

(1996) 09 SC CK 0078

In the Supreme Court Of India

Case No : Civil Appeal No. 1802 of 1987

Collector of Customs

APPELLANT

Vs

Aggarwal Commercial Corporation

RESPONDENT

Date of Decision : 19-09-1996

Acts Referred:

Customs Act, 1962 — Section 25

Citation : (1996) 87 ELT 336 : (1997) 10 SCC 262

Hon'ble Judges : S. P. Bharucha, J;K. Venkataswami, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Bharucha and K. Venkataswami, JJ.—The judgment under appeal of the Customs, Excise and Gold (Control) Appellate Tribunal follows its earlier judgment in 1983 ECR 258D The goods involved are stamping foils and the issue is whether they are entitled to the benefit of the exemption given by a notification issued u/s 25 of the Customs Act, 1962 on 10th November, 1979. The exemption notification exempts "buckles and other embellishments for foot-wear" from the levy of that portion of the Customs duty thereon as is in excess of 40% ad valorem.

2. What stamping foil is, has been set out in the judgment in the case of M/s. Allibhoy Mohamed, thus :

Stamping foil is a foil of about say 6" width in a running length and is supplied in rolls. In some of the goods before me the running length in individual rolls is as much as 120 metres. Similarly the width varies from 1.50 m.m. to as much as 640 m.m. (say 6" to about 26"). These stamping foils are used for impressing or impregnating a decorative design on so many goods including of course leather manufactures and leather foot wear. The stamping foil is placed on the piece to be decorated. Then a die made out exactly to meet the required design to be impressed will press on the stamping foil. It could be only pressure or heat or

both. Only that part of the stamping foil on which the die of the individual design presses becomes one with the material to be embossed or decorated. The design alone will get cut out or separated from that continuous sheet of the stamping foil. The remaining part of the stamping foil is a remnant waste. (It could no doubt have some use for recycling the material). Thus the stamping foil is used for decorating/ornamenting/embellishing different commodities including leather manufactures. As far as these facts are concerned, there is no dispute between the appellants and the department.

3. It was argued before the Tribunal in the case of M/s. Allibhoy Mohamed, as it has been argued before us, that stamping foil imported in the form of long rolls is not an embellishment in itself and it could not be given the benefit of the aforesaid exemption. The Tribunal repelled the contention thus :

We have given our earnest consideration to the matter. It is by now well settled that words and expressions in taxing statutes, unless defined in the statute itself, have to be construed in the sense in which the persons dealing with them understand, i.e., as per the trade understanding and usage. We find that though the expression "embellishments" has not been defined either in the Customs Tariff or in the exemption Notification No. 29/78-Cus., it has acquired a definite trade understanding. The records show that at the original stage the Assistant Collector wanted the appellants to produce a certificate from the Export Promotion Council for Finished Leather and Leather manufactures. Later, the appellants produced the said certificate bearing No. BRO/Certificate/80-81/16987, dated 26-2-1980 which gives a list of 14 articles used in manufacture of leather foot wear and which are considered as embellishments by the said Council. Stamping foils as well as Buckles have been listed as two of these articles by the said Council. It may be mentioned here that the said Export Promotion Council is a semi-Government organisation. We find further that the Council's certificate has a sanction from the Government itself in the Import Trade Control Policy books which, we understand, are prepared in consultation with the Government's technical authorities like the Director General of Technical Development, the Textile Commissioner, etc. We find that the Policy for April 1976 - March 1977, Volume II, gives a list of articles considered as "Trimmings and Embellishments" on page 211. "Stamping Foils" is listed as one of such articles at serial number (xxiii) in this list. Again, the Policy Book for the next year (April 1977 - March 1978), on page 35, lists 17 articles allowed to be imported against the description "Trimmings and Embellishments" and "Stamping Foils" is one of them listed at serial number (xv) of this list. "Buckles" too are included in the same list. In the light of this evidence, there is hardly any doubt that persons dealing with trimmings and embellishments in India consider Stamping Foils as an article of embellishment.

4. We are of the view that what has been stated by the Tribunal in the case of M/s. Allibhoy Mohamed, which is quoted above, is an appropriate answer to the contention raised before us. That the stamping foil is in the form of a long roll or

that pieces thereof have to be attached to footwear by hearing and pressing does not detract from its being footwear embellishment.

5. The appeal is, therefore, dismissed, with no order as to costs.