

CASE NO.:
Appeal (civil) 4940 of 1999

PETITIONER:
M/S. PHOENIX INTERNATIONAL LTD.

Vs.

RESPONDENT:
COMMISSIONER OF CUSTOMS, DISTT. RAIGAD, MAHARASHTRA

DATE OF JUDGMENT: 29/11/2001

BENCH:
D.P. Mohapatra & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.

The appellant, a manufacturer and exporter of leather and synthetic footwear, obtained a Value Based Advance Licence (VBAL) issued in terms of Para 49 of Export Import Policy 1992-93. The Licence permitted the appellant to import printed PVC with technical characteristics of PVC Leather Cloth for use in the manufacture of the export product Synthetic footwear. The appellant filed Bill of Entry for clearance of goods described Printed PVC (PVC leather clothes) for consumption, claiming coverage of VBAL Scheme. Appellant sought clearance of the same as duty free under Notification No. 79/95-Cus. dated 31.3.95 issued by the Central Government under Section 25(1) of Customs Act, 1962 which permitted exemption for the whole of the duty of customs for the materials imported into India against VBAL Scheme. The Licence listed Printed PVC as an eligible item of import. The Assessing Officer after examination of the sample expressed the opinion that the goods had the essential characteristics of Shoe Uppers and it could not be identified as PVC Cloth. A show cause notice was issued to the appellant stating that goods were liable to be classified as Shoe uppers, which are parts of footwear under the heading 6406, and the declaration made by the appellant in the bills of entry was wrong and the goods are liable for confiscation and further imposition of penalty.

The appellant submitted a reply and also produced a letter issued by Joint Director General of Foreign Trade, speaking for DGFT, addressed to the Commissioner of Customs wherein it was stated as under:-

2. The matter has been examined in the Special Advance Licence Committee on the basis of sample produced. The committee observed that what is allowed for import is PVC Leather Cloth and just by printing and embossing thereon and importing in cut lengths, the basic character of PVC Leather Cloth does not change. Moreover, just because import has been made in cut length and imported material would be converted into footwear components, it cannot be treated as footwear components.

3. In view of this you are advised to take appropriate action. Specimen of sample(2 Pieces) are sent herewith.

After considering the matter, the Commissioner held that on examination of goods imported, it reveals that the item is not just PVC Leather cloth but something more than that and each piece is having a pattern of 3 shoe uppers, printed/embossed, and when cut, each of these pieces is distinguishable and

identifiable as a part of shoe upper and, therefore, it merits classification under heading 6406.10 which specifically covers Uppers and parts thereof, other than stiffeners.

An order of classification was passed under Section 111(m) of the Customs Act, 1962, permitting redemption of goods on payment of Rs. 10 lakhs and imposing penalty of Rs. 50,000/- in terms of Section 112(a) of the Act. The appellant challenged the order before the Tribunal and the Tribunal, upholding the order, however, reduced the fine from Rs. 10 lakhs to Rs. 1 lakh.

We heard Mr. V. Lakshmikumaran, learned Counsel for the appellant and Mr. T.L.V. Iyer, learned Senior Counsel appearing on behalf of the respondent. The learned Counsel for the appellant contended that Notification No. 79/95 Cus. dated 31.3.95 exempted materials imported into India against the Value Based Advance Licence (VBAL) in terms of Exim Policy 1992-93 from the whole duty of customs leviable thereon and the notification grants complete exemption of all raw materials, components, intermediaries etc. required for the manufacture of export products which are specified in the VBAL. The learned Counsel for the appellant further contended that as the item imported is printed PVC to be used for the manufacture of the export product Synthetic footwear, the same should be automatically exempted under the notification.

On the other hand, the learned senior Counsel for the respondent contended that the imported item as per the sample is having printing and embossing and hence acquired the characteristic of a part of Shoe upper and an examination of item would reveal that each piece, if cut, would give 3 pieces of Shoe Uppers and, therefore, it becomes identifiable as part of shoe classified under heading 6406 - sub heading 6406.10, which specifically covers uppers and parts thereof other than stiffeners.

The sample of the item imported is having measurement of 20 X 14. It is a PVC sheet bonded with textile fabric. This PVC sheet is not a plain sheet, but having regular pattern and grooves are made for cutting to 3 pieces. The pattern is clearly distinguishable and if cut through the grooves, 3 patterns of Shoe uppers could be separated. It is to be noticed that each sheet is shaded in colours and there is printing also. Thus, the sheet consists of the impression of 3 Shoe Uppers, each bearing a logo.

Thus, it could be seen that PVC Cloth has all the characteristics of Shoe Uppers and we are unable to accept the contention of the learned Counsel for the appellant that merely because it is printed and embossed it would not cease to be a PVC Cloth. The learned Counsel for the appellant placed reliance on the decision of this Court in *Abrol Watches Pvt. Ltd. vs. Commissioner of Customs, Bombay* 1997(1) SCC 321 and contended that if the imported item satisfies the description given in the notification, the benefit is to be extended irrespective of the classification of the item under the Customs Tariff Schedule. That is a case where the assessee imported horological machinery for being installed in a watch-making factory. The import was treated a project import within the meaning of Chapter 98 of the First Schedule of Customs Tariff Act and the goods were cleared under Heading 98.01 and claimed exemption from customs duty leviable thereon in excess of 20%, based on Exemption Notification dated 19.4.85. There was another Exemption Notification dated 28.2.85, which granted exemption from customs duty to horological machinery over and above 10% advalorem. Assessee claimed the benefit of this notification. The Tribunal took the view that since the assessee had chosen to classify the imported machinery under Chapter 98 as project import, the assessee was not entitled to the benefit of the larger exemption. This Court held that the assessee was entitled to the benefit of the larger exemption, though he had cleared the goods under the Heading 98.01. We do not think this decision is of any assistance to the appellant.

The learned Counsel for the appellant also brought to our notice the decision of this Court in *Vareli Weavers Pvt. Ltd. vs. Union of India* 1996(83) ELT 255(SC). That is a case where the appellant-assessee imported Partially Oriented Yarn (POY). The controversy was whether the POY imported by the

appellant should be taken to fall within Item(iv) under the head Polyester Yarn relating to POY of 75 deniers and above but below 100 deniers, or within item (iii) relating to POY of 100 deniers and above but not above 750 deniers. The authorities held that POY was assessable to countervailing duty and excise duty at the final denierage stage, that is to say, after POY had been texturised. This Court held that countervailing duty must be levied on goods in the state in which they are imported and not upon the basis that subsequent to the process of texturising the POY that was imported would have different denierage.

Based on the above findings it was argued that goods imported by the appellant should have been considered for the purpose of duty as it existed at the time of import and the learned Counsel submitted that the PVC Cloth could be transformed into Shoe Upper only after cutting into pieces and piercing holes therein and putting a flap on it. This contention also does not carry much force. The PVC Cloth is printed and embossed and, by cutting into 3 pieces, 3 Shoe Uppers are available and they have all substantial and essential characteristics of shoe uppers. It is pertinent to note that printing and embossing work is not merely cosmetic in nature to give an added appeal to the goods, but they distinctly give the patterns of Shoe Upper and therefore, we do not think that the Tribunal had gone wrong in affirming the decision of the Commissioner.

It was further contended that the question for consideration before the authority was whether the appellant was entitled to benefit of exception or not and under such circumstance, Rule 2(a) of the General Rules of Interpretation attached to the Customs Tariff Schedule has no relevance. It was argued that such rule could be invoked only when a dispute regarding classification arises. It is true that the dispute as such is not regarding classification. However, if the imported goods fall within a particular classification, for which duty is to be paid, authority is well within its rights to hold that goods do not come under the exempted category. The goods in question have got only the general characteristics of PVC Cloth whereas they have distinct and clear features of Shoe Uppers and we do not think that Tribunal went wrong in holding that view.

The appeal is without any merit and it is dismissed.

.J
(D.P. Mohapatra)

.J
(K.G. Balakrishnan)

November 29, 2001.