

(1997) 11 SC CK 0005

In the Supreme Court Of India

Case No : Civil Appeal No. 2139 (NM) of 1991

Collector of Customs, Bombay

APPELLANT

Vs

Pacific Exports

RESPONDENT

Date of Decision : 06-11-1997

Acts Referred:

Citation : (1998) 99 ELT 488 : (1998) 9 SCC 483

Hon'ble Judges : S. Rajendra Babu, J;S. C. Agrawal, J;B. N. Kirpal, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. This appeal has been filed against the judgment of the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") dated 13-11-1990. The matter relates to a claim of the respondent for payment of customs duty at a concessional rate on the basis of Notification No. 224/85-Cus dated 9-7-1985 in respect of consignment of sodium laurel sulphate imported by the respondent from West Germany. Under the said notification concession was granted in respect of the goods specified in the said notification for use in the leather industry. The Collector of Customs (Appeals) in his appellate order dated 5-4-1989 has held that since the goods imported by the respondent have the capability of being used for various purposes including use in the leather industry, the respondent should prove that the goods have been used in the leather industry so as to become entitled to concessional rate and since the respondent is a trader it must lead evidence to this effect and that no such evidence had been led by the respondent. The Tribunal has reversed the order of the Collector (Appeals) on the ground that there is no stipulation in the exemption notification that the import should be made only by one who is in the leather industry. The Tribunal has referred to the letter of the Central Leather Research Institute dated 25-9-1985 wherein it is stated that sodium laurel sulphate has application for use in the leather binders which are used in leather finishing and as leather penetrates and has held that the respondent is qualified

for levy of concessional rate of duty under the terms of the notification dated 9-7-1985.

2. The learned Additional Solicitor General has submitted that the Tribunal was in error in holding that merely because goods that were imported by the respondent could be used for the leather industry the respondent was entitled to claim the benefit of concessional rate of duty under the notification dated 9-7-1985, because as per the letter of the Central Leather Research Institute the goods that were imported could be used for another purpose also, viz., as emulsifier in synthetic fat liquoring compositions. The submission is that since the respondent has not produced sufficient material to show that the goods imported were meant for use in the leather industry, the respondent could not claim the benefit of concessional rate of duty. There is considerable force in this submission.

3. The learned counsel for the respondent has invited our attention to the recent judgment of this Court in Collector of Customs, Bombay Vs. Handicraft Exports, wherein this Court, while dealing with a similar notification, has remanded the matter to the Tribunal to enable the importer to adduce evidence to justify the claim for exemption.

4. Having regard to the facts and circumstances of the case we consider it appropriate in the interest of justice to give an opportunity to the respondent to adduce evidence to show that the goods that were imported by the respondent were meant for use in the leather industry. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside and the matter is remitted to the New Delhi Bench of the Tribunal to consider the matter after affording an opportunity to the respondent to adduce evidence to show that the goods that were imported by the respondent and in respect of which the benefit of concessional rate of duty has been claimed under notification dated 9-7-1985, were meant for use in the leather industry. No order as to costs.