IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.780 of 2020
and
C.M.P.No.4897 of 2020

M/s.VAS Noorullah & Co.
No.47, Wuthucattan Street,
Periamet,
Chennai - 600 003.
Represented by its Partner,
Mr.V.Mohammed Zaid ...Appellant

-Vs-

The Commissioner of Customs (Air)
New Custom House,
Airport & Aircargo,
Meenambakkam,
Chennai - 600 027. ...Respondent

Prayer : Appeal under Section130 of the Customs Act, 1962 against the Final Order No.41246/2019 dated 01.11.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Chennai.

For Appellant : Mr.Hari Radhakrishnan

For Respondent : Mr.R.Swarnavel
Government Advocate (Taxes)

J U D G M E N T

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

The Assessee M/s.VAS Noorullah & Company has filed this Appeal against the order dated 01.11.2019 whereby the learned Tribunal upheld the imposition of the redemption fine and applicable export duty and recovery of drawback in the case of the Appellant with the following observations:

"5.We have considered the arguments on both sides and perused the records. As is evident from the second test report of CLRI dt. 27.12.2010 reproduced above, the sample was tested by CLRI to see if it matches the description in the shipping bill. In the first test report, it was tested on the specifications for "Nubuck Leather of cows or buffaloes" while the description of the goods by the appellant was "Sheep Nubuck leather". The second sample was ordered to be tested which was tested and it was again confirmed that it is not Nubuck Leather at all as the process of snuffing essential for making nubuck leather has not been undertaken. From the above, it is clear that there was misdeclaration of the goods in the shipping bill by the appellant. The confiscation of the goods for improper export is provided for on various grounds under Section 113 of the Customs Act. Clause (d) of Section 113 provides for confiscation of any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force. Confiscation of goods where the description does not match with the declaration is provided for under Section 113(i) and (ii). These are reproduced below:

"(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77;

(ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;"
In this case, as per the usual practice, the exports were not held up but were allowed after taking an undertaking from the appellant. After the testing, it was found that the nature of the goods exported did not match with the description given in the shipping bill. Therefore, they have been confiscated under Section 113(i) and (ii) of the Customs Act, 1962. We also find that there is no confiscation under Section 113(d) for export or attempted export in violation of the prohibtions under Foreign Trade Policy or any other law. We, therefore, find that the argument of the Ld. counsel that their goods were not prohibited

from export under Foreign Trade Policy and the Public Notice issued therein does not come to their rescue because there is no confiscation on this count at all. The only confiscation was on the ground that the appellant has described the goods wrongly. We find that the second test report confirms that the goods were not which were described in the shipping bill. For this reason, we find that confiscation of the goods under Section 113 and imposition of redemption fine of Rs.10,000/- under Section 125 in lieu of confiscation (as the goods have already been exported after the appellant gave an undertaking) calls for no interference. Consequently, we also find that the imposition of penalty of Rs.5000/- under Section 114 is liable to be upheld and we do so. The applicable export duty and recovery of drawback, if any, availed also call for no interference.

7.In view of the above, we find that the appeal is liable to rejected and we do so. The appeal is rejected and impugned order is upheld."

2.The learned counsel for the Appellant Mr.Hari Radhakrishnan submitted that on the basis of the Report of CLRI dated 27.07.2009 referred to the internal page 2 of the Order in Original No.768/2009 - EXP.(ACC) dated 09.09.2009 passed by the Commissioner of Customs (Airport), the said authority found that the export by the Assessee does not satisfy the declaration of Nubuck Leather, in the absence of 'Snuffing to produce Valvety Nap' finished leather as per that Report and the said adjudicating authority imposed the export duty under Section 113 (i) and (ii) of the Customs Act, 1962 and redemption fine of Rs.10,000/- and it has also imposed the personal penalty of Rs.5000/- under Section 114(ii) and export duty of Rs.1,56,457/- on the said export consignment.

3.The learned counsel urged that after obtaining independent Report from CLRI (Central Leather Research Institute) dated 08.12.2009, the leather in question satisfied the norms and conditions of the type of 'Finished Leather as declared" and on the basis of the said Report of CLRI produced before the Commissioner of Customs (Appeals), the Exporter gave a revised classification of the goods in question as 'Softy Upper Leather'. He submitted that in view of the revised classification given before the Commissioner of Customs (Appeals), who permitted the obtaining of such fresh CLRI Report to the Assessee/Exporter, the goods in question should not be treated as exported upon a misdeclaration and therefore, the learned Tribunal has erred in imposing the redemption fine and export duty in question.

4.Having heard the learned counsel for the Appellant, we are of the opinion that such ex-post facto obtaining of a fresh Report by the Assessee/Exporter, is of no relevance, because the fact remains that on the basis of the CLRI Report obtained in the contemporary period of actual export by the Assessee/Exporter, it was found that what was exported by the Assessee was not 'Nubuck Leather' as the process of snuffing to make 'Nubuck Leather' was not carried out.

5.The subsequent change of declaration given by the Assessee to treat the same as 'Softy Upper Leather' vide letter dated 08 April, 2011, all the more confirms the earlier misdeclaration in the relevant documents at the time of actual export. The findings of facts by the learned Tribunal based on the aforesaid material are binding on us and cannot be said to be perverse in any manner and therefore, we do not find any error in the order passed by the learned Tribunal. Consequently, the present Appeal filed by the Assessee is without any merit and the same is liable to be dismissed and is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

The Commissioner of Customs (Air)
New Custom House,
Airport & Aircargo,
Meenambakkam,
Chennai - 600 027.

+1 cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.19121

C.M.A.No.780 of 2020

MP(CO)
RN(21/05/2020)