

(1997) 04 SC CK 0143

In the Supreme Court Of India

Case No : Civil Appeal No. 76 Of 1987

Collector of Customs, Bombay

APPELLANT

Vs

Handicraft Exports

RESPONDENT

Date of Decision : 09-04-1997

Acts Referred:

Customs Act, 1962 — Section 25

Citation : (1997) 93 ELT 6 : (1997) 7 SCC 144

Hon'ble Judges : S. C. Sen, J;K. T. Thomas, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The contention on behalf of the appellant is that unless the imported goods are exclusively for the use of embellishments for footwear, the importer will not be entitled to the benefit of the notification No. 29/Cus./79, dated 10-2-1979. We are unable to uphold this contention. The notification exempts goods specified in the table set out hereinunder. The relevant portion of the notification is as under:

Notification No. 29/79-Cus., dated 10-2-1979

NOTE 83 Exemption to goods used in leather industry. - In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do hereby exempts the goods specified in the Table below and used in the leather industry....

TABLE

SI.	No.	Description
		1 to 11.
x x x x x	12.	Buckles and other [embellishments] for footwear
	13.	Shoe eyelets
	14.	Shoe finishing polishes in solution or in blocks
	15.	x x x x x

2. The notification does not say that the imported goods must be capable of being exclusively used as "buckles and other embellishments for footwear". In order to claim any exemption, the importer will have to show that the goods were meant to be used as embellishment for footwear. The fact that it was capable of being used for other purposes by itself will not disqualify the imported goods from the benefit given by the aforesaid notification.

3. Our attention has been drawn to two judgments of this Court. Both the judgments are in appeal from the Tribunal and as a matter of fact in this case, the Tribunal relied upon the judgment in Collector of Customs Vs. Aggarwal Commercial Corporation, . The other judgment, relied upon by the assessee is Collector of Customs, Bombay Vs. Chaganlal and Sons,

4. But the difficulty for the respondent is that in both the cases, there were findings that the imported goods had been used by the respondent as embellishments for footwear. In fact, in the case of Collector of Customs v. Chaganlal & Sons, a certificate was issued by the Export Promotion Council. In the instant case, there is no finding that the embellishments imported were utilised or were going to be utilised for the embellishment of shoes. The case is, therefore, remitted to the Tribunal to find out the purpose for which the goods were imported and whether the goods were actually used as an embellishment for shoes. That the goods were capable of being used for embellishment of shoes is not enough. The case of the Revenue is that the goods were equally capable of being used for some other purpose. We are of the view that the importer will have to prove that the goods were not only capable of being utilised as embellishment for shoes but also the goods were imported for the purpose. It has to be shown that the goods were actually used as embellishment. The Tribunal will examine the facts and dispose of the case accordingly.

5. There is a further point taken by the Revenue. This case arises out of an application for refund. Even if the importer succeeds on merit in this case, the refund cannot be granted to the importer automatically. If the assessee can prove that the burden of the duty has not been shifted to the consumer, the refund must be granted to the assessee straightaway. In that view of the matter the refund application will have to be considered by the Assistant Collector of Customs in the light of the judgment delivered by this Court in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others,

6. The appeal is finally disposed of with the directions given herein above. There will be no order as to costs.