

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Custom Appeal No. 319 of 2012 - DB

(Arising out of OIA-171-KDL-CUS-COMMR-A-AHD dated 30/05/2005 passed by Commissioner of CUSTOMS-AHMEDABAD)

Novelty Exports

29, Kannadsan Road, T Nagar,
CHENNAI
TAMILNADU

.....Appellant

VERSUS

Commissioner of C.-Ahmedabad

CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD,
GUJARAT

.....Respondent

APPEARANCE:

Shri Rahul Gajera, Advocate, Appeared for the Appellant

Shri Tara Prakash, Deputy Commissioner (AR) Appeared for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 12524/2024

DATE OF HEARING: 28.06.2024
DATE OF DECISION: 25.10.2024

RAMESH NAIR

The issue involved in this appeal is whether the Commissioner (Appeals) was justified in upholding adjudication order denying exemption under Sr.No.108 (1) of Notification No.23/98-Cus. dated 02.06.1998 for non-submission of end use certificate and where there is no condition stipulated against Sr. No.108 (1) for production of end-use certificate unlike in Sr. No.108 (2).

2. Shri Rahul Gajera, Learned Counsel appearing on behalf of the appellant at the outset submits that condition which is not prescribed in the Notification cannot be imposed by the department. In the present case the entire demand was confirmed denying the exemption notification on the ground that appellant have not submitted the end use certificate. He submits

that there is no requirement of end use certificate as per Notification. Therefore, the entire order is baseless and without any authority of law. He submits that this issue has been considered by this Tribunal in the case of Anil Exports- 2010 (361) ELT 870. He placed reliance on the following judgments:-

- Anil Exports V.CC, Kandal - 2010 (261) ELT 870 (Tri. Ahd)
- Inter Continental (India) V UOI – 2003 (154) ELT 37 (Guj)
- UOI V Inter Continental (India) – 2008 (226) ELT 16 (SC)
- Century Enka Ltd V. CCE, Pune - 2017 (358) ELT 1002

3. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the revenue, reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the appellant have availed the exemption Notification No.23/98-Cus Dated 02.06.1998 under Sr. No.108 description Serial No.1 which is reads as under:-

S.No.	Chapter or heading No. or sub-heading No.	Description of goods	Standard Rate	Additional duty Rate	Condition No.
108.	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%	- -	- 14

From the above exempted entry at description Sr. No.1 of entry Sr. No. 108, it is found to be unconditional. Accordingly, there is no need of any production of end use certificate. The department has relied upon CBIC's circular No.74/1998-Cus dated 06.10.1998. However, it is a settled law that

any condition which is not prescribed in the Notification the same cannot be read in the application of the Notification by issuing a board circular. We are completely agreed with this preposition as notification is a statute enacted by the Parliament which cannot be flouted by mere issuing a circular. Therefore, the board circular No. 74/1998-Cus dated 06.10.1998 is ultra vires to the Notification 23/98-Cus. dated 02.06.1998 in Sr. No.108 which does not prescribes the condition of end use certificate. This issue has been considered by this Tribunal in the case of Anil Exports wherein, this Tribunal passed the following order:-

"4. After hearing both the sides, we find that there is no condition annexed, as such to the said serial No. 108 of the Notification. The same grants concessional rates to the goods "for use in the leather industry". Admittedly, the exemption would be available only to the goods which are meant for use in the leather industry. The reference by Commissioner (Appeals) to the Hon'ble Supreme Court judgment in the case of Collector of Customs, Bombay v. Pecific Exports - [1998 \(99\) E.L.T. 488](#) (Supreme Court), as also to another decision in the case of Collector of Customs, Bombay v. Handicraft Exports - [1997 \(93\) E.L.T. 6](#) (Supreme Court) are only to the effect that the importer will have to prove that the goods imported by him were meant for use in the leather industry. We find that there cannot be any quarrel on the above issue. Admittedly the Notification grants exemption to the goods imported for use in the leather industry and there should be some evidence that such goods were actually meant for use in the leather industry. Nowhere in the above decisions, the Hon'ble Supreme Court laid down that such evidence can only be in the shape of end use certificate given by the Central Excise officers having jurisdiction over the factory of the purchaser. In fact, demand of such certificate would amount to introduction of a condition which was not provided by the legislation. As held by the Hon'ble Gujarat High Court in the case of Inter Continental (India) v. UOI - [2003 \(154\) E.L.T. 37](#) (Guj.), introduction of such a condition even by Circular issued by the Board would tantamount to re-writing the Notification or legislating by Circular, which can not be allowed. It was observed by the Hon'ble High Court that a Notification under Section 25 of Customs Act, 1962 requires publication in the Official Gazette as well as requires tabling before both the Houses of Parliament and if that exercise has been carried out without any condition being imposed in Notification No. 17/2001-Cus., it would not be permissible to permit Revenue to impose such a condition by way of Circular. If the Revenue is allowed to undertake such an exercise, the requirement of publication in Official Gazette and laying a Notification before each House of Parliament would become nugatory and such a course of action is not envisaged by the Act. It would give license to the executive to bypass/override the legislature and cannot be countenanced.

5. We also note that the Tribunal, while remanding the matter to Original Adjudicating Authority, has specifically directed to examine the certificate issued by Chartered Accountant as also the invoices issued by the appellants, indicating sale of the goods to the Leather Industry. The said certificate stands examined by the Original Adjudicating Authority, who has held in favour of the assessee. The Commissioner (Appeals) has observed that the Chartered Accountant certificate simply show that the goods have been sold to manufacturer of leather goods but no where shows that the same has

actually been used by them. He has accordingly, not accepted the certificate. We find no merits in the above reasoning of the appellate authority. The goods having been admittedly sold to the leather manufacturers, the reasonable presumption is that the same is used by them. The expression "goods for use in the Leather Industry" only means that the goods should be for use in the leather industry and should have been imported for that purpose. To insist on the evidence to show that they have actually been used by the buyer in the manufacture of leather industry would amount to introducing a new condition in the Notification, which as already observed, cannot be permitted.

6. *In view of our forgoing discussions, we set aside the order passed by Commissioner (Appeals) and restore the order of the Original Adjudicating Authority. Appeal is accordingly allowed."*

In view of the above decision and our observation made herein above, we are of the clear view that in absence of any condition of end use certificate in the Notification, the same cannot be imposed and for that reason exemption cannot be denied.

5. Accordingly we set aside the impugned order and allow the appeal.

(Pronounced in the open court on 25.10.2024)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**

**(RAJU)
MEMBER (TECHNICAL)**

Bharvi