(2) of the Act but the owner of the vessel was given an option to redeem it on payment of fine of Rs. 7,50,000/- within one month of the date of receipt of the said order and personal penalties were also imposed under Section 112 of the Act on respondent No. 2, the Managing Director of respondent No. 1 company (the owner of the vessel) as well as on the Master of the vessel and other persons.

In September 1982 408 packets were consigned from Dubai to Afghanistan via Karachi and were shipped to Karachi on the vessel 'AMETHYST'. When the said vessel arrived at Karachi port the Government of Pakistan refused clearance of the consignment and the goods remained in transit shed at Karachi port. On April 25, 1983 the Central Board of Revenue of Pakistan allowed reshipment of the goods back to Dubai. Thereafter the vessel, MANSCO-3, was sent from Dubai to Karachi for unloading certain cargo at Karachi and to return to Dubai with the said consignment of 408 packets which had been detained at the Karachi port. At Karachi port 408 packets were loaded on the vessel for the purpose of reshipment to Dubai. 971 packages of goods of Pakistan origin were also loaded on the said ship. MANSCO-3 left Karachi on August 16, 1983 but instead of proceeding to Dubai the vessel proceeded to Bombay. MANSCO-3 reached the outer anchorage of Bombay harbour on August 20, 1983. From the outer anchorage the said vessel entered the inner anchorage on August 21, 1983 but was sent back to outer anchorage on the same day. On August 22, 1983 M/s Regent Shipping and Trading Company, the local agents of the shipping company which owned the vessel, MANCO-3, contacted the Captain of the ship as well as the Bombay Port Trust Pilot Station and the Bombay Port Trust Control. They were asked to deposit the piloting charges by the Bombay Port Trust authorities. On August 23, 1983 piloting charges of Rs. 12,000/- were paid to the Bombay Port Trust by the local agents and the ship was brought into the inner anchorage of Port Mazgaon on August 23, 1983 at about 12.20 p.m. On the morning of August 24, 1983 the officers of the Customs (Preventive) Wing boarded MANSCO-3 and asked the Captain of the vessel to produce the crew list, crew property list, store list and the Import General Manifest. The Captain of the vessel could not produce any of the above referred documents. On questioning the Captain the Customs Officers came to know that the Chief Officer and the Chief Engineer of the vessel had left the vessel in a fishing craft without completing the customs, health and immigration formalities and had gone ashore when the vessel was at the outer anchorage.

Thereafter the officers inspected the holds of the vessel and found a large number of white cloth wrapped packages bearing the markings 'Star Dubai', 'Prince Dubai', etc. They further found a large number of gunny covered packages bearing the marking 'In Transit to Afghanistan via Karachi and Chamman' below the white cloth covered packages. Having regard to the markings it appeared to

the officers that the goods were meant for shipment to Afghanistan and the Captain had port clearance for Dubai from Karachi and not for Bombay. The customs officers also came to know that the vessel had on its own attempted to come to the inner anchorage of Bombay harbour even before Bombay Port Trust charges were paid and without being escorted by the Port Trust Pilot and that there was a direction by the harbour pilot to go back to the outer anchorage. The 408 gunny packages bearing the markings 'In Transit to Afghanistan via Karachi and Chamman' were found to contain VCRs, Video Cassettes, Car Cassettes Players, textiles, TV sets. All these packages originated from Dubai and were valued at Rs. 56,21,320/- c.i.f. and Rs. 1,68,63,960/- (market value). The other packets found in the vessel contained ready-made garments, PVC pipes, footwears, aluminium utensils packed in 971 packing and were valued at Rs. 3,32,240/- c.i.f. and Rs 9,96,720/- (market value) and the said goods originated from Pakistan. The Customs Officers recorded the statements of the Captain of the vessel as well as the representative of the local agents at Bombay. Since the captain and the local agents did not take any steps to file the Import general Manifest and other documents for the purpose of voyage to Bombay, the Customs Officers seized all the 1379 packets found on board of the vessel. After completing the investigation Show Cause Notices dated December 31, 1983 were issued by the Assistant Collector of Customs, R & I, Bombay. A reply dated February 19, 1984 to the said Show Cause Notice was submitted on behalf of M/s Mustafa & Najibai Trading Co., Dubai, respondent No. 1, the owners of MANSCO-3 and respondent No. 2 the Managing Director of respondent No. 1. The Captain and others sent their replies to the Show Cause Notice on February 20, 1984. After holding an inquiry the Collector passed the order dated April 6, 1984 for the confiscation of the goods that had been seized, valued at Rs. 59,53,560/- c.i.f. and Rs. 1,78,60,680/- at the Indian market rate under clauses (d) and (f) of Section 111 of the Act as well as for confiscation of the gunny bags, white cloth wrappings, wooden cases and the cartons which were used for keeping the seized goods under Section 118(1) of the Act. MANSCO-3 was ordered to be confiscated under Section 115(2) of the Act but the owner of the vessel was given an option to redeem it on payment of fine of Rs. 7,50,000/- within one month of the date of receipt of the said order. A personal penalty of Rs. 3,00,000/- was imposed on Mustafa Najibi, respondent No. 2, the Managing Director of respondent No. 1, and a penalty of Rs. 2,00,000/- was imposed on Abdul Rahim Kharti, the master of the vessel. Personal penalties were also imposed on certain other persons, viz, Mohammed Yousef Abdulla, M/s Aero Maritime Ltd., Karachi, Ramesh Amritlal Shah, Abedin Ghadialy, Ramanlal P. Pandya and Dawood Sharafuddin Kaldane. Feeling aggrieved by the said order of the Collector, an appeal C.D. (Bom.) A No. 548 of 1984 was filed by Abdul Rahim Khatri, master of the vessel MANSCO-3 and C.D. (Bom.) A No. 549 of 1984 was filed by M/s Mustafa & Najibi Trading Co., respondent No. 1 and Nuruddin Nustafa, respondent No. 2, Managing Director of respondent No. 1. Both these appeals were dismissed by the Tribunal by order dated November 26, 1985. Feeling aggrieved by the said order of the Tribunal, Writ Petition No. 6142 of 1986 was filed in the Bombay High Court by M/s Mustafa & Najibi Trading Co., respondent No. 1, the owners of the vessel MANSCO-3, Nuruddin Mustafa, respondent No. 2, the Managing Director of respondent No. 1 company, and Mahmood Mohmed Abraham Benzad, respondent No. 3 herein, who claims to be the owner of some of the packages which had been shipped from Dubai to Karachi and which were seized from MANSCO-3 by the customs authorities at Bombay port and were ordered to be confiscated. The said Writ Petition has been allowed by the High Court by the impugned judgment. Hence this appeal.

We have heard Shri M.S. Usgaonkar for the Union of India and Ms. A.J. Rana, the learned counsel for the respondents.

As mentioned earlier, the orders passed by the Collector and the Tribunal, which have been quashed by the High Court, involve:-

(i) confiscation of the goods which were found in MANSCO-3 during the course of inspection of the vessel by the customs authorities on August 24, 1983 and had been seized;

(ii) confiscation of the vessel, MANSCO-3; and

(iii) Imposition of personal penalties on respondent No. 2, the Managing Director of respondent No. 1 company and on the Master of the vessel.

We will first take up the matter of confiscation of the goods. As indicated earlier, the goods were ordered to be confiscated in exercise of power conferred under clauses (d) and (f) of Section 111 of the Act which are reproduced as follows :-

"111. Confiscation of improperly imported goods, etc.-The following goods brought from a place outside India shall be liable to confiscation:-

(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;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in any import manifest or import report which are not so mentioned;"

The expressions "Import", "Import manifest", "India" and "Indian Customs Waters" are defined in Section 2 of the Act in the following terms:-

"2(23). 'Import', with its grammatical variations and cognate expressions, means bringing into India from a place outside India."

"2(24). 'Import manifest' or 'import report' means the manifest or report required to be delivered under Section 30."

"2(27). 'India' includes the territorial waters of India."

"2(28). 'Indian Customs Water' means the waters extending into the sea upto the limit of contiguous zone of India under section 5 of the Territorial Waters Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river."

In Section 30 of the Act the following provision is made with regard to delivery of import manifest in the case of a vessel or aircraft:-

"30. Delivery of import manifest or import report.-(1) the person-in- charge of a conveyance carrying imported goods shall, within twenty-four hours after arrival thereof at a customs station, deliver to the proper officer, in the case of a vessel or a aircraft, an import manifest, and in the case of a vehicle, an import report, in the prescribed form:

Provided that,-

(a) In the case of a vessel bay such manifest may be delivered to the proper officer before the arrival of the vessel;

(b) if the proper officer is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof within twenty-four hours after the arrival of the conveyance, he may accept it at any time thereafter.

(2) The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth or its contents.

(3) If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it is to be amended or supplemented."

Regulation 3 in the Import Manifest (Vessels) Regulations, 1971 [hereinafter referred to as 'the Import Manifest Regulations'] framed under Section 157 of the Act, as in force at the relevant time, required that the import manifest must be delivered in duplicated and should cover all the goods carried in a vessel and shall consist of :-

(i) a general declaration in form I,

(ii) a Cargo declaration in form II,

(iii) a Vessel's Stores List in form III,

(iv) a list of the private property in the possession of the Master, Officers and crew in form IV.

In Regulation 5(1) of the Import Manifest Regulations it was provided that the cargo declaration shall be delivered in separate sheets in respect of each of the following categories of cargo, namely, (a) cargo to be landed, (b) Unaccompanied baggage, (c) goods to be transshipped, and (d) same bottom or retention cargo.

The Collector held that the seized goods had been imported into India without an import licence and hence in contravention of the prohibition imposed under Section 3 of the Imports and Exports (Control) Act, 1947 and clause 3 of the Imports (Control) Order, 1955 and were, therefore, liable to confiscation under Section 111(d) of the Act and that the goods were also liable to be confiscated under Section 111(f) of the Act because there was failure on the part of the Master of the vessel MANSCO -3 and the agents of the owners of the vessel at Bombay to file the Import General Manifest as required under Section 30 read with the Import Manifest Regulations within 24 hours of the arrival of the vessel in the port Bombay. The submission of the respondents that the goods were not meant for being unloaded in India and being 'same bottom cargo' they were covered by clause 11(e) of the Import (Control) Order and no import licence was required for bringing them in this country, was rejected by the Collector on the ground that under the Import Manifest Regulations same bottom cargo or retention cargo carried on a vessel has to be listed on a separate sheet in the Import Manifest which has to be delivered in the manner laid down in Section 30 of the Act within 24 hours of the arrival of the vessel in any customs port in India and that no import manifest indicating the goods as same bottom cargo was delivered under Section 30 of the Act. In the absence of an import manifest listing the goods as same bottom cargo, the said goods, which had crossed the territorial waters of India, had to be treated as having been imported into India in view of the definition of 'Import' contained in Section 2(23) of the Act and, therefore, they were liable to be confiscated under Section 111(d) of the Act since there was no import licence authorising their import.

On behalf of the respondents reliance was placed on clause (b) of the proviso to Section 30(1) of the Act and it was submitted that it provided for a situation where the Import General Manifest is not delivered within 24 hours of the arrival of the vessel at the port and enables its acceptance by the proper officer at any time thereafter. The submission was the words "may accept" in the said proviso should be read as "shall accept". Reliance was also placed by the respondents on sub-section (3) of Section 30 of the Act which provides that the Import Manifest may be permitted to be amended or supplemented by the proper officer if he is satisfied that the Import Manifest is in any way incorrect or incomplete and that there was no fraudulent intention. The Collector, however, rejected the said contention on the view that there is nothing on record to show that the Master of the vessel MANSCO-3 or its agents in Bombay at any time filed the manifest or they had at any time made a request for being permitted to file the manifest and that in the absence of the manifest the question of request being entertained for amending or supplementing the manifest under Section 30(3) of the act does not arise.

While dealing with the contention based on the provisions of Section 30(3) of the Act, the Collector considered the question whether the voyage of the vessel MANSCO-3 to Bombay was bonafide and found that the said voyage was not bonafide having regard to inconsistencies in the statements of the Master of the vessel and the other crew members and the agents of the owner regarding the purpose of the visit of the vessel to Bombay. It was pointed out that Aabdul Khatri in his statement had said that he received a telex from the owners of the vessel from Dubai asking him to proceed to Bombay to take 125 tons cargo for Dubai and further that the radar and V.H.F. sets of the vessel MANSCO-3 were not working and they were to be repaired at Bombay port.

As regards the explanation based on the telex message that the vessel was directed to proceed to Bombay to load cargo for Dubai, the Collector has pointed out that Ramesh Shah, Director of M/s Regent Shipping and Trade Pvt. Ltd., the local agents of the owners of the vessel at Bombay, in his statement dated August 24, 1983, had stated that a telex was received in his office on August 16, 1983 from Dubai saying that the vessel MANSCO-3 was sailing from Karachi and was expected to reach Bombay on August 18, 1983 and that the vessel was proceeding to Bombay as the radar and V.H.F. sets of the vessel were out of order and they were to be repaired at Bombay. He had further stated that he did not have any intimation regarding the cargo to be lifted by the vessel MANSCO-3 at Bombay and no cargo had been kept ready by him for loading. Abedin Abdul Hussain Ghadiali, another Director of M/s Regent Shipping and Trade Pvt. Ltd., in his statement dated August 24, 1983, mentioned about repair of radar and V.H.F. which showed that both Ramesh Shah and Abedin Abdul Hussain Ghadiali, the Directors of the local agents at Bombay, did not have knowledge that the vessel had arrived at Bombay for lifting cargo for Dubai. Mohammed Yousuf Abdulla, who claimed to be the promoter of M/s Regent Shipping and Trade Pvt. Ltd., in his statements dated August 25, 1983 and September 7, 1982, had made conflicting and inconsistent statements. Relying upon the statement of Ramesh Shah, the Collector held that no cargo was available at Bombay for being shipped on board the vessel MANSCO-3 and the agents at Bombay would not have been in a position to arrange for 100 to 150 tons of cargo which the Master of the vessel had been instructed to lift from Bombay.

The explanation that the vessel MANSCO-3 was brought to Bombay for repairing or radar and V.H.F. sets was also not accepted by the Collector in view of the statement of the Captain of the vessel dated August 25, 1983 wherein he had confirmed that the Radar was out of order even when the vessel left Dubai and repairs to the Radar were carried out at Karachi before the vessel left that port and that the V.H.F. set was also in working order when the vessel left Karachi port and according to Mirza Beg, Cadet on board the vessel, this equipment went out of order only when the vessel was about 100 to 150 nautical miles from Bombay. The Collector held that the voyage of the vessel MANSCO-3 from Karachi to Bombay was neither to have the radar and V.H.F. equipments repaired, nor was it for lifting 100 to 150 tons of cargo from Bombay as stated by the Captain and that the real purpose of the visit of the vessel MANSCO-3 to Bombay was known only to the owners of the vessel at Dubai, the agents at Karachi and Mohamed Yousuf Abdulla who were in constant touch with each other over telephone and through telex and that it could not be said that the voyage was bonafide and there was no fraudulent intention. In this context, the Collector pointed out that in order to make the voyage look bonafide a large number of cartons containing very cheap quality of goods of Pakistani origin which could not have any market in Dubai were also placed on board the vessel and the packages containing electronic goods and textiles which bear markings to show that they were in transit to Afghanistan were kept hidden below the packages containing cheap quality Pakistani goods. The Collector also referred to the fact that the agents at Karachi even after having informed the Captain that he was to sail for Bombay chose to give him a port clearance for the port of Dubai in a sealed cover which casts serious doubt about the bonafides of the voyage since such practice is not indulged in by shipping companies engaged in regular and bonafide shipping operations and this irregularity on the part of agents of the owners of the vessel MANSCO-3 at Karachi lent support to the view that the intention of the owners, the agents in Karachi and the Master and the persons controlling the affairs of the agents firm in Bombay were fraudulent. It was

also observed that the Captain of the vessel MANSCO-3 after arrival at the outer anchorage of the Bombay harbour on August 20, 1983 surreptitiously and without getting in touch with the control tower of the Bombay Port Trust and without completing the Port Trust formalities brought the ship to the inner anchorage which would not have been done in case his intention was bonafide.

It was urged on behalf of the respondents that the Captain brought the vessel inside the inner anchorage on his own because his wife was not feeling well and he was running short of provisions. The said explanation was, however, not accepted by the Collector on the view that the purpose for which the Captain entered the inner anchorage was obviously other than the sickness of his wife or shortage of provisions on board the vessel because in his evidence on February 25, 1984 during the course of cross-examination the Harbour Pilot Captain Mavin Kurve had deposed that when he boarded the vessel MANSCO-3 on seeing it anchored in an unauthorised spot in the inner anchorage he was told by the Captain that there was nothing seriously wrong with his wife and that she was feeling better and as regards the shortage of provisions, the Collector observed that in case the Captain was short of provisions and was not able to convey the message to the total agents because of the breakdown of V.H.F. equipment shortly before the arrival of the vessel in Bombay harbour, the Captain could have requested the harbour pilot Captain Mavin Kurve to convey the message to his agents through the Bombay Port Trust Control Tower and that instead of taking this course, the Captain chose to send two senior officers on board the vessel, viz., the Chief Engineer and the Chief Officer, without completing Customs, Health and Immigration formalities, on a fishing craft in a manner which is highly irregular from the customs angle since instances of lakhs worth or precious metal being smuggled by people by carrying it on their person are not uncommon and that these two crew members after contacting Mohammed Yousuf Abdulla disappeared and remained away from the vessel for quite some time. Having regard to the aforesaid facts and circumstances, the Collector recorded the finding that the intentions of the owners of the vessel MANSCO-3, the Captain and the agents, including Mohammed Yousuf Abdulla, were fraudulent and, therefore, the question of exercising the discretion for extending the period for filling the import manifest as provided under Section 30(1) of the Act or for considering amendment or supplementation of the manifest would not arise even if a request would have been made for such extension of the time limit for filling of the manifest or for its amendment.

The Tribunal, while confirming the order of the Collector regarding confiscation of goods under clauses (d) and (f) of Section 111 of the Act, has considered the evidence that was produced before the Collector. The Tribunal did not accept the explanation offered by the owners and master of the vessel that the vessel MANSCO-3 had come to Bombay from Karachi for lifting another 100 to 125 tons of cargo from Bombay for Dubai and for repair of Radar and V.H.F. equipment. The Tribunal has referred to the statements of Ramesh Shah and Abedin Abdul Hussain Ghadiali, the two Directors, and Mohammed Yousuf Abdulla, the promoter of M/s Regent Shipping and Trade Pvt. Ltd., the local agents of the owners of the vessel at Bombay that they had no information that the ship was coming to Bombay for loading additional cargo and that they had not arranged any cargo to be located and has held that if the vessel's voyage from Karachi to Bombay was for avowed purpose of lifting 100 to 125 tons of cargo there was no reason for the Bombay agents to deny knowledge. The Tribunal has pointed out that they have not merely denied the knowledge but were categorical that they have no such information and no cargo had been arranged. In so far as repair of V.H.F.



equipment was concerned, the Tribunal found that it was working at the time the vessel left Karachi till it was about 150 nautical miles away from Bombay and, therefore, the question of the vessel sailing to Bombay for repair of the V.H.F, could not be true. As regard repair of Radar the Tribunal has taken note of the statement of the Captain of the vessel that the radar was out of order even when the vessel sailed from Dubai and that some repairing of the radar were carried out at Karachi and for want of time the entire repairs could not be carried out, and has observed that if the repairing of the radar was so important as to require the vessel to be sent from Karachi to Bombay no reason was forthcoming as to why the vessel did not wait at Karachi for carrying out full repairs and that the repair theory was invented for the purpose of the case. On the basis of the circumstances set out in sub-paras (i) to (xvii) of para 23 of the judgment the Tribunal has concluded that the voyage of the vessel for Karachi to Bombay was not for the avowed purpose of repair of Radar and loading of additional cargo of 100 to 125 tons and that the vessel's entry in Bombay port was for clandestine disposal of 408 packages containing electronic and textile goods of foreign origin.

As regards the non-filing of Import Manifest at Bombay the Tribunal has pointed out that the explanation offered by the Captain was that he was under the belief that customs formalities would be attended to by the local agents, while Ramesh Shah, one of the Directors of the local agents, had stated that since no cargo was to be unloaded he thought it was not necessary to file the Import General Manifest and has held that the Captain was an experienced Captain who knew his responsibilities and on earlier voyage he did file a 'NIL' manifest at another port and in his statement recorded on September 2, 1983 the Captain had stated that he was aware that the manifest has to be delivered to the customs immediately when the vessel enters the customs area even if the vessel comes in Ballast and that, therefore, there was no good reason for the Captain to be under the impression that the agents would attend to the customs formalities and that the explanation of Ramesh Shah that no Import General Manifest was required to be filed because no cargo was to be unloaded at Bombay was also not based on any reasonable ground. The Tribunal rejected the contention based on clause (b) of the proviso to sub-section (1) of Section 30 of the Act on the view that not only no manifest was filed but there was not even a request for accepting the manifest after the expiry of 24 hours after arrival of the vessel at the Port of Bombay. The Tribunal did not accept the contention that in view of sub-section (3) of Section 30 of the Act it was the responsibility of the customs officer to inform the Captain or the agents to file the manifest and that non-delivery of the manifest could not have been made a ground for confiscation of the cargo. The Tribunal held that Section 30(3) is an enabling provision which only confers a power on the proper officer to permit the manifest being amended or supplemented if the manifest is any way incorrect or incomplete and that it was not the case of the respondents herein that they had filed a manifest which was incorrect or incomplete. The Tribunal, therefore, held that since neither the Master of the vessel nor the agents of the owners of the vessel MANSCO-3 at Bombay filed the Import General Manifest, there was a clear violation of Section 30 of the Act and since violation of the provisions of Section 30(1) of the Act was intentional, the Collector committed no error in ordering the seizure of the goods under section 111(f) of the Act.

With regard to the confiscation of goods under Section 111(d) of the Act, the submission of the respondents before the Tribunal was that import of good takes place only when the goods imported

in the vessel are unloaded and get mixed up with the mass and reliance was placed on decisions of High Courts wherein the expression "import" had been construed. The Tribunal rejected the said contention and has observed that the American doctrine of "original package" which holds that importation is not over so long as the goods are still in the original package has no application in this country in view of the decision of this Court in *State of Bombay v. F.N. Balsara*, 1951 SCR 682. Relying upon the decision of this Court in *Radhakrishnan v. Union of India*, 1965(2) SCR 213, the Tribunal held that importation of goods is complete when the goods have crossed the customs frontier. The decisions of the High Courts on which reliance was placed by the respondents were held to be inapplicable on the ground that they were given in the context of the particular provision under consideration and not in the context of Section 111(d) of the Act. The Tribunal also observed that admittedly the goods were prohibited goods which required import licence to import into India and admittedly no such import licence was obtained and that there had been violation of the Import and Export (Control) Act, Import (Control) Order and the provisions of the Act.

The High Court, while exercising its jurisdiction under Articles 226 and 227 of the Constitution, has reversed the concurrent findings of fact recorded by the Collector and the Tribunal regarding the avowed purpose of the voyage of the vessel MANSCO-3 from Karachi to Bombay, viz., picking up additional cargo and repair of Radar. Disagreeing with the findings recorded by the Collector as well as the Tribunal, the High Court has accepted the explanation offered by the owners and the master of the vessel MANSCO-3 for its coming to Bombay from Karachi. The High Court has held that there was nothing to show that there was any fraudulent intention on the part of the owners of the vessel, the Captain and the agents at Karachi in the vessel MANSCO-3 coming to Bombay from Karachi.

Shri Usgaonkar has assailed the said view of the High Court and has urged that in interfering with the findings of fact recorded by the Collector as well as the Tribunal, the High Court has exceeded the jurisdiction vested in it under Articles 226 and 227 of the Constitution inasmuch as the findings recorded by the Collector and the Tribunal do not suffer from any infirmity which could justify interference by the High Court. The said contention, in our opinion, must be accepted.

While exercising its jurisdiction under Articles 226 and 227 of the Constitution it is not open to the High Court to re-appreciate the evidence produced before the subordinate tribunal and on the basis of such re- appreciation of the evidence to arrive at a finding different from that recorded by such tribunal. The finding of fact recorded by the subordinate tribunal can be interfered with by the High Court only if it is found to be based on no evidence or if such a finding can be regarded as perverse. The high Court cannot convert itself into a court of appeal. Reference, in this context, may be made to the decision of this Court in *Collector of Customs, Madras & Ors. v. D. Bhoormall*, 1974 (2) SCC 544, wherein it has been said:-

"Even if the Division Bench of the High Court felt that this circumstantial evidence was not adequate enough to establish the smuggled character of the goods, beyond doubt, then also, in our opinion that was not a good ground to justify interference with the Collector's order in the exercise of the writ jurisdiction under Article 226 of the Constitution.

The function of weighing the evidence or considering its sufficiency was the business of the Collector or the appellate authority which was the final tribunal of fact. "For weighing evidence and drawing inference from it", said Birch, J. in *R. V. Madhub Chunder* "there can be canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited". It follows from this observation that so long as the Collector's appreciation of the circumstantial evidence before him was not illegal, perverse or devoid of common sense, or contrary to rules of natural justice, there would be no warrant for disturbing his finding under Article 226." [p. 555] Similarly, in *Indru Ramchand Bharvani & Ors. v. Union of India & Ors.*, 1988 (4) SCC 1, this Court has said:-

"It must be reiterated that the conclusions arrived at by the fact-finding bodies, the Tribunal or the statutory authorities, on the facts, found that cumulative effect or preponderance of evidence cannot be interfered with where the fact-finding body or authority has acted reasonably upon the view which can be taken by any reasonable man, courts will be reluctant to interfere in such a situation.

Where, however, the conclusions of the fact-finding authority are based on no evidence then the question of law arises and that may be looked into by the courts but in the instant case the facts are entirely different.[pp. 9,10] In the present case, the Collector as well as the Tribunal, after carefully considering the evidence produced during course of the proceedings, arrived at the conclusion that the explanation offered by the owners and master of the vessel MANSCO-3 for voyage of vessel from Karachi to Bombay, namely, to pick up additional cargo at Bombay and to get the Radar and V.H.F. equipment repaired at Bombay was unacceptable. Reversing the said view the High Court has accepted the said explanation. The explanation that the vessel MANSCO-3 came to Bombay to pick additional cargo was rejected by the Collector as well as the Tribunal in view of the statements of Ramesh Shah and Abedin Abdul Hussain Ghadiali, the two Directors of M/s Regent Shipping and Trade Pvt. Ltd., the agents of the owners of the vessel at Bombay that they had no knowledge that the vessel had arrived at Bombay for lifting cargo and that no cargo was available at Bombay which could be picked up by the vessel and that in the telex which was received by the local agents at Bombay from the owners of the vessel at Dubai there was no mention about picking of additional cargo by the vessel at Bombay. No reliance was placed on the testimony of Mohammed Yousef, the promoter of M/s Regent Shipping and Trade Pvt. Ltd., for the reason that he had made conflicting and inconsistent statements as regards the purpose of the visit of the vessel MANSCO-3 to Bombay. The High Court has proceeded on the basis that no importance could be attached to the statements of Ramesh Shah and Abedin Abdul Hussain Ghadiali since they are not "well versed in the field and have not much experience to their credit". The High Court, while observing that "the tendency exhibited by Mohamed Yousef to prevaricate in that behalf is so eloquent that it gives rise to a strong inference to be drawn against him", has chosen to rely on his statement that in his conversation with Mustafa (respondent No.2) on telephone he

had "promised that he would arrange the cargo for the ship to compensate the expenses of previous dealing". The said statement was subsequently contradicted as wrong by Mohammed Yousuf in his statement. The High Court has discarded the subsequent disclaimer and has said:

"However, the fact remains that he had been in contact with the Dubai persons and was anxious to supply additional cargo and at the relevant time had full knowledge that the vessel was reaching Bombay to lift additional cargo and therefore it follows with necessary implications that he had promised that he would supply the cargo when the ship comes to promise that the ship officials at Dubai thought it proper to direct the ship to go to Bombay from Karachi to pick up the additional cargo for being brought to Dubai."

There is nothing to corroborate the statement of Mohammed Yousef on which reliance had been placed by the High Court. On the other hand, the said statement about Mohammed Yousef having promised to arrange for the cargo at Bombay does not find support from the telex received at the office of the agents at Bombay on August 16, 1983 from Dubai and it is belied by the fact that no cargo was available at the Bombay port for loading on the vessel when it arrived at Bombay.

Similarly, as regards repair of Radar and V.H.F. Equipment the Collector and the Tribunal have found that the Radar was not functioning when the vessel left Dubai and that it had been repaired at Karachi and that the V.H.F. equipment was working till the vessel reached about 100 to 150 nautical miles from Bombay port which shows that repair of Radar and V.H.F. equipment could not be the reason for the vessel MANSCO-3 proceeding to Bombay from Karachi. The High Court, while accepting the explanation that one of the reasons for the vessel to proceed to Bombay was to have the Radar and V.H.F. equipment repaired at Bombay, has laid stress on the fact that at the time when the vessel reached Bombay V.H.F. equipment was not working and that two mechanics were taken to the vessel for repairing of Radar and V.H.F. equipment. The fact that the Radar and V.H.F. equipment had to be repaired at Bombay does not, however, mean that they were not functioning when the vessel left Karachi and it cannot be said that the vessel had to proceed to Bombay for repair of Radar and V.H.F. equipment.

A Perusal of the impugned judgment of the High Court shows that while dealing with the Writ Petition, the High Court embarked upon re-appreciation of the evidence and has dealt with the matter as if it was hearing an appeal on facts. Such a course, as indicated earlier, was not permissible. The Collector and the Tribunal, after carefully considering the evidence produced during the course of the proceedings, had concurrently arrived at the finding that the vessel MANSCO-3 had not come to Bombay from Karachi for a bonafide purpose and that the explanation offered for the vessel proceeding to Bombay from Karachi could not be accepted. The said finding cannot be regarded as unreasonable or perverse. We are, therefore, unable to uphold the decision of the High Court in reversing the said finding of fact recorded by the Collector and the Tribunal.

Moreover, bonafides of the owners or the master of the vessel has a bearing only on the applicability of sub- section (3) of Section 30 which enables the proper officer to permit the import manifest or

import report to be amended or supplemented if he is satisfied that the said import manifest or import report is in any way incorrect or incomplete and there is no fraudulent intention. In the present case, the question of applicability of sub-section (3) of Section 30 does not arise because no import manifest was delivered by the Master of the vessel at any time. The intention of the owners or master of the vessel has no bearing on the exercise of the power of confiscation of goods under Section 111 of the Act because, as laid down by this Court, confiscation of goods is an action in rem directed against the goods in respect of which the contravention rendering them liable to be confiscated has taken place. [See :*Shewpujanrai Indrasanrai Ltd. v. The Collector of Customs & Ors.*, 1959 SCR 821 at p. 838; and *Collector of Customs, Madras & Ors. v. D. Bhoormall* (supra) ]. In the matter of confiscation of goods under Section 111(d) of the Act intention has, therefore, no bearing. What is required to be seen is whether the goods had been imported or attempted to be imported or brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under the Act or any other law for the time being in force. If it is found that any goods have been imported or attempted to be imported or brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under the Act or any other law for the time being in force the said goods would be liable to confiscation under Section 111(d) and the question whether the person importing or bringing the said goods intended to commit violation of the provisions of the Act or any other law for the time being in force would be of no consequence. Similarly, clause (f) of Section 111 provided for confiscation of any dutiable or prohibited goods which are required to be mentioned under the regulations in any import manifest, or import report and which are not so mentioned therein. In the matter of confiscation of goods under Section 111(f) what is required to be seen is whether the goods are dutiable or prohibited goods and are required to be mentioned in the import manifest or import report under the regulations made under the Act and whether they are mentioned in the import manifest/import report. If it is found that the goods are dutiable or prohibited goods and are required to be mentioned under the regulations made under the Act in the import manifest/import report but have not been so mentioned, the goods would be liable to be confiscated and the intention of the default would have no bearing on the exercise of power to confiscate the goods. Since mens rea is not essential for invoking the power of confiscation of the goods under Section 111 of the Act, the intention of the master of the vessel or the owners of vessel and the circumstances under which the vessel containing the goods came to Bombay has no bearing on the exercise of the power of confiscation of goods under Sections 111(d) and 111(f) and all that has to be seen is whether the conditions prescribed under the said provisions were fulfilled so as to justify the confiscation of the goods.

As regards the non-filing of the Import General Manifest either by the Captain of the vessel or the agents of the owners of the vessel at Bombay, the High Court has held that the Manifest is required to be filed "within twenty four hours after the arrival of the vessel at a customs station" and that time for filing the said Manifest would have started running only after the Bombay Port Trust charges had been paid and the said cargo charges were paid on August 23, 1983. According to the High Court, the customs officials boarded the vessel on the morning of August 24, 1983 at about 9/10 a.m. and seized the goods immediately thereafter mainly on the ground that no Import General Manifest had been filed by that time. According to the High Court, the period of twenty four hours had not expired and there was still time to file the Import General Manifest. We find it difficult to

agree with the said view of the High Court. Under Section 30(1) an import manifest has to be delivered within twenty four hours after the arrival of the conveyance at a customs station. The expression 'customs station' is defined in Section 2(13) to mean "any customs port, customs airport or land customs station." The expression "customs port" is defined in Section 2(12) to mean "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". In the present case, the vessel MANSCO-3 had arrived at the outer anchorage of the Bombay Port on August 20, 1983. The outer anchorage is a part of the Bombay Port. This would show that the vessel MANSCO-3 had arrived at the customs port of Bombay on August 20, 1983. In view of Section 30(1) of the Act the Import General Manifest should have been delivered within twenty four hours of the arrival of the vessel at the outer anchorage on August 20, 1983. The High Court was in error in holding that the vessel would be treated to have arrived at the customs port of Bombay on August 23, 1983 after the Bombay Port Trust charges had been paid and the signal had been given for the vessel to be brought into the inner anchorage or on after August 23, 1983. Proviso (b) to sub-section (1) of Section 30, which empowers the proper officer to accept the import manifest or import report at any time after the expiry of the period of twenty four hours if he is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof within twenty four hours after the arrival of the conveyance, has no application in the present case because the Collector as well as the Tribunal have found that no request for filling the Import General Manifest after the expiry of the period of twenty four hours was made at any time either by the Captain of the vessel or by the local agents at Bombay.

The Tribunal has held that the Goods that were seized from the vessel were prohibited goods and the said finding has not been upset by the High Court. In the circumstances, it must be held that there was contravention of the requirement regarding mentioning of the goods in the Import General Manifest by the captain of the vessel and the local agents of the owner of the vessel at Bombay and the goods seized were liable to be confiscated under Section 111(f) of the Act.

The High Court has held that the goods were obviously in transit to Dubai which was the port of clearance and the visit to Bombay port was not illegitimate or illegal. In holding that there was no contravention of the provisions of clauses (d) and (f) of Section 111 the High Court has proceeded on the basis that since the vessel had come to Bombay for legitimate purpose and there was no lack of bonafides on the part of the master and the owners of the vessel in the ship having come to Bombay, it cannot be said that there was violation of the provisions of Section 111(d) and (f) of the Act. As indicated earlier, the finding of the High Court that there was no lack of bonafides on the part of the master of the vessel and the owners of the ship in the ship having come to Bombay, has been arrived at by the High Court after reversing the finding of fact recorded by the Collector and the Tribunal and it cannot be sustained. We have also indicated that mens rea is not essential for invoking the power of confiscation under Section 111 of the Act and, therefore, the intention of the owners of the vessel or the master of the vessel has no bearing on the exercise of the power to confiscate the goods under clauses

(d) and (f) of Section 111 of the Act.

The High Court has also held that direction regarding of the goods could not be sustained for the reason that no notice as required under Section 124 of the Act was given by the Collector to the owners of the goods ordered to be confiscated before passing the order of confiscation of goods and the notice that was given to the local agents of the owners of the vessel cannot be a substitute for a notice which is required to be given to the owners of the cargo since the local agents have no concern whatsoever with the owners of the cargo. Section 124 of the Act reads as follows:-

"124. Issue of showcause notice before confiscation of goods, etc.- No order confiscation any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the ground or confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may at the request of the person concerned be oral."

Shri Usgaonkar has urged that confiscation of goods under Section 111 of the Act is in the nature of a penalty in rem which attached to the goods and is distinct from personal penalty that can be imposed under Section 112 of the Act which is a penalty in personam. The submission is that while a notice under Section 124 is required to be issued to the person on whom penalty under Section 112 is to be imposed, the notice to the owner of the goods is not required to be given in every case and there may be cases in which the notice has to be given to the person from whose possession the goods were seized instead of the owner of the goods. Shri Usgaonkar has, in this context, pointed out that under Section 123 of the Act in a case where any goods to which the said section applies are seized under the Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be, in a case where such seizure is made from the possession of any person, on the person, on the person from whose possession the goods were seized.

In the context of the Sea Customs Act, 1878 this Court has pointed out the distinction between penalty in rem and penalty in personam. In the case of Shewpujanrai Indrasanrai Ltd. (supra) this Court was dealing with Section 167(8) of the Sea Customs Act, 1878 wherein it was prescribed that it would be an offence "if any goods the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction" and that "such goods would be liable to

confiscation and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees". This Court, after pointing out that 'a distinction must at once be drawn between an action in rem and a proceeding in personam', has observed that under Section 167(8) of the Sea Customs Act:-

"The penalty provided is that the goods shall be liable to confiscation. There is a further provision in the penalty column that any person concerned in any such offence shall be liable to a penalty not exceeding three time the value of the goods etc. The point to note is that so far as the confiscation of the goods is concerned, it is a proceeding in rem and the penalty is enforced against the goods whether the offender is known or not known; the order of confiscation under s. 182, Sea Customs Act, operates directly upon the status of the property, and under s. 182 transfers an absolute title to Government." [pp. 836,837] By way of illustration the Court has referred to a case 'where the offender (the smuggler, for example) is not known, but the goods in respect of which the contravention has taken place are known and have been seized."

Similarly, in the case of D. Bhoomall (supra) this Court, while considering the provisions of Section 167(8) of the Sea Customs Act, 1878, has pointed out that proceedings for confiscation of contraband goods are proceedings in rem and the penalty of confiscation is enforced against the goods irrespective of whether offender is known or unknown and it is not necessary for the customs authorities to prove that any particular person is concerned with their illicit importation or exportation and it is enough if the department furnishes prima facie proof of the goods being smuggled stocks. It was observed that the second kind of penalty which is enforced against the person concerned in the smuggling of the goods is one in personam and in the case of the said penalty the Department have to prove further that the person proceeded against was concerned in the smuggling. It was held that "goods found to be smuggled goods can, therefore, be confiscated without proceeding against any person and without ascertaining who is their real owner or who was actually concerned in their illicit import." [pp. 550, 551 and 554] This distinction between the nature of the two penalties, viz., penalty in rem and penalty in personam, has been maintained in the Act. The provision regarding confiscation of goods contained in Sections 111 and 113 of the Act is a penalty in rem which is enforced against the goods, while the personal penalties imposed under Section 112 and other provisions of the Act are in the nature of penalty in personam which are enforced against the person concerned.

Section 124 of the Act, which incorporates the rule of audi altrem partem, one of the two basic tenets of the principles of natural justice, does not have the effect of making any alteration in the nature of these penalties. There may be situations where the goods are found to be smuggled goods and are seized but the identity of the owner of the goods is not known. Can it be said that since notice cannot be issued to the owner of the goods under Section 124 of the Act, the goods which are found to be smuggled goods cannot be confiscated under Section 111 of the Act? In our view, this question must be answered in the negative because confiscation of goods under Section 111 of the Act is a penalty in rem which attached to the goods which are the subject matter of the proceedings for confiscation



and if it is found that the goods are liable to be confiscated under Section 111 of the Act, they can be confiscated without ascertaining their real owner. Moreover, in so far as the rule of *audi altrem partem* is concerned, the position is well settled that an order passed in disregard of the said principle would not be invalidated if it can be shown that as a result of denial of the opportunity contemplated by the said rule the person seeking to challenge the order has not suffered any prejudice. Since Section 124 of the Act incorporates the said principle of natural justice, failure to give the notice to the owner of goods would not, by itself, invalidate an order of confiscation. What has to be seen is whether the owner of the goods has suffered prejudice on account of the failure on the part of the officer passing the order for confiscation of goods to give a notice to the owner of the goods before passing the order for confiscation of goods. the owner of goods ordered to be confiscated cannot be said to have suffered any prejudice in a case where notice has been given to the person responsible for the alleged contravention on which the order for confiscation of goods is founded and who alone is in a position to offer an explanation for such contravention. The requirement regarding issuing of notice to the owner of the goods under Section 124 cannot, therefore, be constructed as a mandatory requirement so as to have the effect of invalidating an order. An order of confiscation would not be rendered invalid if there is substantial compliance with the requirements of Section 124 in the sense that before passing an order of confiscation a notice has been given either to the owner of the goods or a person who is responsible for the contravention on which the order for confiscation of goods is founded and who alone is in a position to offer an explanation for such contravention.

In the present case, Show Cause Notice dated December 31, 1983 were issued by the Assistant Collector of Customs, R & I, Bombay, to M/s Mustafa & Najibai Trading Co., Dubai, respondent No. 1, the owners of the vessel, MANSCO-3, Nuruddin Mustafa, respondent No. 2, the Managing Director of respondent No. 1, Abdul Rahim Khatri, the Captain of the vessel, MANSCO-3, the Promoter and the two Directors of M/s Regent Shipping and Trade Pvt. Ltd., the local agents of the owners of the vessel at Bombay, M/s Aero Meritimes Ltd., the agents of the owners of the vessel at Karachi and certain other persons. Replies to the said Show Cause Notices were filed on behalf of the owners of the vessel as well as by the Master of the vessel and the local agent of the owners at Bombay. The owners of the cargo did not appear before the Collector. None of the owners of the cargo challenged the order for confiscation of goods passed by the Collector before the Tribunal and the order of the Collector regarding confiscation of goods became final as against the owners of the goods. In the Writ Petition filed before the High Court respondent No. 3, claiming to be the owner of a part of the cargo which was seized and confiscated., for the first time sought to challenge the orders passed by the Collector as well as the Tribunal regarding the confiscation of the goods. In Para 8 of the Writ Petition it has been averred that before the Collector it was pointed out that the cargo belonged to various parties and mainly to respondent No. 3 and the names of the owners and other persons were furnished to the Collector and other customs officers and that they should be given an opportunity of hearing if any judicial order is passed in respect of the cargo belonging to respondent No. 3 and other persons. The replies that were filed on behalf of respondent No. 1 before the Collector in response to the Show Cause Notice do, not, however, support the said averment. Nor is there anything in the order passed by the Collector to show that any such contention was advanced before him. the judgment of the Tribunal also does not indicate that any such plea was raised. the said contention appears to have been raised for the first time before the High Court.

Moreover, under the Show Cause Notices the seized goods were proposed to be confiscated under Sections 111(d) and 111(f) of the Act. The owners of the vessel, MANSCO-3, the Master of the said vessel and the local agents of the owners of the vessel at Bombay were the best persons who could offer an explanation and show that there was no contravention which could justify the confiscation of goods under Sections 111(d) and 111(f) of the Act. Since the owners of the goods were not present on the scene and had no personal knowledge, they could not offer an explanation other than that offered by the owners of the vessel, the Master of the vessel and the local agent of the owners of the vessel at Bombay. In the circumstances, it cannot be said that the failure to issue a notice under Section 124 to the owners of the goods has resulted in any prejudice to the owners of the goods that have been ordered to be confiscated of goods passed under Sections 111(d) and 111(f) of the Act. We are, therefore, unable to uphold the impugned judgment of the Higher Court setting aside the order for confiscation of the goods passed under Sections 111(d) and 111(f) of the Act.

The order of confiscation of the vessel MANSCO-3 was passed under Section 115(2) of the Act. At the relevant time, Section 115 provided as under :-

"115. Confiscation of conveyances.-

(1) The following conveyances shall be liable to confiscation.-

(a) any vessel which is or has been within the Indian customs water, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;

(b) any conveyance from which the whole or any part of the goods is thrown overboard, starved or destroyed so as to prevent seizure by an officer of customs;

(c) any conveyance which having been required to stop or land under section 106 fails to do so, except for the good and sufficient cause;

(d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of , or deficiency in, the goods.

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in

charge of the conveyance or animal and that each of them had taken all such precautions against such use as are for the time being specified in the rules:

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be. Explanation.- In this section, "market price" means market price at the date when the goods are seized."

The consideration which weighed with the High Court to set aside the order regarding the confiscation of the goods also weighed with it for setting aside the order for confiscation of the vessel under Section 115(2) of the Act inasmuch as the High Court has found that there was no fraudulent intention on the part of the owners of the vessel in directing the vessel to proceed to Bombay from Karachi to lift additional cargo and the purpose for which the vessel, MANSCO-3, was directed to proceed to Bombay was to lift the said additional cargo and also to have the Radar and V.H.F. equipment repaired. We have already considered the said aspect of the case while dealing with the matter of confiscation of the goods and have held that the said finding of the High Court cannot be upheld. The High Court has set aside the confiscation of the vessel also on the ground that no notice was issued to the owners of the vessel under Section 124 of the Act. In this regard, it may be stated that the Show Cause Notice dated December 31, 1983, indicates that the said notice was issued to Mustafa Najibi, respondent No. 2, on behalf of respondent No. 1, the owners of the vessel, as well as to Abdul Rahim Khatri, the master of the vessel and the promoter and the two directors of M/s Regent Shipping and Trade Pvt. Ltd., the agents of the owners of the vessel at Bombay. Respondent No. 1, the owners of the vessel, had full knowledge of the said Show Cause Notice because a reply to the said notice was filed on their behalf as well as on behalf of respondent No. 2 and they had contested the proceedings before the Collector. In these circumstances, we are of the view that the order regarding confiscation of the vessel could not be set aside on the ground that no notice under Section 124 of the Act was issued to the owners of the vessel.

As regards the penalty that has been imposed under Section 112 of the Act, Shri Rana, the learned counsel for respondent No. 2, has urged that the Collector and the Tribunal were in error in imposing penalty on respondent No.2 is the owner of the vessel. It has been submitted that respondent No.2 is only a Managing Director or respondent No. 1 company which is the owner of the vessel. It has also been urged that at the relevant time respondent No. 2 was not in Dubai and that he had no role in the vessel being directed to proceed to Bombay from Karachi and, therefore, penalty under Section 112 of the Act cannot be imposed on him. The order passed by the Collector proceeds on the basis that respondent No. 2 is the owner of the vessel. It appears that no contention was raised before the Collector that respondent No. 2 was not the owner of the vessel and that he had no particular role in the vessel being directed to proceed to Bombay from Karachi. Before the

Tribunal. however, a contention was raised that respondent NO. 2 was only the Managing Director of respondent No. 1 company and not the owner of the vessel and reliance was placed on the affidavit of respondent No. 2 dated March 25, 1985 which was filed before the Tribunal wherein it was stated that the deviation of voyage from Karachi to Bombay was without his pre knowledge as at that time he was away from Dubai and was in Europe in connection with his business. On behalf of the appellants reliance was placed on the reply to the Show Cause Notice wherein respondent No. 2 was described as the joint owner of the vessel. The Tribunal rejected the contention urged on behalf of respondent No. 2 and has observed that no independent evidence has been adduced to establish that respondent No. 1 company is owned by any other person other than respondent No. 2 and that it in the reply to the Show Cause Notice respondent No. 2 had been mentioned as the owner of the vessel. The Tribunal has also referred to the statement of Mohammed Yousef that he had received the telex dated August 16, 1983 from respondent No. 2 and has observed that the said statement clearly established that respondent NO. 2 knew about the voyage of the vessel from Karachi to Bombay. On that view the Tribunal upheld the penalty imposed on respondent No. 2 under Section 112 of the Act. We do not find any infirmity in the said view of the Tribunal. We are, therefore, unable to uphold the contention of Shri Rana that the Tribunal was in error in affirming the penalty of Rs. 3,00,000/- imposed on respondent No. 2 by the Collector.

In the result, the appeal is allowed, the impugned judgment of the High Court is set aside and, while restoring the orders of the Collector and the Tribunal, the Writ Petition filed by the respondents is dismissed. No order as to costs.