

SUPREME COURT OF INDIA

Commissioner of Central Excise Bangalore

Vs.

Cargo Tarpaulin Industries

C.A.No.5004 of 2003

(C. K. Thakker, Ruma Pal and Arijit Pasayat JJ.)

23.02.2005

ORDER

1. The issue whether the canvas cloth manufactured by the respondent-assessee out of which tarpaulins are stitched has been dealt with by the Tribunal by treating the canvas cloth as classifiable under Tariff heading 52.06. However, the Tribunal has denied the benefit of Notification No. 65/87-CE, dated 1-2-87 in respect of the tarpaulins which were manufactured by the appellant out of the canvas cloth on the ground that the same had in fact, been manufactured by the use of power. The Tribunal has also held that the penalty was imposable on the respondent. However, the Tribunal has remanded the matter back for examining whether the respondent is entitled to the benefit of exemption as a small scale industry. Since the quantum of duty would have to be redetermined depending upon the outcome of this question, the question of imposition of penalty was also left to be decided by the Adjudicating Authority. The respondent was directed to submit the proof to the Adjudicating Authority for availing the SSI exemption within a period of one month from the date of the receipt of the order of the Tribunal. We see no reason to interfere with the order.

2. The appeal is, accordingly, dismissed but without any order as to costs.

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3. Having regard to the findings arrived at by the Tribunal that the fabric itself was visible, the item in question was properly classifiable under Chapter Heading 52.06 and not under 59.06. The civil appeal is, accordingly, dismissed but without any order as to costs.