

(1968) 03 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 3350 of 1965

Carborandum Universal Ltd.

APPELLANT

Vs

Asstt. Collector of Cus.

RESPONDENT

Date of Decision : 22-03-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 107 ELT 593 : (1969) 82 LW 28

Hon'ble Judges : P. Ramakrishnan, J

Bench : Single Bench

Advocate : K.P. Jagadeesan, for the Appellant; Habibulla Badsha, for the Respondent

Final Decision : Allowed

Judgement

P. Ramakrishnan, J.—The point which arises for decision in this writ petition is a brief one. The petitioner, Messrs. Carborandum Universal

Ltd., Madras, imported from manufacturers in Switzerland, for use in their manufacture of coated and bonded abrasives, an article known as ""Silk

Bolting Cloth"" which is, according to their affidavit, an indispensable component part of the machinery designed to effect the proper sieving of

grains which are used in the manufacture of abrasives. The petitioner has taken the trouble to show the blueprint of the machinery wherein, this

"Silk Bolting Cloth" which is of a standard measurement of 40"" x 30"" or 80 cms. x 100 cms. exactly fits into the standardised frames manufactured

for the purpose. The petitioner purchased ""Silk Bolting Cloth"" under an import licence from manufacturers in Switzerland and had the necessary

invoices. It wanted to pay customs duty under Item 72(3) of the First Schedule of the Import Tariff under the heading ""Component parts of

machinery as defined in Item Nos. 72, 72(1) and 72(2) and not otherwise specified, namely, such parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose but excluding small tools like twist drills and reamers, dies and taps, gear cutters and hacksaw blades"". The duty payable under this item is 20 per cent ad valorem. The Customs Authorities/ however came to a different conclusion and in their view, this commodity has to be classified under Item 48, which is described in the schedule as ""Fabrics, not otherwise specified, containing more than 90 per cent of silk, including such fabrics embroidered with artificial silk"" for which 120 per cent, ad valorem plus Rs. 13.80 per kilogram is provided. The petitioner's contention that the proper duty leviable was under Item 72(3) was overruled and the higher 120 per cent duty was levied. The petitioner has filed this petition under Article 226 of the Constitution for the issue of a writ of certiorari quashing the above order of the Customs Authority, which was confirmed by the second and third respondents respectively.

2. It is contended by the petitioner that "Silk Bolting Cloth" is an essential part of the machinery used for the manufacture of abrasives, that it was intended for that purpose, and that its suppliers had also cut the cloth into the specified measurements for the purpose of fitting into frames. It is also alleged by the petitioner that the material is costly and the price works out to Rs. 42/-per yard and that the material would not have been cut into small sizes, unless the measurements had become specialised for the purpose of the particular machinery, into which the cloth had to be fitted. In other words, according to the petitioner, though the article in question is composed of silk fabric, the fact that it has been cut into a standardised measurement of 40"" x 30"" or 80 cms. x 100 cms. will be strong indicia to show that it had become specially adopted for its use as a component part of the machinery.

3. In the counter affidavit filed to the writ petition by the Department, it is stated that formerly Silk Bolting Cloth was being used exclusively for flour milling machinery but it has been subsequently reported that it has got a larger use in other than flour mills, for instance, in printing, in sifting abrasive grains, in textile printing etc., and there is a further observation that

there is a possibility of its also being used as a wearing apparel, and such a possibility could not be ruled out altogether. It was in these altered circumstances that it was assessed under Item 48(c).

4. The reference to the use of the cloth in other types of machinery like flour mills, printing machinery, textile printing machinery etc. would not rule out the contention of the petitioner that it formed the component part of a machinery specially adopted for the purpose. The further observation about the possibility of its use as a wearing apparel appears to me to miss the mark so entirely that it would seem to be an irrelevant consideration.

Considering the high price of the cloth at Rs. 42/- per yard which is the price according to the petitioner, and that it has been imported after being

cut into a specified size of 40" x 30" or 80 cms. x 100 cms., it is extremely improbable that intending purchasers of the cloth for use as wearing

apparel, would go in for these pieces with the ever present risk of their being more or less than what body measurements would require, if it has to

be used as wearing apparel. Thus it is very unlikely that a lady, who would like to buy this costly silk cloth at Rs. 42/- per yard, would go in for a

cut piece, knowing full well the risk that her body measurement would require the need to supplement it by stitching on to it more pieces of the

same cloth. The idea that these uniformly cut pieces in standard sizes of costly cloth will be used as wearing apparel appears to be opposed to

reality as well as common sense. Therefore I hold that this is not a case where the Customs Authority had to make an election between two

possible alternative classifications, one under one item of the Indian Customs Tariff Guide and the other under another item of the same guide

which was more favourable to the revenue. In that event, following the dicta in several decisions of the Supreme Court including A.V.

Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, . followed in The Collector of Customs, Madras

Vs. K. Ganga Setty, decision of the Customs Authority would not be open to interference by this Court in writ proceedings under Article 226 of

the Constitution. On the other hand, this appears to be a case where the Customs Authorities when faced with every probability and every

justification for classifying this item under Item 72(3) of the Schedule, decided to classify it under Item 48(c) under circumstances which are

opposed to common experience and also ordinary knowledge of the limitations in the use to which a textile fabric altered into a particular form and shape can be put into. From this point of view, the classification made by the Department of the article in question appears to be one which could not be made by any reasonable interpretation of the provision in Item 48(c) relied upon by the Department. On the other hand the petitioner's claim for its classification appears to be clearly valid.

5. This Writ Petition is, therefore, allowed. No order as to costs.