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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/41 /2009 - CU[DB] Date 13/05/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S INYATI FOOTWEAR LTD.
"SULTAN VILLA", JAJMAU, KANPUR.

M/S INYATI FOOTWEAR LTD. Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/81/2010 – CU DB DATED 21.04.2010** passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. KANPUR, 117/7,
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2. Adv. / Consult
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3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. Office Copy
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Customs Appeal No.C/41/09

[Arising out of Order-in-Original No.04/Commr/Customs/Adj/2008 dated 2.12.2008 passed by the Commissioner, Central Excise, Kanpur].

Date of Hearing:16.04.2010
Date of decision: 16.04.2010

M/s. Inyati Footwear Ltd. ...Appellant

Vs.

CC, Kanpur ... Respondent

Present for the Appellant :Shri.B.Garg, Advocate
Present for the Respondent :Shri.Vijay Kumar, DR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr. S.K. Gaule, Technical Member

Final **ORDER NO.** C/81/10 **DATED:16.04.2010**

PER: D.N.PANDA

The appellants have grievance in this appeal that although the raw-material imported were used for manufacture of Gents leather half boot upper and exported the same, that was held to be shoe upper by revenue and holding so, the notificational benefit allowed under Notification No.40/06 dated 1.5.06 was withdrawn. Such a withdrawal resulted in demand of custom duty of Rs.11,89,775/- with consequence of confiscation and imposition of redumption fine as well as penalty.

2. Shri Vipin Garg, ld. Counsel appearing on behalf of the appellant submits that the raw-material imported were used for manufacture of Gents leather half boot upper in terms of the Duty Free Import Authorization (DFIA) license issued by DGFT on 9.3.07. (copy available at page 58 of appeal folder). These goods were dispatched in terms of shipping bills which were subject matter of adjudication. The shipping bill clearly indicated that the goods manufactured and exported were of the description as claimed by the Appellant. According to him, Revenue should not have come to a different conclusion making unilateral reference to Central Leather Research Institute (CLRI), Kanpur to seek a report stating that the goods exported were leather shoe uppers when the appellant was not aware how the samples were sent. The report of CLRI is subject to challenge and that was done by the appellant asking for cross-examination of the examiner concerned. But such a cross-examination was not allowed.

2. Appellant's further submission is that the goods manufactured by the appellant were of the specification prescribed by Bureau of Indian Standard and those are IS 15298 and like nature. Even if the standard specification is available in the standard parameters of BIS, the goods manufactured by the appellant were not subjected to test. If a test is done properly according to Bureau of Indian Standard specification and according to the detailed technical testing done by International Testing Centre in terms of report dated 2.4.09 and the appellant is allowed appropriate opportunity of defence, the appellant shall satisfy the Authority below in

respect of its claim and may not have grievance in future. He submits that the documents presented before the Tribunal if examined thoroughly, the authorities shall themselves come to a conclusion about the merits of the appellant and the Notificational benefit allowed earlier shall not be withdrawn. Learned Counsel submit that there are various arithmetical inaccuracies in the order and various documents and pleadings which are relevant and material deserves for appropriate consideration since those were not considered in adjudication.

3. Ld. DR Shri Vijay Kumar submits that there is no difficulty to understand about the meaning of the term Gents Leather half boot upper and Gents leather shoe upper. There is a SION prescribed by Foreign Trade Policy document itself to understand the identity and nature of such goods. According to him, different combination of the raw material used for manufacture of the type of resultant product shall prove identity thereof. Also he submits that the SION was applied totally by the ld. Adjudicating authority to come to a conclusion that the goods exported by the appellant were shoe upper only. He also submits that the CLRI being an Apex Body for leather test, there was no discrepancy in the report. He further submits that Bureau of Indian Standard if prescribes specification for different types of goods, SION norms cannot be ignored which is a requirement of DFIA licence. He submits that BIS specification in respect of Shoe upper and half boot is not available. The examination was done properly when the

materials were in the course of export and nothing could exhibit to support the pleadings of the appellant.

4. Heard both sides and perused the records.

5. There is no difficulty to understand that there were certain goods allowed to be imported under Duty Free Import Authorization Scheme (DFIAS) and the list of such goods were attached to the certificate issued by the DGFT on 9.3.07. Once the goods, which are meant for manufacture of the resultant product, are subject matter of Notificational benefit, it is essential to examine that the goods imported (raw-material) necessarily emerged resultant product and such resultant product were only exported. Without a clear finding in this regard any order passed shall defeat the spirit of Notification No.40/06 dated 1.5.06. We are unable to find from Order-in-Original whether such a technical test and approach was made to satisfy whether the resultant product itself has the quality, technical characteristics and specification of the raw materials used in the resultant product. In absence of such features, the adjudication order is bound to suffer from legal infirmity. We have noticed from the copy of the certificate issued by the CLRI that the said laboratory came only to the conclusion that the samples were leather shoe uppers. Once revenue's claim that the goods were leather shoe upper, according to SION, that should have been brought to the purview of adjudication. But that is not done. Similarly, what are all the characteristics of the Gents leather half boot upper both in terms of input and output according to SION has also not been brought to the

body of adjudication order. We do not find anywhere as to any opportunity whether was granted to the appellant for rebuttal against the finding by CLRI. Nothing can be used against an aggrieved behind his back. He has every right to be dealt under the law fairly. Therefore, appellant definitely deserves an opportunity of cross examination, if revenue propose to use CLRI report against the assessee. Finding that there is a primary laxity in the order of Adjudication as to manner of examination of the notificational benefit, we are not satisfied to appreciate the pleading of either side. Notificational benefit having provided certain guidelines and parameters, keeping in view the object of paragraph 4.55.3 of the Handbook of Procedures (Vol. 1 of Foreign Trade Policy), any allegation made against an assessee should be tested according to the norms laid down by the Notification. Failure to test the facts according to the norm laid down shall not result with a rational adjudication.

6. Having noticed some of the features aforesaid, namely, violation of natural justice, ill-reasoned order, none speaking nature of the order, ill-examination of the material evidence, non-consideration of the required parameters of the notification, we are compelled to send back the matter to the ld. Adjudication authority to thoroughly test the facts according to the guidelines suggested above and apply the law properly. Without limiting his power to examine to the few guidelines above, he shall examine every point, and materials on record with pleading of appellant as well as relevant consideration, to come to a proper conclusion whether Notificational benefit allowed to the assessee shall be withdrawn with the consequence of

law to follow. The appellant is entitled to the due process of justice granting fair opportunity of hearing to him.

7. In the course of hearing, it was stated by the appellant that the Appellants are still continuing manufacture of impugned goods and they shall be ready to provide even new samples for the convenience of testing. If the ld. Adjudicating authority feels proper that new samples may be determinative, he shall have his own decision to take such sample and test in accordance with law. The appellant's pleadings as to consideration of Bureau of Indian Standard specifications may not be ignored. Allowing opportunity of cross examination and to make other legal pleadings, if any, learned Adjudicating Authority shall complete de-novo proceedings and pass a reasoned and speaking order.

8. In the result, appeal is disposed by way of remand to the ld. Adjudicating Authority.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(S.K.GAULE)
TECHNICAL MEMBER

Anita