Circular No. 74/94- Customs

F.No. 528/127/98-Cus. (TU)

Government of India

Ministry of Finance

Department of Revenue, C.B.E.C., New Delhi

Subject : Imposition of actual user condition and end-use bond condition for insole/midsole and sheets thereon. Notification No. 11/97-Cus. Si. No. 94(1) and Notification No. 23/98-Cus. Sl. No. 108.

Commissioner of Customs, Mumbai has made a reference on the eligibility of Nylon Tricot Fabrics/ P.U.leather cloth under the above Sl.No. of the Notification No. 11/97-Cus. read with list 3 (A) therein. The dispute was that the product was having multiple uses and the main use not being that of use in leather industry. While Commissioner of Customs, Mumbai considered, this item to be covered under the heading Insole and Midsole, the DRI Zonal Unit, mumbai suggested, citing the Judgement of the Supreme Court and the views of Central Leather Research Institute, Chennai that this Nylon Tricot Flocking material is not covered under the said Notification. In addition, he stated that in view of the recent judgement of the Supreme Court in the cases of Commissioner of Customs, Mumbai Vs. Pacific Exports and Commissioner of Customs, Mumbai Vs. Handicrafts Exports both pertaining to leather industries, the existing practice of the Custom House allowing unconditional benefit of the Notification to this fabric needs reconsideration.

This issue was examined in the Board. The said Notification which has been repeated at. Sl. No. 108 of Notification No. 23/98- Cus. is seen to have made a distinction between the 2 parts of the entry in column 3. The first part, containing parts and consumables and other items of list 3(A) does not have a specific restriction. In the second part, containing items of list 3(B), the importer is required to furnish an undertaking to the Assistant Commissioner that the goods shall he used in the leather industry and that he shall maintain an account of imported goods and that he shall submit such accounts periodically etc..

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 had 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 judgement of the Supreme Court in the case of Commissioner of Customs, Mumbai v. Pacific Exports cited in 1998 (99) ELT 488 (SC) and Commissioner of Customs, Mumbai v. Handicrafts Exports 1997 993) ELT 6 (SC) 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.

3. In view of the two judgements of the Supreme Court, which pertain to the leather industry and which mainly examine the import of the goods for use in the leather industry, the above goods viz. Nylon Tricot Flocking Fabric can only be cleared under this notification provided the imported abide by the condition stipulated by the Supreme Court i.e. end use condition has to be stipulated at the time of clearance of the goods from the customs.

4. The Customs House may, therefore, change their existing practices to fall in line with the above judgements.

Sd/-
(S.C. Choudhury)
Director (Customs)

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