

Madan Enterprises Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-18-2001

Reported in : (2001)(75)ECC461

Judge : S T Gowri, J S Murthy

Appellant : Madan Enterprises

Respondent : Commissioner of Customs

Advocate for Pet/Ap. : Sri. Anil Balani

Judgement :

1. The appeal is filed by the above appellant praying for setting aside the Order-in-Original No. 41/2000/CAC/KPS dated 1.2.2000 and quashing penalty; and redemption fine, and for extending the benefit of Notification No. 23/98 to the goods with consequential relief.

2. The facts of the case are that the appellant had sought clearance of NYLON TRICOT FLOCKING FABRICS, valued at Rs. 11,03,465.00 on 14.10.98 declaring as INSOLE SHEET, claiming benefit of CN 23/98 Sl. No. 108, List 3A, Sl. No. 3 at concessional rate of duty; at 20% basic customs duty as against merit rate of 40%. Under these heading goods such as Insole, Midsole and parts thereof for leather industry; are eligible for concessional rate of basic custom duty at 20% as against 40%.

Subject; item Nylon Tricot Flock fabric is a product having multiple use. Whether it can be used as insole, midsole, in leather; industry; has been debatable issue for years. The practice being followed this customs house like other custom house was to extent (extend) the benefit of Notification No. 23/98 whenever Nylon Tricot fabrics are being declared as sheet for making sole. However board vide their circular 74/98 dated 6.10.98 has directed that in case of Nylon Tricot Fabrics, the end use condition should be stipulated, whenever Importer declare the goods as Insole sheet and claimed the notification benefit CN/23/ 98, which exempts the Insole or Midsole and sheets therefore for used in leather industry.

3. Based on information received by DRI that certain importers are misusing the benefit of Notification No. 11/97 or 23/98, inasmuch as goods incapable of being used as Insole sheet in leather industry, the case was taken up for investigation. They also drew samples from the consignment and sent to CLRI Chennai, for testing as well as opinion regarding usability of subject goods as insole sheets, and they opined in their letter dated 30.12.97 that Nylon Treat Fabrics could not be used as Insole or Insole sheet material. DRI officers also obtained technical opinion dated 29.11.96 provided by the Indian Institute of leather products, Chennai, indicating that Nylon Tricot Fabric may not find use as insole in foot wear making. SUB intelligence wing seized the above seized consignment imported by the appellant and transferred the case for further investigation to DRI, who were also investigating such other cases of misuse of notification by Importers of Nylon Tricot fabrics, on 28.11.98 under their letter. Statement under Section 108 of Customs Act of the Proprietor of Appellant Sri Madanlal Deepchand Jain was recorded. Quantified duty of Rs. 5,99,740 was paid by Importer on 17.10.98. Banker's cheque for Rs. 2,74,297.00 towards differential duty was also paid by Sri Jain in subject B/E, (which was assessed to duty at 20% + 5% + 18% + 5% + 0.05%). Show cause notice was issued on 16.4.99 under Section 124 and 28 of Customs Act to the importer to show cause to Commissioner of Customs (Import), New Customs House, Mumbai, as to why duty short paid of Rs. 2,74,297.00 should not be demanded alongwith interest under Section 28AB Customs Act, and paid during investigation should not be adjusted towards the liability, and seized goods valued at Rs. 11,14,500 should not be confiscated under Section 111 (m) & (o) of Customs Act, and why penalty should not be imposed on them under

Section 114 A and or Section 112(a) of Customs Act, and Proprietor was also called upon to show cause as to why similar penalty should not be imposed on him. Importer filed reply on 16.8.99. Personal Hearing was held on 2.9.99 and importer submitted his arguments. After considering all the material on record Commissioner of Customs (Import) passed the Impugned Order on 4.2.2000, denying the benefit of Notification No. 23/98 and charging duty at applicable rate, and confirmed the demand of Rs. 2,74,279.00 and appropriated the same amount paid, and confiscated the goods under Section 111(m) of Customs Act with redemption fine of Rs. 2.50 lakhs and imposed penalty of Rs. 50,000 under Section 112(a) of Customs Act on the importer. Hence this appeal.

4. Perused the show cause notice, reply, statement under Section 108 of Customs Act of Proprietor of the appellant, and the opinion of Central Leather Research Institute, Adyar, Chennai, dated 4.12.97 and the technical opinion dated 29.1.96 of Indian Institute of Leather Products, Madras and Appellant's letter to Assistant Collector, declaring that with reference to Bill of Lading dated 15.9.98 that Insole sheet (Nylon Tricot Flocking) imported under the above bill of lading will be sold for use as Insole sheet for leather industry, and appellant's letter to Senior Intelligence Officer DRI -- Zonal Unit, Mumbai, in response to summons dated 29.10.98 stating that Nylon Tricot Flock Fabric is a regular item being allowed clearance by Mumbai Customs, and there is no irregularity in to present Import, and Bill of Entry for home consumption dated 15.10.98 for Insole sheet (Nylon Tricot Flocking) of 15007 Metres in Sixty cartons, and invoice for the same dated 10.9.98 and the Notification No. 23/98-Cus. Dated 2.6.98 at Serial No. 108 that "the following goods for use in leather industries, namely

(1) parts, consumables, and other items specified in List 3A--(item No. 3 -- Insoles or Midsoles and sheet thereafter),

(2) Other parts, consumables and items specified in List 3(B), falling under Chapter 64 or any other chapter with standard rate 20% each for bother (both) categories. Condition No. 14 is for 23rd item only. At said No.14 it is stated that "If at the time of Importation, the importer

(1) in all cases [Excluding the case of goods at Item No. 9 of list (B)] produces a valid registration-cum-membership certificate issued by the council for leather exports sponsored by the Govt. of India in the Ministry of Licence, and

(2) furnished an undertaking to the Assistant Commissioner of Customs to the effect that (a) The imported goods shall be used in leather industry of (or) as the case may be, for the manufacture of leather chemicals to be used in leather industries, (b) He shall maintain an account of imported goods received and consumed in the place of manufacture for the above purpose in the manner specified by the said Assistant Commissioner, (c) He shall within three months or such extended period as the said Assistant Commissioner, may allow produce the extract of the aforesaid account, duly certified by the Assistant Commissioner of Central Excise having jurisdiction over the factory manufacturing the goods to the effect that the said goods have been used for the above-said purpose, and (d) He shall pay, in the event of his failure to comply with the condition above, an amount equal to the difference between the duty leviable on the imported goods but for exemption under the notification and that already paid at the time of Importation list 3A (Section 108 of the table) contains parts, consumables and other items, under No. 3 Insoles or Midsoles sheets therefor is mentioned. Board Circular No. 74/98-Cus. dated 6.10.98 is also perused. in Collector of Customs, Bombay v. Handicraft Exports, Notification No. 29/79-Cus. Dated 10.2.79 for Buckles and other embellishment for footwear used in leather industry is considered. in the case of Collector of Customs, Bombay v. Pacific Exports Notification No. 224/85-Cus. dated 9.7.95 for the goods imported Sodium Lauryl Sulphate having used in leather Industry and could also be used as emulsifier in synthetic fat liquoring compositions importer only a trader -- He should adduce evidence to show that the goods imported were meant for use in leather industry, is considered. Also perused the appeal memorandum. Heard Sri Anil Balani, learned Counsel for appellant and learned Departmental Representative for Respondent. The only question involved is the benefit of the notification and applicability of Board Circular, which is seriously challenged by the appellant, and value of the technical opinion furnished, about the usage of the product in question, as contended in appeal memorandum. They are considered below.

5. As narrated above, the Notification No. 23/98-Cus. Dated 2.6.98 at Sr. No. 108 in Column No. 3 of the table clearly mentions the goods, under Chapter 64 or any other chapter, for use in leather industry namely Parts Consumables and other items specified in list 3(A).

Insoles or Midsoles and sheets therefore are eligible for benefit of notification. No condition is attached. So it is necessary for the appellant to show it to avail benefit. Regarding that appellant has made a declaration before Assistant Commissioner of Customs, apprising cell, regarding Bill of lading dated 15.9.88 that--" The goods imported will be sold for use on insole sheet for leather industry". No material is produced by the appellant as per that declaration. On the other hand his statement under Section 108 of Customs Act is altogether different, which is not all retracted. The explanation offered in appeal memorandum and reply to show cause is not all supported any immediate action. Protesting the facts in the statement and the exercise of duress and giving false assurance to extract such statement, with any document in the nature of complaint to superiors of the officer who has recorded the statement. In the absence of it, the said explanation can only be termed as face saving device. It cannot be accepted. The contention of the appellant about the interpretation of the word--"for use" -- in the notification in the light of Supreme Court Judgment relied on, to mean as -- "capable of being used" even if accepted, the appellant has to show it to get benefit of notification, which is not done. Appellant, being only a trader, and supplier of goods involved for value for different purposes, other than leather industry of footwear, has to show by way of supporting evidence of manufacturer using soles for producing foot wear, which he has not even attempted.

In the absence of it, he is really out of the scope of notification.

6. Now coming to the customs house practice and orders of co-ordinate authorities, the department itself has made clear in the show cause notice under what circumstances the said practice had to be stopped, which is quite justifiable and proper. Statement of appellant itself is a mirror to the said practice for its misuse by all the concerned importers to gain undue benefit of the concessional rate of duty for wrongful gain at the cost of revenue. The first consignment was

cleared; to appellant under the notification benefit, and second consignment is held up by SUB, on the intelligence gathered, and by DRI the investigation was taken up, alongwith other similar cases, which resulted in the show cause notice and adjudication. Appellant has voluntarily paid the customs duty and has also clearly admitted in his statement about the wrong claim of the benefit of notification, as others are claiming and getting benefit. He had no specific order from any leather industry to supply the goods in question. He has clearly stated he was supplying to the various retailers on sale. He is in the business of selling tailoring materials. The consignment in question was meant for sale only to garment manufacturer. To pay less duty, he has made declaration that it is used in leather industry which is patently false. He has issued Bank cheque to show his bonafides. He has clearly admitted that "as far as he knew Nylon Tricot Flock fabric is generally not used as insole. Earlier consignment cleared was sold to various customers as tailoring material, and not to any shoe manufacturer or leather industry. These statements, going against the interest of appellant in the case holds good, and is intact. There are no sufficient reasons to discard it. Even ignoring the Technical opinion of both CLRI and Indian Institute of Leather Products and board circular, as contended by the appellant, it is for the appellant to bring his claim within the purview of the notification to avail benefit. Notification has to be interpreted strictly. Party claiming the benefit has to satisfy its requirements. As held in the impugned order the appellant has failed to do so. Even otherwise as discussed above the appellant has failed to convince that he is entitled to succeed in the appeal. There are no satisfactory and sufficient reasons to come to different conclusion. Hence the following order is passed.

1. For the reasons discussed above, appeal cannot be allowed. It is dismissed.

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