

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 84 of 2012

[Arising Out Of OIA-25/2012/CUS/COMMR-A-/KDL Dated-29/02/2012 Passed By
Commissioner of CUSTOMS-KANDLA]

Mahavir Corporation

95, Acharya Donde Marg,
Opp : Police Booth, Parel T T,
Mumbai,, Maharashtra

.....Appellant

VERSUS

C.C.-Kandla

Custom House,
Near Balaji Temple,
Kandla, Gujarat

.....Respondent

WITH

CUSTOM Appeal No. 85 of 2012

[Arising Out Of OIA-25/2012/CUS/COMMR-A-/KDL Dated-29/02/2012 Passed By
Commissioner of CUSTOMS-KANDLA]

Gazebo

95, Acharya Donde Marg,
Opp : Police Booth, Parel T T,
Mumbai,, Maharashtra

.....Appellant

VERSUS

C.C.-Kandla

Custom House,
Near Balaji Temple,
Kandla, Gujarat

.....Respondent

APPEARANCE:

Shri. J.C. Patel, Shri. Rahul Gajera, Advocates for the Appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM:

**HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

FINAL ORDER NO. A / 11188-11189 /2023

DATE OF HEARING:02.06.2023

DATE OF DECISION:02.06.2023

Raju

These appeals have been filed against order of Commissioner (Appeals) denying the benefit of Notification No. 11/97-Cus. dated. 01-Mar-1997 to the PU coated sheets imported by the appellant declaring them as 'PU coated Sheets for used in making insoles'.

2. Learned counsel for the appellant pointed out that the matter has earlier travelled to Tribunal it was remanded to ascertain if the test report obtained at the time of issue of show cause notice was in respect of the same goods imported by the appellant. He pointed out that the test report of CLRI mentions the goods as 'flock fabric' whereas the goods imported were PU coated leather cloths. Noticing this difference Tribunal had remanded the matter for confirmation of the facts, however, despite that two rounds of litigation before the Commissioner (Appeals), the same could not be verified. The Commissioner (Appeals) in the impugned order holds that the CLRI report on which the Order-In-Original is based could not confirm if the goods in respect of which the report has been obtained are the same as the goods imported by them. However, it continues to examine the matter with respect to the terms of condition of Notification No. 11/97-Cus, supra. Learned counsel pointed out that the show cause notice was limited to the issue of the CLRI report and after having found that CLRI report cannot be relied, the Commissioner (Appeals) could not have been proceeded further. He pointed out that the notification does not require End use certificate. He relied on the decisions in the case of PREET INTERNATIONAL-2017 (358) ELT 734 (Tri.-Mumbai) and in the case of SILVER WING INVESTMENT & TRADING CO. (P) LTD.-2007 (209) ELT 364 (Tri.- Mumbai). He also relied on the decision of Hon'ble Apex Court in the case of INTER CONTINETAL (INDIA).-2008 (226) ELT 16 (S.C).

3. Learned AR relies on the impugned order

4. We have considered the rival submissions. We find that identical matter has been decided by the Tribunal in the case of PREET INTERNATIONAL wherein the Circular No. 74/98-Cus dated 06.10.1998 was also examined. The said circular prescribed End use Certificate may be obtained in such circumstances in respect of importswere made under Notification No. 11/97-Cus. The said order points out that this circular can

be applied prospectively and not retrospectively. In the instance case also the imports of the goods accorded prior to the issue of this circular. Thus, the facts of the case are identical. In the said case following has been observed.

"5.*We find that the appellant had sought the benefit of Notification 11/97-Cus. (Serial No. 94), which reads as under :-*

S. No.	Chapter or heading No. or sub-heading	Description of goods	Standard rate
94	64 or any other chapter	The following goods for use in the leather industry, namely :- (1) Parts, consumables and other items specified in List 3(A). (2) Other parts, consumables and items specified in List 3(B).	20% 20%

6.*The said benefit of concessional rate of duty is available only if the conditions in list are met. We find that the products imported by the appellant are specifically mentioned in serial No. 3 in list 3(A). It is to be noticed that there is no other condition has been put in the notification for extending the benefit of the said concessional rate of duty. C.B.E. & C. vide Circular No. 74/98-Cus., dated 6-10-1998, on a reference made by the field as to imposition of actual user condition and end-use bond condition for insole/midsole and sheets thereon, opined as under :-*

2. It is seen that the goods in the first part are, undeniably, goods for use in the leather industry only. In the second part because there are some goods which are likely to have more than one use the said list has been hemmed by the stipulation that the accounts should be maintained. However, both the lists put together, only the goods for use in the leather industry can be covered under this Notification. The items which is being sought to be cleared i.e. Nylon Tricot Flocking Fabric is undeniably having more than one use. The judgment of the Supreme Court in the case of Commissioner of Customs, Mumbai v. Pacific Exports cited in [1998 \(99\) E.L.T. 488](#) (S.C.) and Commissioner of Customs, Mumbai v. Handicrafts Exports - [1997 \(93\) E.L.T. 6](#) (S.C.) have discussed the exemption Notifications pertaining to the goods used in leather industry though of an earlier notification. In the said earlier notification the words used were also for use in the leather industry. There is no substantial difference in the words used in the 3 notifications. The Supreme Court had stipulated that the goods imported are having use in leather industry and could also be used in other industry. If the importer is a trader should adduce evidence to show that the goods imported by him were meant for use in the leather industry. In the subsequent case of Handicraft Export, the Supreme Court has mentioned that the importer will have to prove that the goods are not only capable of being utilised as embellishment for sheets but also they were imported for that purpose. It has to be shown that the goods were actually used as embellishment."

7. *The said C.B.E. & C. Circular was issued on 6-10-1998 and would be applicable only from that date is the view which has been held by the Tribunal in the case of Intrade Impex Pvt. Ltd. v. CC, Indore - [2001 \(129\) E.L.T. 737](#) and followed by Mahavir Corporation v. CC, Mumbai - [2003 \(160\) E.L.T. 355](#).*

8. *In view of the above judicial pronouncements on the very same issue and the C.B.E. & C. circular, we find that the imports in this case being prior to the date of circular having been issued, the actual user condition cannot be imposed on the appellant to deny the benefit of concessional rate of duty."*

5. Respectfully, following the decision of coordinate bench, the appeals are allowed.

(Dictated and pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI