

(2023) 09 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40105 Of 2013

M/S. Benign International

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 01-09-2023

Acts Referred:

Customs Act, 1962 — Section 114(ii)

Citation : (2023) 09 CESTAT CK 0003

Hon'ble Judges : Sulekha Beevi C.S., Member (J); Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : Sundaranathan T, N. Satyanarayanan

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant filed shipping bill dated 16.09.2009 under claim of duty drawback for the export of a consignment declaring the item as 'cow crumbled upper finished leather'. The declared total value of the consignment was Rs.18,29,251/- (FOB). The export consignment consisted of same item of three different colours as detailed in the invoice dated 16.09.2009 filed along with the shipping bill. During the course of examination, the Appraising Officer (Leather Expert) had a doubt as to whether the third item of the said invoice viz., cow crumbled upper finished leather-off-white would satisfy the norms prescribed for the finished goods under Public Notice No. 3/ETC(PN) 1992/97 dated 27.05.1992. Samples were drawn and sent for testing at Central Leather Research Institute, Chennai (CLRI). The value of this item alone works to be Rs.4,10,597/-(FOB) for the declared quantify of 4857.50 Sq. ft.

2.1 The consignment was permitted to be exported based on the assurance from the Exporter on an undertaking to furnish bond binding the exporter for the consequential action based on the test report by CLRI. Later, report was received

from CLRI dated 24.09.2009 wherein it was reported that the leather does not satisfy the norms and conditions laid down in the public notice for the type of finished leather declared as 'Cow softy Upper Leather (crumbled)' as there was no protective coat. The exporter vide letter dated 06.10.2009 requested to adjudicate the matter without issuing Show Cause Notice, but sought permission for a personal hearing. At the time of personal hearing, the exporter claimed that there was a protective coat on the leather. The leather had been crushed and had polishing character on the leather.

2.2 After due process of law, the original authority ordered for confiscation of the disputed item giving an option to the exporter to redeem the same by payment of redemption fine of Rs.1,30,000/-. A personal penalty of Rs.70,000/- was imposed under Section 114(ii) of the Customs Act, 1962. Payment of duty Rs.2,46,358/- was also ordered. The exporter was asked to repay the proportionate duty drawback of Rs.25,868/- which was already availed.

3. Aggrieved by such order, the appellant filed an appeal before the Commissioner (Appeals) who vide order impugned herein upheld the finding of the adjudicating authority. However, the penalty imposed by the adjudicating authority was increased to Rs.2,46,358/-, thus as being equal to the duty amount. Aggrieved by such order, the appellant is now before the Tribunal.

4. The Ld. counsel Shri Sundaranathan T. appeared and argued for the appellant. It is submitted that the exported goods had protective coating and the goods have been received by the foreign importer and there was no complaint of any sort from them. There was no difficulty in getting the remittance from the foreign buyer and the documents in regard to the amount received from the buyer was also furnished before the authorities. The Ld. counsel submitted that it is contended by the Department that the CLRI report stated that the goods does not satisfy the norms and conditions laid down in the Public Notice in the absence of protective coat. However, the said report has not been furnished to the appellant. Moreover, merely because it is stated that there is no protective coat it cannot be said that the goods are not finished leather. The protective coat is only one of 40 processes taken place before the export of the goods. The protective coat is given to avoid damage during the transit and has nothing to do with the processes required for finished leather. A copy of the report was not given to the appellant and the appellant does not know what is the actual fact stated in the report. There is no mis-declaration of goods. As the report on which the Department has confirmed the duty, penalty and confiscation of the goods has not been supplied to the appellant and there is complete violation of natural justice.

5. It is further argued by the Ld. counsel that the Commissioner (Appeals) has enhanced the penalty in an appeal filed by the appellant. The Commissioner (Appeals) had not issued any intimation/notice to the appellant proposing to enhance the penalty. When the Department had not filed any appeal against the order passed by the original authority imposing a penalty of Rs.70,000/-, the

Commissioner (Appeals) ought not to have enhanced the penalty in an appeal filed by the appellant without giving an opportunity to the appellant to reply with regard to the enhancement of penalty. The Ld. counsel prayed that the appeal may be allowed.

6. The Ld. Authorised Representative Shri N. Satyanarayanan supported the findings in the impugned order.

7. Heard both sides.

8. The goods have been ordered for confiscation, payment of redemption fine and penalty along with duty for the reason that the goods did not conform to the criteria of finished leather as per the Public Notice dated 27.05.1992. It is the case of the Department that the samples were drawn and sent for testing before CLRI. Though it is stated that the report dated 24.09.2009 issued by CLRI confirmed that the goods are un-finished leather as there was no protective coating, we do not find any details of the report as part of the records. It is submitted by the Ld. counsel for the appellant that the copy of the report was not furnished to the appellant. The Bench directed the Department to furnish the copy of the report. Though several adjournments were given, the Department could not furnish the CLRI report. It has to be seen that part of the consignment has been exported and only one item had been denied the benefit of duty exemption. When the Department is relying upon the report of an expert to hold that the goods do not conform to the standard of Public Notice, they ought to have extracted the relevant portion as part of the order. We find that both the authorities below have not placed the discussions or tests made in the report or the method of testing done by CLRI as part of the report. In the Order-in-Original as well as the Order-in-Appeal it is merely stated that CLRI reported that the goods do not conform to the criteria of Public Notice. If the report was available it would have been possible to check the type of test done and as to how the testing authority has arrived at the conclusion that there is no protective coating.

9. The CLRI report is a very crucial document in deciding the issue as to whether the impugned goods are finished leather or not. The Department has failed to supply the copy of the report to the appellant and also furnish copy before the Tribunal. We are of the considered view that the confiscation of goods, imposition of redemption fine, penalty and the demand of duty therefore cannot sustain and requires to be set aside, which we hereby do.

10. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any.