

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.12.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.Nos.3240, 3464 & 3465 of 2019
and

C.M.P.Nos.18564, 20315 & 20316 of 2019

M/s.Hi Fasn Leather Products Co.,
Represented by its Partner A.Ganesan,
No.93/6, MGR Salai,
Nagalkeni, Chromepet,
Chennai - 600 044.

... Appellant/Appellant
in all CMAs

Vs.

The Joint Commissioner of Customs (Airport & Cargo),
Office of the Commissioner of Customs,
Chennai Airport and Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

... Respondent/Respondent
in all CMAs

Appeals filed under Section 35G of the Central Excise Act, 1944, praying to set aside the impugned Final Order No.40375, 40376 & 40377 of 2019 dated 26.02.2019 in Appeal Nos.C/40174, 40175 & 40176/2013 respectively passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai.

For Appellant : Mr.VBR. Menon

For Respondent : M/s.Hema Muralikrishnan

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.VINEET KOTHARI, J.)

The Assessee has filed these Civil Miscellaneous Appeals against the order dated 26.02.2019 of the learned Customs, Excise and Service Tax Appellate Tribunal, Chennai, upholding the order passed by the lower authorities and dismissing the appeals of the Assessee with regard to redemption fine and penalty imposed on the Shipping Bills for export of "Cow Crunch Upper Finished Leather" made by the Assessee under the Shipping Bills No.3969869, 3969871 & 3963901 in question.

2.The reasons assigned by the Tribunal in the impugned order are quoted below for ready reference:

"5. The samples of the leather are required to be sent to the CLRI as per the requirement of DGFT Public Notice dated 27.5.1992. We find that this is a detail Public Notice running into around 28 pages. The Public Notice has given description of types of leathers, manufacturing norms, conditions and the requirements to be tested. For example, in respect of „protective coat", we find as per Note 2, "the protective coat shall stand a minimum of 256 revolutions to grade 4 on Gray Scale (1-5) when tested on SATRA rub fastness tester for both dry and wet rubbing".

5.1 The ld. counsel was at pains to argue that the said Public Notice discussed is outdated. Be that as it may, when that is the only method of ascertaining the correctness of the type of leathers declared, that too by a recognized institute of national importance, have to be accepted. Interestingly, we find that in the appeal filed by the appellant, the appellants have enclosed a subsequent copy of Public Notice No.21/2004 dated 1.12.2009 also issued by DGFT concerning the latest leather norms. It is therefore obvious that the concerned authorities have been also seized of the matter and have issued revised norms as per the said notification. The exports in the present case are before the Public Notice No. 21/2004 came to be introduced.

5.2 While casting aspersions in the CLRI report, ld. counsel has in the same breadth placed reliance on the said test reports issued by CLRI themselves in respect of samples sent by appellants. This has been done with intent to show that the CLRI reports in respect of the same leather are different and contradictory. However, it is not the case that the remnant samples of the one earlier tested by the CLRI have been cast to test by the appellant. On the other hand, appellant have themselves sent the samples on their own without following the procedural requirements of consignment samples. They have not drawn samples in the presence of all stake holders. In any case, it appears that they have been sent to CLRI after the earlier consignments have been allowed to be exported albeit on redemption fine etc. In the circumstances, when the appellant themselves are placing absolute reliance on CLRI report, in respect of sample sent by them, they

cannot then make aspersions at reports of CLRI on samples sent by the department.

5.3 The appellant has filed Miscellaneous Application Nos. C/Misc./40163, 40165 and 40167/2013 requesting to send the samples for retesting. After a lapse of more than a decade we do not think that such testing would serve any purpose. The remnant samples may well have been disposed of by CLRI after a prescribed time limit. Even if the samples are still available, the passage of time, namely of almost nine years would surely have caused at least some perceptible, if not irreversible changes in the physical or other characteristics of the samples. For these reasons, the miscellaneous application for retesting is dismissed.

5.4 We also find that the adjudicating authorities in each of these appeals have been quite reasonable in their adjudication. In the first place, relating to FOB value, the redemption fine for export imposed under section 125 ibid as also the penalty imposed under section 114(ii) are quite reasonable, just and fair, as under:-

Shipping Bill	FOB Value	Redemption fine	Penalty
3969869	8,36,534/-	70,000/-	10,000/-
3969871	8,95,712/-	70,000/-	10,000/-
3963901	27,08,304/-	2,00,000/-	25,000/-

6. In the circumstances, we do not find any infirmity in the orders passed by the authorities below, for which reason, the impugned order is sustained and the appeals are dismissed."

3. The learned counsel for the appellant Mr.V.B.R.Menon vehemently submitted that the report of Central Leather Research Institute (CLRI) dated 16.10.2009, according to which, the sample of the leather of the present appellant was held not satisfying the norms and conditions laid down in the relevant notification as 'Finished Leather' was not justified, because the samples tested under the said report dated 16.10.2009 by CLRI, the goods were mentioned as 'Cow Softy Upper Leather (Crunch) Colour. OLIVE (VI) (1) (E)', whereas the Assessee on export has mentioned in the Invoice as "Cow Crunch Upper Leather". He submitted that if the export was "Finished Leather", then the duty was not leviable under the provisions of the Customs Act, whereas if the goods on export were found to be

'not Finished Leather', levy of duty was attracted. He submitted that the Assessee himself obtained a Report from the same CLRI vide Report dated 22.10.2009 which satisfied the criteria of "Finished Leather" and description of goods in the said report dated 22.10.2009 were shown to be "Cow Lining Leather Colour. OLIVE (KISSEL) (IV) (1)". He further submitted that the basis of the report of the CLRI obtained by the appellant/Assessee, at his own instance, clearly showed that the Report obtained by the Revenue from CLRI vide report dated 16.10.2009 was not correct and therefore, the miscellaneous applications filed by the Assessee for holding a retest of the sample in question ought to have been allowed by the learned Tribunal before dismissing the appeals of the Assessee. The said Miscellaneous Application Nos.C/Misc./40163, 40165 and 40167/2013 however came to be rejected on the ground that the said request was made before the Tribunal after a lapse of more than a decade and CLRI could not be expected to maintain those samples for a period of about 9 years or more for holding such retest, after the report dated 16.10.2009 was obtained from the CLRI by the Revenue Department. The learned counsel, therefore, urged that unless a retest is held, the imposition of the redemption fine and penalty by the Tribunal could not be justified.

4.Per contra, the learned counsel for the Revenue, M/s.Hema Muralikrishnan urged that the Report from CLRI was obtained by the Revenue Authorities on 16.10.2009 for the samples drawn out of the confiscated goods of the appellant/Assessee and merely because the description in the said report given as "Cow Softy Upper Leather (Crunch) Colour. OLIVE (VI) (1) (E)" is differently worded from the Description of the Goods as used in the Invoice or the Shipping Bills of the Assessee as "Cow Crunch Upper Leather", it cannot result in discarding the said Report, as the samples were taken from the confiscated goods of the appellant/Assessee only in accordance with the Rules and were sent to CLRI for investigation and giving the Report, whereas the Report obtained by the Assessee itself was of the sample taken by Assessee itself without following the Rules and therefore, the Report dated 22.10.2009 obtained by the Assessee, which satisfied the test of its being "Finished Leather" for the sample "Cow Lining Leather Colour: OLIVE (KISSEL) (IV) (1)" could not be a ground for holding a retest after a long period of about a decade and therefore, the rejection of the said prayer of the Assessee by the learned Tribunal was justified. She submitted that the learned Tribunal has observed in the impugned order that on the basis of the report of CLRI dated 16.10.2009, the credibility of which is not disputed by the Assessee, the upholding of imposition of redemption fine and penalty to a

nominal extent, cannot be assailed by the Assessee in the present Appeals and therefore, the Appeals filed by the Assessee deserve to be dismissed.

5. We have heard the learned counsels and have perused the records.

6. We are of the clear opinion that rejection of the prayer for retesting after a long period on the part by the Tribunal cannot be faulted. Even though the Assessee obtained a Report from the same Institute on 22.10.2009, the product description shown in that Report viz., "Cow Lining Leather Colour: OLIVE (KISSEL) (IV) (1)" is also not the same as the export of the goods in question which is subject matter of the present case viz., 'Finished Leather'. The Report dated 16.10.2009 relied upon by the Revenue, gives the description of the sample is "Cow Softy Upper Leather (Crunch) Colour: OLIVE (VI) (1) (E)". A mere difference of description of the goods in these two Reports given by the CLRI itself, as obtained by the Revenue and Assessee, cannot be fatal to the reliance placed by the Revenue on the said Report dated 16.10.2009 which pertained to the confiscated goods only. The second Report dated 22.10.2009 obtained by the Assessee on the basis of samples sent by itself other than from confiscated goods cannot be said to be a ground to call for a retesting to be directed by the Tribunal after a long period, particularly where the description of the goods in the second report obtained by the Assessee itself is also different. These three different descriptions of the goods does not render the evidence relied upon by the Revenue viz., CLRI report dated 16.10.2009, non-est or unreliable.

7. We do not find any force in the contention raised by the learned counsel for the Assessee that on the basis of the report adduced by the Assessee before the Tribunal vide dated 22.10.2009, though obtained shortly after the report dated 16.10.2009, the Tribunal was required to direct a retest. Obviously the sample goods sent by the Assessee for testing was not from the lot of the goods exported or goods confiscated by the Revenue in question. Therefore, obviously the report obtained by the Revenue Authorities from the sample taken from the confiscated export goods vide Report dated 16.10.2009, was more reliable rather than the Report dated 22.10.2009 produced by the Assessee.

8. Therefore, the rejection of the prayer by the learned Tribunal for retesting of the sample in question, especially after a long period of about 9 years was justified. Therefore, the findings of the learned Tribunal in upholding the imposition of redemption fine and penalty in question, cannot be said to be wrong. Consequently, we do not find any merit in the present

Appeals filed by the Assessee and the same are accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1. The Customs, ExCise and Service Tax Appellate Tribunal, South Zonal Bench Chennai.
- 2.The Joint Commissioner of Customs (Airport & Cargo), Office of the Commissioner of Customs, Chennai Airport and Air Cargo Complex, Meenambakkam, Chennai - 600 027.

+1 cc to M/s.V.B.R.Menon,Advocate Sr.No. 101838(28.02.2020)

+1 cc to M/s.Hemamuralikrishnan,Advocate Sr.No. 102066

AKM/03.02.2020/6P- 5c /

C.M.A.Nos.3240, 3464 & 3465 of 2019

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