

(1994) 09 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 6131 of 1987

Continental Exporters

APPELLANT

Vs

Assistant Collector of Customs, Madras

RESPONDENT

Date of Decision : 27-09-1994

Acts Referred:

Customs Act, 1962 — Section 108

Citation : (1996) 53 ECC 64 : (1995) 77 ELT 801

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Shri K. Harish, for the Appellant; Shri K. Ilis Ali, for the Respondent

Judgement

Raju, J.—The above writ petition has been filed for a writ of certiorarified mandamus or other appropriate writ calling for the records of the

respondent culminating in his order dated 15-6-1987 bearing Ref. No. S. 59/128/87 Gr-4, quash the same and consequently direct the

respondent to release goods covered by IGM, No. 25/87 and Line Nos. 179, 180 and 181 on payment of 50% of the differential duty under the

Heading 7317.00 of the I Schedule to the Customs Tariff Act, 1975.

2. The petitioner claims to be engaged in the manufacture of ready-made garments for export to various countries and imported a consignment of

staples from Max Co. Ltd. and when it submitted the necessary Bill of Entry on the arrival of goods at Madras Port for clearance, it classified the

goods under the Heading 73.17 of the Schedule to the Customs Tariff Act, since according to the petitioner, the staples were iron and steel

articles. It is also stated in the affidavit filed in support of the present writ petition that on an earlier occasion, when a similar issue came up before

this Court for consideration in W.P. No. 1429 of 1985, Venkataswami, J. (as he then was) rejected the claim of the Department that the goods of the nature under consideration were classifiable under Tariff Item 83.01/15(2) and instead held that they would fall under Tariff Item 73.31. The said order was also said to have been confirmed by a Division Bench of this Court on a writ appeal filed by the Department in Writ Appeal 451 of 1984 by judgment dated 28-06-1985. On the above basis, the petitioner claims that the articles in question would fall under the Heading 73.17 (the corresponding entry), that the claim is quite in order and could not have been rejected by the Department.

3. Learned counsel for the petitioner reiterated the above stand taken in the affidavit filed before this court at the time of hearing and invited my attention to the decision of the Division Bench.

4. Mr. Ilias Ali, learned counsel appearing for the Department while referring to the order under challenge, contended that the said view in the decisions referred to and relied upon for the petitioner was taken on the basis of the particular description of the entry or head as it stood at the relevant point of time and not with reference to or in the context of amendments introduced in the year 1986, and therefore, the petitioner could no longer lay its claim successfully on the basis of the earlier judgments of this Court. Learned counsel for the respondent/Department took me though the difference in the original entries as it fell for consideration of this Court on the earlier occasion and the entries as they stand after the amendment with effect from 28-2-1986 to contend that the articles of the nature imported by the petitioner would only fall under Heading 83.05.

5. I have carefully considered the submission of the learned counsel appearing on either side. In my view, the claim of the petitioner cannot be sustained. A perusal of the entries as they existed when they were considered by this Court on the earlier occasion and the entries which came to exist after the amendment in 1986, would substantiate the substantial difference in their language, content and purport. In the description, the current Heading 73.17 itself states that except such of the goods as would otherwise fall under Heading number 83.05 alone would fall under the entry and that therefore, it should be proper and necessary that while considering the scope of Heading 73.17, the articles or goods which are

classifiable under 83.05 should be excluded. In substance, the construction of Heading 73.17 as it stands now, would not be as wide as the corresponding entries as they stood earlier, on account of the specific exception carved out in the present entry bearing Heading No. 73.17. On a careful perusal of the entry bearing Heading 83.05, it should be seen that irrespective of the base material out of which the items of goods in question are manufactured, they would attract and also would fall under the Heading 83.05, once they answer the description of the goods illustrated and enumerated in Heading 83.05. On an appreciation of the nature of the articles, on which there is no serious controversy, the Authority below has in my view rightly thought fit to bring them under the Heading 83.05. The serious point of controversy between the petitioner and the respondent is only based on the character of the base material out of which the article in question has been manufactured. Whereas the petitioner would contend that an article imported by it had been made or manufactured out of iron and steel, it would fall under Heading 73.17, the Department claims that irrespective of the base or raw material which went into the production of the articles imported, the manufactured articles themselves answer the description of goods enumerated in and will fall only under 83.05. The stand taken for the Department not only conforms to the scope and purport of the entry as it stands after the amendment with effect from 28-2-1986, but also is acceptable to common sense as well as reason and the contentions to the contrary do not merit the acceptance of this Court.

6. The plea on behalf of the petitioner that when there is possibility of more than one construction, that which is favourable to the citizen, should be adopted, does not apply to this case on hand. After the amendment noticed supra, there can be only one method of construction and that is the construction that has been placed by the Department with reference to the goods in question.

7. For all the reasons stated above, there is no merit in the above writ petition. The writ petition shall stand dismissed. No order as to costs.