CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISON BENCH
Court-I
Appeal No. C/59388/2013

[Arising out of OIA No.CCA/CHD/43/2013 dt.6.5.2013 passed by the CCE (Appeals), New Delhi (Camp at Chandigarh)]

Date of Hearing/decision: 26.04.2018

CC, Amritsar **Appellant**

Vs.
Artisan Leathers Pvt.Ltd **Respondent**

Present for the Appellant: Shri Tarun Kumar, AR
Present for the Respondent: Shri Ravi Chopra, Advocate

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)
Hon'ble Mr.Devender Singh, Member (Technical)

FINAL ORDER NO.62347/2018

PER: DEVENDER SINGH

The Revenue has filed this appeal against the impugned order passed by the Commissioner (Appeals).

2. The facts are that the appellant filed 5 Shipping Bills No. 000191 to 000195 all dt. 24.01.2011 at CFS Jalandhar for export of Cow calf wax coated finished shoe upper leather colour Tan/Cow calf printed finished upper leather colour Tan, declaring FOB value as Rs. 11009109/-. The goods were consigned to M/s Mondialsea SRL via Del Ronziell 12, 50054 Fucecchio, Italy. The shipping bills were filed under Drawback scheme and exemption from export duty was claimed under Notification 133/2000 dt. 17.10.2000 and the goods claimed to be covered under Public Notice No. 21/2009-14 dt. 01.12.2009 issued by the Ministry of Commerce and

Industry. The assessment was made provisional in r/o all shipping bills pending test report.

The consignment was examined as per norms and representative samples were drawn from the consignment of only three shipping bills. Three samples from three shipping bills were drawn, detail as below:-

S/Bill No.	Description	Package No.	Sample No.
000191 dt. 21.01.2011	Cow calf wax coated leather colour black	109	57/10/CFS/JAL
000194 dt. 21.01.2011	Cow calf Burnishable leather colour Tan	659	58/10/CFS/JAL
000195 dt. 21.01.2011	Buff calf wax coated leather colour black	671	59/10/CFS/JAL

The samples were sent to the Director, Regional Centre for Extension & Development Adyar, Chennai to confirms as to whether all the required processes as per DGFT's Public Notice No. 21/2009-14 dt. 01.12.2009 have been carried out on the goods.

The Central Leather Research Institution Adyar, Chennai submitted the test reports on 11.03.2011 as under:-

S/Bill No.	Description	Test Report
000191 dt. 21.01.2011	Cow calf wax coated leather colour black	Satisfies the norms & notification laid down in Public

		Notice No. 21/2009-14
000194 dt. 21.01.2011	Cow calf Burnishable leather colour Tan	Does not satisfy the norms & notification laid down in Public Notice No. 21/2009-14 for the reason of absence of Burnishable effect.
000195 dt. 21.01.2011	Buff calf wax coated leather colour black	Satisfies the norms & notification laid down in Public Notice No. 21/2009-14

The appellant were given a copy of the test report dt. 11.03.11 vide letter dt. 30.04.11 for comments. The appellant vide their letter dt. 25.06.11 submitted that the report of CLRI pertains to some sample of Beige Colour whereas as per their invoice/shipping bill no. 000194 the goods exported were of tan colour and not of Beige colour.

As a consequence of the contention of the appellant, the Director, CLRI was again requested vide letter dt. 17.08.11 to confirm whether the test report sent vide their letter dt. 11.03.11 was actually in r/o sample no. 58/10/CFS/JAL-PKG No. 659 and also to confirm the colour of the sample leather which the appellant had declared as TAN in the export documents. The CLRI vide letter dt. 25.8.11 confirmed that the test report td. 11.03.11 pertained to sample no. 58/10/CFS/JAL-PKG No. 659.

Based on the above facts the assessing authority held that "burnish finished leather" exported by the appellant vide shipping bills no. 000193, 000194 and 000195 all dt. 21.01.2011 was not "finished leather" and was therefore liable to charging export duty @60% ad valorem.

3. Aggrieved from the final assessment order dt.3.10.2011, the exporter filed appeal with Commissioner (Appeals), who set aside the said final assessment order.

4. Aggrieved from the same, the Revenue has filed this appeal.

5. Ld.AR for the Revenue submits that the samples package No.659 was representative of the entire consignment having continuous S.Nos.621 to 683 and three shipping bills were covered under the same Proforma invoice and invoices for shipping bills were all dated 24.1.2011. The description of the goods was same and the goods were consigned to the same buyer and similar containers and with similar form and hence sample test report was automatically applicable to all 36 packages of "burnished leather" exported on 24.1.2011. He also argued that the conditions for burnishable leather have not been fulfilled. He further contended that CLRI, Chennai report covered samples of burnished leather. He therefore, assailed the order of the Commissioner (Appeals).

6. Ld. Advocate for the appellants submits that the packages were different for the shipping bills: packages 621 to 627 for shipping bill No.193, packages 648 to 662 for shipping bill No.194 and for shipping bill 195, the packages were ranging from 663 to 683. He also contended that description and conditions were different for different shipping bills. Hence, the test findings of one package cannot be applied to all the packages. He further argued that in respect of shipping bills No.194, they have not declared the

same as “burnishable leather” and had declared that they were claiming S.No.(i) & (xiii) of the Public Notice No.21/2009 dated 1.12.2009. Hence, he argued that the emphasis of the department that it was not burnishable leather under S.No.vi of the Public Notice was not applicable to shipping bill No.194.

7. Heard both sides and perused the records.

8. We find that the description of the goods and the conditions applicable from the DGFT Public Notice are different for each of the three 3 shipping bills, which have been placed on record by the appellant page from 21 to 25 of the paper book. Even though the consignee is the same the fact that the goods declared were different for the three shipping bills and different conditions were claimed in terms of Public Notice No.21/2009-14 dt.1.12.2009 for each of the impugned shipping bills. We therefore find force in the finding of the Commissioner (Appeals) that test results of one shipping bill can be made applicable to other shipping bills. We also find that in the shipping bill No.194, the description given is as below:-

> *“(i) Leather with finished coat (cow calf leather with finishing coat colour: black), (XIII) wax/oil coated leather (cow calf wax coated leather colour: brown) falling at Sr.No.(I), (XIII) of DGFT public notice no.21/2009-14 dt.1.12.2009.*
> *Exemption claimed from export duty as per Notification No.133/2000 as goods meant for export are finished leather falling at Sr. No.(I), (XIII) Public Notice No.21/2009-14 dt.1.12.2009 satisfying the norms of finished leather mentioned in the said P.N.”*

9. It is clear from the above description of the export goods were declared to be covered under S.No.(I) and (XIII) of Public

Notice No.21/2009-14 dt.1.12.2009. and the condition No.VI "Burnishable Leathers (All subtracts including butts and bends)" clearly is clearly not applicable to shipping bill No.194.

10. In view of above backdrop, we fully agree with the following findings of the Commissioner (Appeals):

> *"24. I find that the Test Report given by the Central Leather Research Institute, Chennai in respect of the sample drawn from Package No.659 was only for one package under Shipping Bill No.194 dated 24.01.2011. The adjudicating authority on the basis of this report without giving any reason has held that all the goods covered under Shipping Bills No.193, 194 and 195 all dated 24.01.2011 were not eligible for the benefit of exemption from Export Duty in terms of Notification No.133/2000-Cus dated 17.10.2000 which is contrary to the facts and the legal provisions. It is admitted in the impugned order that no sample was drawn out of goods covered under Shipping Bill No.193 dated 24.01.2011 and as per Test Report given by the Central Leather Research Institute, Chennai the sample drawn out Package No.671 from Shipping Bill No.195 dated 24.01.2011 satisfied the norms of the said Public Notice. Therefore, the rest result in the goods covered under shipping bill no.193 and 195 both dated 24.01.2011 is in respect of Sl.No.VI of the said Public Notice which the appellant never claimed and the said Test Report does not say that the goods did not satisfy the condition no.I & XII of the said Public Notice as claimed by the appellant. The said Test Report is in respect of one package only and the same cannot be held to be applicable to all the packages covered under the said shipping bill."*

11. In view of foregoing, we find no infirmity in the order of the Commissioner (Appeals) and the same is sustained.

12. In the result, the appeal filed by the Revenue is dismissed.

(operative part of order pronounced in the court)

ASHOK JINDAL	DEVENDER SINGH
MEMBER (JUDICIAL)	MEMBER (TECHNICAL)

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