

**Sunint Auto Pvt. Ltd. Vs. Cc**

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**Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi**

**Decided On : Feb-17-2005**

**Reported in : (2005)(101)ECC213**

**Judge : A T V.K., P Bajaj**

**Appellant : Sunint Auto Pvt. Ltd.**

**Respondent : Cc**

**Judgement :**

1. The issue involve in this appeal filed by M/s. Sunint Auto Pvt. Ltd. is whether 100% Polyester Curtain Fabric imported by them is classifiable under heading No. 60.02 of the schedule to the Central Excise Tariff Act as claimed by them or under Heading 58.04 of the Tariff as confirmed by the Commissioner (Appeals) under the impugned Order.

2. We heard Shri Piyush Kumar, learned Advocate, and Shri H.C. Verma, learned D.R. The rival Tariff Headings read as under : "5804 Tullies and other net fabrics, not including woven, knitted or Crocheted fabrics; lace in the piece, in strips or in motifs, other than fabrics of headings 6002 to 6006" It is the contention of the learned Advocate the heading 58.04 clearly excludes fabrics which are woven, knitted or crocheted; that as per test report of the Textile Committee obtained by the Department that fabric is knitted fabric; that the test report of the Textile Committee cannot be discarded without valid reasons; that the said opinion was obtained under the instructions from the learned Commissioner (Appeals) for

sending the samples drawn from the impugned goods for test to the Textile Committee; that the personal observations of the Adjudicating Authority about the nature of the goods cannot be accepted for discarding the expert opinion given by the Textile Committee.

3. Learned D.R. on the other hand has submitted that initially the appellant have classified their product under Heading 63.03 as made up article; that only subsequently they have claimed the classification under Heading 60.02; that the Adjudicating Authority has noticed that there are two sets of threads one is running in the direction of warp and the other in the direction of weft; that resulted fabric has meshes which give a pattern; there is no thread which forms loops and which may interlock alternatively with loops in adjacent row on left and right sides; that the Adjudicating Authority had thereafter reached the finding that the product is not knitted fabric as claimed. The learned D.R. also relied upon the decision in the case of Vestegard Frandsen (I) Pvt. Ltd. v. CC, (ICD), Tuglakhabad, New Delhi - 2004 (170) ELT 290 (Tri-Del) and Mehta Nettings (P) Ltd. v. CCE 4. We have considered the submissions of both the sides. The Textile Committee had clearly given its opinion that the fabric in question is warp knitted fabrics. The Revenue has not brought on record any other opinion of any expert in this filed to counter the opinion expressed by the Textile Committee. The Revenue has placed reliance on the personal observations of the Adjudicating Authority over the expert opinion given by the Textile Committee. Heading 58.04 applies to Tulls & Other net fabrics, not including woven, knitted or crocheted fabrics. Once the knitted fabric is excluded from the ambit of Heading 58.04, the impugned goods being knitted, as opined by the Textile Committee, cannot fall under the Heading 58.04. The decision relied upon by the learned DR are not applicable to the facts of the present matter. In the case of Vetergard Frandsen (I) Ltd. The Tribunal has classified the product netting fabrics under Heading 58.04 as the foreign supplier had described the goods only as netting fabrics. Thus in the said decision there was no material to establish that the imported material was knitted fabric whereas in the present matter Textile Committee, in its opinion, characterized the fabric as knitted fabrics. In the case of Mehta Nettings (P) Ltd. the issue relates to the classification of the Round Mesh Mosquito netting fabrics and the dispute was between Tariff Heading 58.04 and 52.06. there was no dispute as to whether the

fabric was knitted. We, therefore, set aside the impugned Order and allow the appeal.

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