CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SZB, CHENNAI

COURT : Division Bench III

CUSTOMS APPEAL No. 40290/2013

(Arising out of Order-in-Appeal No. C. Cus. No. 1293/2012 dated 30.10.2012 passed by the Commissioner of Customs (Appeals), Chennai).

M/s. Nabisha Leathers **Appellant**
1st Floor, No.4, Sheik Ali Subedar Street,
Periamet, Chennai- 600 003.

Vs.

Commissioner of Customs (Appeals) **Respondent**
Customs House,
No. 60, Rajaji Salai, Chennai-600 001.

APPEARANCE

For the appellant : Shri S. Murugappan, Advocate

For the respondent : Ms. Sridevi Taritla, ADC (A.R)

CORAM

Hon'ble MS. SULEKHA BEEVI C.S., MEMBER JUDICIAL
Hon'ble Shri VASA SESHAGIRI RAO, MEMBER TECHNICAL

Date of Hearing: **17.02.2023**
Date of Pronouncement: **28.02.2023**

FINAL ORDER No. 40097/2023

Order : Per Hon'ble Vasa Seshagiri Rao

1.1 M/s. Nabisha Leathers, Chennai, who are the appellants herein filed a Shipping Bill No. 4090836 dated 16.03.2010 for export of 37 cartons of "Goat Shoe Suede Upper Leather" of four different colours. On examination of the said consignment, the

Appraising Officer (Leather Expert) opined that the item declared as “Goat Shoe Suede Upper Leather” of grey colour packed in 13 cartons might not be satisfying the norms prescribed for finished leather vide DGFT Public Notice No. 21/2009-14 dated 01.12.2009. As such a sample was drawn and sent to the Central Leather Research Institute (CLRI in short), Chennai for their expert opinion. However, the consignment was allowed for export provisionally on the strength of a bond executed by the exporter. The CLRI vide its letter No. CLRI/TAN/CUSTOMS/046/ 2010 dated 26.02.2010 stated that the subject sample fails to satisfy the norms in terms of DGFT’s Public Notice referred to above, for the reason of “Absence of snuffing on the grain imparting visible evidence of removal of grain”.

1.2 It may be mentioned here that only finished leather of all kinds which conform to the conditions contained in the Public Notice No. 21/2009-14 dated 01.12.2009, are freely exportable and all others are restricted for export requiring a valid export license issued by DGFT authorities. As per Export Tariff (S. No. 14) of Schedule II of Customs Tariff Act, 1975, “Hides, skins and leathers, tanned or un-tanned, all sorts”, but not including manufactures of leathers, attract an export duty of 60%. Further, only finished leathers are eligible for drawback.

1.3 On the basis of the CLRI report that the exported leather was not conforming to the definition of finished leather, after due process of adjudication, the consignment was confiscated valued at Rs. 6,08,578/- (FOB) under Section 113 (d) of the Customs

Act, 1962. As the consignment was allowed for export on the basis of an undertaking bond, the exporter was allowed redemption on payment of fine of Rs. 50,000/-. Further, export duty of Rs. 3,65,149/- was demanded and a penalty of Rs.10,000/- was imposed on the exporter. The First Appellate Authority has upheld this order and hence the appellant came in appeal before us.

2. Learned Counsel for the appellant Shri S. Murugappan has argued that the item exported was finished leather only as per the purchase order and the buyer satisfied with the consignment and effected full payment by accepting the goods as finished leather; that the Joint Commissioner did not consider their request in their letter dated 02.08.2010 to retest the leather sample by CLRI though subsequent exported goods on test by the CLRI have satisfied as finished leather vide their other report No. CLRI/TAN/368/2010 dated 11.06.2010. He has relied on the decision rendered in the case of *Collector of Customs, Madras Vs. M. Aslam Aejaz & Co.* reported in 1995 (79) ELT 165 (Tri.), wherein it was held that where a number of processes involved in converting raw leather into finished leather, a minor deficiency in the processing may not *ipso facto* make the leather as not fully finished. He has put forth that the appellants have carried out all the major and substantive steps to make the raw leather into finished leather, the presence or absence of snuffing is determined by visible check and such check is always subjective and therefore CLRI report alone should not be the basis to hold that the leather under question is not finished leather. He has

argued that there is no malafide intention on the part of the exporter to export the prohibited goods and as the buyer has accepted the goods as finished leather and has made payment and also placed order for further quantities and so imposition of penalty and fine are not justified and arbitrary.

3. Learned AR Ms. Sridevi Taritla has reiterated the findings as in the Order-in-Original dated 06.12.2010 and justified the confiscation of the exported leather, demand of export duty, and imposition of penalty as CLRI report has testified the absence of snuffing. She has relied on the decision of *Mondepal Vs. Commissioner of Customs, Chennai* reported in 2011 (267) ELT 269 (Tri.-Chen.) and also *Devi Enterprises Vs. Commissioner of Customs (Sea), Chennai* reported in 2009 (238) ELT 543 (Tri.-Chen.), wherein on the basis of the CLRI reports confiscation, fine and penalty were upheld.

4. We have carefully heard both sides and examined all the records.

5.1 The issue for determination in the appeal is whether CLRI's interpretation of the conditions/norms prescribed in DGFT's Public Notice No. 21/2009-2014 dated 01.12.2009 is correct or not for Export of Finished Leather. Ld. Advocate has argued that as per DGFT's Public Notice, Shaving or Snuffing is required for allowing this type of leather for export but the report is silent with regard to compliance with the process relating to shaving and though CLRI's report may be factually correct as to absence of snuffing but it's interpretation as to fulfilment of the norms/conditions of DGFT's Public Notice to treat as finished leather is not legally tenable. He has further referred to "Guidelines for Identification of Finished Leather for Export by the Bureau of Indian Standards" to support his contentions. So, it is necessary to go through the norms and conditions prescribed in DGFT's Public Notice dated 01.12.2009 and also the guidelines of BIS for ready identification of different varieties of finished leathers particularly for export purposes. Relevant portions as required in respect of impugned goods are extracted below:-

(A) **"Public Notice No. 21/2009-2014 Dated 01.12.2009**

<u>Export of Finished Leather – Revised Leather Norms</u>

In exercise of the powers conferred by Section 5 of the Foreign Trade (Development & Regulation Act, 1992 (No.22 of 1992), the Director General of Foreign Trade hereby specifies, for the purpose of the entry "Finished Leather all kinds" appearing at Serial No. 143, Chapter 41, Schedule l2 – Export Policy, of the Foreign Trade Policy 2009-14, that the items mention in column 2 of the table hereunder shall constitute "Finished Leather" and the same may be exported without a license but subject to the terms and conditions specified against each item in column 3 of the table hereunder."

S.No.	Description of the item	Manufacturing Norms Conditions
1	2	3
I	Leathers with finishing coat (All substrates- Goat and Sheep skins and Bovine hides/sides calf skins including splits)	a. Tanning b. Dyeing (optional) c. Fatliquoring d. Finishing coat
II	**Suede Leather (All substrates including splits)**	**a. Tanning** **b. Dyeing in light/pastel/medium /dark shades (in case of doubt, the presence of dye to be ascertained by chromatographic technique)** **c. Fatliquoring** **d. Buffing to produce suede nap** **e. Shaving /Snuffing of the grain along the backbone 2 inches on either side in the**

		case of goat and sheep skins and in the case of bovine hides/sides and calf skins all over the grain side.
III	--	--
IV	--	--
V	--	--
VI	--	--
VII	--	--
VIII	--	--
IX	--	--
X	--	--
XI	--	--
XII	--	--
XII	Wax/Oil Coated leathers	a. Tanning b. Dyeing (optional) c. Fatliquoring d. wax coat (or) Oil coat

NOTE:- Any new type of finished leather not covered under the above categories shall be permitted for export, subject to testing and certification by Central Leather Research Institute (CLRI).

Definitions of manufacturing operations

Tanning :- Tanning with one or more than one kind of tanning agent, such as mineral tanning and vegetable tanning and/ syntan tanning and/or resin tanning and/or aldehyde tanning, oil tanning in any sequence and or any new type of tanning.

....
....
....
....
....

Shaving:- A mechanical operation of reducing the substance of leather to uniform thickness by scrapping off layers from flesh or grain side.

Snuffing:- The process of buffing the grain side of leather usually done by buffing machine, with visible evidence of removal of grain.

....
....
....

Rolling:- The operation of rolling the heavy leathers like sole leather using a heavy roller with rolling machine.

2. This issues in public interest.

(R.S. Gujral)
Director General of Foreign Trade and
Ex Officio Additional Secretary to the Government of India.”

(B) Guidelines for identification of finished leather for export by the "Bureau of Indian Standards" is extracted as under:-

"Indian Standard
GUIDELINES FOR IDENTIFICATION OF
FINISHED LEATHER FOR EXPORT
(Third Revision)
Leather Sectional Committee, CDC 16

……………………………….
……………………………..

0.FOREWORD

0.1………………...
…………………..
0.5 …………………

1. SCOPE

1.1 This standard lays down guidelines for ready identification of different varieties of finished leather particularly for export purposes.

1.2 This standard does not specify quality of individual finished leather.

2. TERMINOLOGY

……………………………….

3. GUIDELINES FOR IDENTIFICATION

3.1 Manufacturing/Processing Operations: - A brief description of all the manufacturing processes and operations undergone during manufacture of finished leathers is given below. Numerals 1 to 19 as explained below represent these operations and are used in col.3 of Table 1:

1. <u>Levelling the substance with the tolerance of +/- 0.2 mm if not specified otherwise (see table-1) in all portions of a skin or hide excluding bellies and shanks</u>
2. <u>Retanning</u>
3. <u>Dyeing</u>: Any leather treated with dye(s) thus imparting a light/pastel/medium/dark-shade.
4. <u>Fatliquoring</u>
5. Stuffing/currying
6. Oiling
7. <u>Setting</u>
8. <u>Staking/boarding</u>
9. Dry drumming
10. Producing a reasonably clean flesh side by mechanical means
11. <u>Buffing to produce a suede nap</u>
12. <u>Raising a suede nap by dry drumming/plush wheeling/buffing</u>.
13. Shaving and/or snuffing of the grain side (see Note 1)
14. Protective coat
15. Glazing (see Note2)
16. Plating/embossing (see Note 2)
17. Ironing/polishing (see Note 2)

18. Plush wheeling
19. Rolling

NOTE-1 - Shaving and/or snuffing may be done along the back bone or fully".

NOTE-2 - The object of glazing, plating, ironing and polishing may be to produce a distinct lustre except in the case of matt finished leathers, such as grain clothing and upholstery. Glazing followed by hot ironing, if necessary, shall be done on leathers where a protective coat based on proteinous materials is given. Plating/embossing and/or hot ironing may be done on leathers where a protective coat based on synthetic resins is given.

3.2 Physical condition and Characteristics

…………………..

3.3 Broad classification – The finished leathers have been categorized in Table 1 under the following heads:

a) clothing leathers,
b) Fur leathers,
c) Glove leather,
d) Industrial leathers,
e) Lining leathers,
f) Luggage leathers,
g) Miscellaneous leathers,
h) Shoe upper leathers,
i) Sole leathers, and
j) Upholstery leathers

TABLE 1 IDENTIFICATION OF FINISHED LEATHERS

VARIETY OF FINISHED LEATHERS	BRIEF DESCRIPTION	MINIMUM OPERATIONS INVOLVED IN MANUFACTURE
(1)	(2)	(3)
a) Clothing leathers		
1) From Cow and Buffalo Hides and Calf skins	Shall be chrome/combination tanned. Shall be soft and have drape	-----
………………………………………………………		
………………………………………………………		
b) Fur leathers	……………………	
c) Glove leathers	……………………	
d) Industrial leathers	……………………..	
e) Lining leathers	……………………	
f) Luggage leathers	……………………	
g) Miscellaneous leathers	…………………...	
h) Shoe upper leathers	**……………………**	
i) Sole leathers	……………………	
j) Upholstery leathers	.……..………………	
………………………………………………		
………………………………………………		
h) Shoe upper leathers **1. From Cow and Buffalo Hides and Calf Skins**	**Unless otherwise specified shall be chrome/combination tanned. Leather processed for upper part**	**---**

	Of footwear.	
………………………………		
………………………………..		
2) Shoe Upper from Goat/Sheep Skins.	**Made from goat/kid/lamb/sheep Skins and shall be chrome/com- -bination tanned unless otherwise Specified. Processed for upper Part of footwear**	
……………………….….		
……………………………		
xi) **Suede upper/ Shoe suede Upper leather**	**Shall be drum dyed to a level and uniform shade, having suede on the flesh side.**	**1,2,3,4,7,8. 11 and 12**
………………………..		
K) Upholstery leathers		
………………………………………………."		

5.2 A perusal of the DGFT's Public Notice indicates that shaving and snuffing operations are the last in the manufacture of Suede Leather. Shaving is a mechanical operation of reducing the substance of leather to uniform thickness. Moreover, snuffing is the process of buffing for removal of visible grains. Thus, these are different processes to be carried out in the manufacture of finished leather. Manufacturing norms/ conditions as prescribed in the Public Notice mentions as **"c. Shaving/snuffing of the grain side along the backbone 2 inches on either side……………."** Learned Advocate has contended that the conditions of Public Notice are satisfied if shaving or snuffing is carried out. Absence of snuffing on the impugned goods would not make this leather unfinished as all the major manufacturing operations were carried out. These words shaving/snuffing have to be understood as one of these processes is required to be done. In support of his arguments, he has drawn strength from BIS guidelines for identification of finished leather for export. These guidelines clearly detail out various manufacturing operations involved in finished leathers viz., Levelling, Retanning, Dyeing, Fatliquoring etc. In these guidelines, at "**Note-1 - Shaving and/or snuffing may be done along the back bone or fully" is** mentioned at the end of manufacturing/processing operations relating to suede leather. Usage of and/or in BIS guidelines indicate that one of the processes if carried out is adequate according to the ld. Advocate. Further, minimum operations involved in manufacture for suede upper/shoe suede upper leather as per BIS guidelines are 1,2,3,4,7,8,11 and 12, which are Levelling, Retanning, Dyeing, Fatliquoring, Setting, Staking/boarding, Buffing and Raising a suede nap by dry drumming/plush wheeling/buffing. It is noteworthy to mention here that shaving and /or snuffing are mentioned at Sl. No. 13 as indicated above which are not prescribed as one of the minimum operations to be carried out in the manufacture of suede leather.

5.3 As, a forward (/) has been used in the DGFT's Public Notice in respect of shaving/snuffing, a question arises as to the way it needs to be interpreted or understood. Ld. Advocate has put forth that the forward slash (/) has to be understood to mean "and" or "or'' depending upon the context. He has drawn our attention to the decision of the Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) in the case of *Arti Dahayat Vs. State of M.P*. in Writ Petition No. 24112/2021 dated 11.11.2021, wherein it has been held as under:-

> "10. As per English usage "/" (forward slash) also known as forward slash, stroke, oblique, is often use to indicate "or". As per Oxford Advance Learner's Dictionary of Current English, A.S. Hornby, Seventh edition, oblique the symbol (/) used to show alternatives. In the case of Star Co. Ltd. Vs. Commissioner of Income Tax, MANU/SC/0311/1970 : AIR 1970 SC 1559, it is held that positive conditions separated by "or" are read in the alternative; and, in the case of Patel Chunibhai Dajibha Vs. Narayanrao, MANU/SC/0287/1964 : AIR 1965 SC 1457, negative conditions connect by "or" are construed as cumulative and "or" is read as 'nor' or 'and'. Thus, if these judgments are taken into consideration then positive conditions separated by 'or' symbolised by forward slash which means 'or' are to be read in the alternative and meaning of such a reading will be that at the time of the application, the applicant herself or in alternative her family members should be the holders of valid BPL card document.
>
> 11. When tested on this legal proposition then there is no iota of doubt that when petitioner herself admits that father-in-law and husband of the private respondent are part of the BPL card holders prior to the date of the advertisement then by inclusion of private respondent on account of her marriage to a member of BPL family will become a BPL card holder and, therefore, the Collector and Commissioner have not erred in passing the impugned order calling for any interference."

5.4 In this background of peculiar circumstances of this case, we have been persuaded to come to the conclusion that shaving/snuffing as used in the DGFT's Public Notice dated 01.12.2009 to mean shaving **or** snuffing. As all the major manufacturing operations are carried out on the impugned goods, the same could not be termed as unfinished goods. The fact of buyer accepting the goods and making payment, ordering further quantities and terming only 13 cartons of suede leather of grey colour as unfinished leather when 24 cartons of other colours of the same consignment as finished leather have weighed in our mind. We have also considered the decision rendered in the case of *Collector of Customs, Madras Vs. M. Aslam Aejaz & Co.* reported in 1995 (79) ELT 165 (Tri.), to the effect that minor deficiency in the processing may not ipso facto make the leather as not fully finished as the appellant's have carried out all the major operations.

6. For the reasons and detailed discussions as above, the appeal is allowed with consequential relief, if any.

(Order pronounced in the Open Court on **28.02.2023**)

(**SULEKHA BEEVI C.S.)**
MEMBER JUDICIAL

(VASA SESHAGIRI RAO)
MEMBER TECHNICAL

BB