

SESSION 11: PRACTICAL EXERCISE

Charge Sheets: The Case of Greedy Foods

On the 1st of June 2005 customs officials found a consignment of 500kg of abalone at Johannesburg International Airport, due for export to Hong Kong. The forwarding agents, Quick Exporters, showed an export permit from Marine and Coastal Management (MCM) in the name of Greedy Foods for the export of 500kg of frozen abalone. An inspection however showed that the consignment contained 500 kg of dried abalone. The bill of export indicated a value of R50 000,00 for the consignment.

MCM inspectors and the police were called in to investigate. They seized the consignment of abalone and followed up with an inspection at the address of Greedy Foods indicated on the documentation. At the premises of Greedy Foods they found the owner and director of Greedy Foods, Mr. Very Greedy, as well as two other people appearing to be workers there. Inside the building they found heaters and drying racks, all of which are generally used to dry abalone. They also found another 250 kg of “wet” frozen abalone in a freezer room, but no abalone on the dry racks. They requested Mr. Greedy to show his permits. He could not produce any permits, but an official letter from MCM, indicating that he has a 10 year right to operate a fish processing establishment, as well as a permit to possess 750 kg’s of wet abalone out of the shell, was handed to the investigating officer by his lawyers the next day. MCM confirmed that Greedy Foods had been allocated a long term right to operate a fish processing establishment, as well as that they have been issued a permit to possess 750 kg’s of wet abalone and an export permit for the export of 500kg of frozen abalone. No other permits had been issued to the accused by MCM, and the accused did not produce any other permits or invoices.

During further investigation the following facts came to light:

- the customs code number and tariff headings for “frozen fish” instead of that for abalone was indicated on the bill of export

- the bill of export did not indicate the exporter code number of Greedy Foods, but that of Quick Exports, although Greedy Foods had been allocated a company code number by the Department of Customs and Excise
 - scientific evidence shows that to produce 1 kg of dried abalone, about 4 kg's of wet abalone is needed
 - the price of "wet" abalone at the time of export was R1000,00 a kg, and R4 000,00 a kg for dried abalone.
1. Which accused are you going to prosecute, and on what counts? List all offences under the MLRA (and regulations). Without providing detail, give an indication of what other possible legislation was transgressed as well as possible common law offences.

 2. Is abalone listed on CITES (Convention on the International Trade in Endangered Species of Fauna and Flora, to which South Africa is a party)? If so, on which appendix? If it is accepted that abalone is listed on Appendix 3, under which legislation can the accused be charged for exporting abalone without a CITES export permit as is prescribed for Appendix 3 species in CITES?

 3. You have decided to prosecute Mr. Greedy as well as the two workers. They are all represented by Mr. Rich, an advocate. One day before the trial, one of the workers calls the investigating officer and informs him that he is willing to turn state witness, but is afraid to come forward as he fears intimidation. Furthermore, Mr. Greedy is paying the advocate who represents all three the accused. He also states that he can testify to illegal consignments of abalone being offloaded at the premises on various occasions and dried there for export. You want to use him as a witness. What do you do?