

(1992) 02 GUJ CK 0007

Gujarat High Court**Case No:** Special Civil Application No. 1932 of 1984

Starlight Silk Mills Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Feb. 24, 1992**Acts Referred:**

- Central Excise Rules, 1944 - Rule 56A
- Central Excises and Salt Act, 1944 - Section 18II(i)(b)

Citation: (1992) 38 ECC 127 : (1992) 43 ECR 345**Hon'ble Judges:** D.G. Karia, J; A.P. Ravani, J**Bench:** Division Bench

Judgement

A.P. Ravani, J.

Petitioner No. 1 is a private limited company engaged in the business of manufacturing textured crimped yarn which was covered by tariff Item 18-II(i)(b) of the First Schedule to the Central Excises and Salt Act, 1944 as it was in force at the relevant time. In view of the notification No. 55/78 dated March 1, 1978 issued by the Central Government, the petitioner was liable to pay the duty leviable on the base yarn if not already paid plus Rs.5/- per kilogram. However, if the duty was paid on the base yarn, then the petitioner would be liable to pay Rs.5 per kilogram if the petitioner produced the proof of payment of duty in respect of base yarn.

2. As per Rule 56-A of the Central Excise Rules if the goods were manufactured out of certain materials or components on which duty was paid and the finished goods were also excisable, the procedure of giving pro forma credit for duty paid on materials or components was made available by maintaining account in form RG 23 parts I & II. Under the said special procedure when the manufacturer brought in duty paid materials or component parts, he was given credit for the excise duty paid on such goods. The manufacturer was also required to maintain another account designated as permanent ledger account in which the manufacturer credit(ed)

lumpsum amount from time to time and when the manufactured goods are taken out as and when required, the excise duty payable thereon would be debited to the said permanent ledger account.

3. By notification No. 178 to 184 dated July 1, 1983, the Central Government changed the whole basis of levying excise duty with regard to filament yarn and textured or crimped filament yarn. By the aforesaid notifications Nos. 178 to 184 dated July 1, 1983, the special procedure of giving pro forma credit under Rule 56-A was discontinued with effect from July 1, 1983. However, the pro forma credits already existed in RG 23 continued to be available to the manufacturers of textured crimped filament yarn up to July 16, 1983 on the balance goods lying in manufacturing process. According to the petitioner, there was some clerical mistake in making debit and credit entry in RG 23 account and in PL account of the petitioner. The petitioner contends that on account of the erroneous entry, an amount of Rs. 1,28,716.86 ps. was debited in PL account instead of RG 23 account.

4. The petitioner made a claim by letter dated February 14, 1984 [February 2, 1984?] that the petitioner be permitted to reverse the entries. The details of the entries erroneously made were mentioned in letter dated February 2, 1984. They are as follows:

Gate pass No. & Date	Weight	Amount of duty
197/2.6.83	192.040	17763.00
198/3.6.83	53.040	3978
199/4.6.83	225.180	20829.15
200/4.6.83	345.035	34034.80
201/5.6.83	198.775	18386.69
202/5.6.83	168.775	15588.10
203/5.6.83	29.020	2176.50
204/5.6.83	148.740	15059.92

It was submitted that the clerk had committed mistake by debiting duty payable in PL account instead of RG 23 account in which there was sufficient credit balance. It was also submitted that additional credit amounting to Rs.94,905/- was obtained on June 3, 1983 and further credit of Rs. 1,74,296.55 was taken on June 4, 1983. Thus it was submitted that the clerk had committed mistake in obtaining by debiting in PLA and that too by depositing an amount of Rs.2,00,000/- on June 3, 1983 in PL Account. The petitioner submitted that when the mistake came to its notice, a request was made and detailed submissions were made by letter dated February 2, 1984.

5. By communication dated February 14, 1984, the petitioner has been informed by the Superintendent Central Excise, Bardoli that the Assistant Collector of Central Excise, Surat Division III, has rejected the request for reversing the entries. No reasons are assigned for passing the order. At any rate, no such reasons are communicated to the petitioner. The petitioner has challenged the legality and

validity of this order by filing this petition.

6. In para 2 of the affidavit in reply, it is submitted that the petitioner has alternative remedy of filing appeal before the Collector (Appeals). Therefore, it is submitted that the petitioner should be directed to file appeal before the statutory forum available under the Act. However, in the facts of the case, we do not think it proper to direct the petitioner to avail of the remedy of appeal because there is no reasoned order passed by the Assistant Collector, Central Excise, Surat Division III. In the facts and circumstances of the case, in our opinion the following order would meet the ends of justice:

7. In the result, the communication dated February 14, 1984 by which the petitioner is informed by the Superintendent of Central Excise, Bardoli, that the request made in letter dated February 2, 1984 is rejected, is hereby quashed and set aside. The Assistant Collector, Central Excise, Surat Division III, or any other Assistant Collector who may be dealing with the subject matter at present shall hear and decide the request of the petitioner. It is clarified that it will be open to the petitioner to make further submissions before the Assistant Collector concerned. The Assistant Collector is directed to give reasoned order in support of his decision. If the petitioner wishes to make further submissions before the Assistant Collector, it shall do so on or before March 23, 1992. Thereafter, the concerned Assistant Collector will hear and decide the request made by the petitioner latest by May 25, 1992. We hope and trust that if it is a case of bona fide mistake, the officer concerned will try to see that the assessee does not suffer on account of bona fide mistake. However, while exercising his powers, he will be bound by the provisions of the Act and the Rules. Rule made absolute accordingly.