A LAL WOOLEN AND SILK MILLS (P) LTD. AMRITSAR

v.

THE COLLECTOR OF CENTRAL EXCISE, CHANDIGARH

APRIL, 13, 1999

B [A.P. MISRA AND R.P. SETHI, JJ.]

Central Excise Rules, 1944 : Rules 56-A(2), 56A-(2B).

Excise—Entitlement for set off—Year 1976-77—Notification Nos. 235/
C *76 and 236/76—Assessee—Payment of excise duty on dyed worsted woollen yarn after having paid the duty on worsted woollen grey yarn—Asseesee has not followed the procedure as contemplated under sub-section (2) by making an application for proforma credit—Rule 56-A(2) was amended on 21st February, 1981 by introducing sub-rule 2 B, under which power was entrusted*
D *to the Collector both, to condone the defect of any procedure of sub-rule (2) and to confer benefit to such assessees—Assessee cannot claim benefit of this Amendment—Assessee held not entitled to set off the differential amount of duty while being taxed on "Dyed-yarn."*

Excise—Manufacture—Conversion of grey yarn into dyed yarn—
E *Amounts to manufacture.*

Empire Industries Ltd. **v.** *Union of India,* **[1985] 3 SCC 314 and** *Ujagar Prints* **v.** *Union of India,* **[1989] 3 SCC 48, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 473 of 1986.

F From the Judgment and Order dated 12.8.85 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E-46 of 1985 (D).

P.S. Sudheer and K.J. John for the Appellant.

T.L.V. Iyer, K.J. Francis, P. Parmeshwaran and V.K. Verma for the
G Respondent.

The following Order of the Court was delivered :

The short question raised for the assessee is, whether he is liable to pay excise duty on dyed worsted woollen yarn when he has already paid the duty
H on the worsted woollen grey yarn, if liable, whether he is entitled for set off

the difference of excise duty, which he paid for the 'grey yarn' while being taxed on the said 'dyed yarn'? The two Notifications imposing duty on the said two goods are Notifications 235/76 and 236/76. It is not in dispute for the first time separate rate of duties were imposed on 'grey yarn' and 'dyed yarn' in 1966. Thereafter, through the aforesaid Notifications different tariff values and separate rates of duty were notified for the said two goods. In spite of this the assessee continued to pay the differential duty in view of the earlier practice without any objection from the Department. It is only on 24th August, 1977 notice was issued by the Department refusing such set off. Department case is that woollen yarn is notified in the schedule to Rule 56 A of the Central Excise Rules. Thus under this Rule grant of proforma credit is permitted and not any set off subject to the claim by the assessee under sub-rule (2) of Rule 56A. As no such permission was obtained by the assessee from the Assistant Collector under Rule 56 A, thus the appellants were directed to show cause why Central Excise Duty of Rs. 4,08,789.96 should not be recovered under rule 10 of the Central Excise Rules. The Assistant Collector confirmed the said demand over-ruling the assessee's objections with reference to the past practices. In appeal the Collector of Customs and Central Excise (Appeals) New Delhi confirmed the order passed by the Assistant Collector of Central Excise, Amritsar. The Customs, excise and Gold (Control) Appellate Tribunal partly dismissed the appeal of the assessee with majority of 2:1 relying upon the decision of this Court in *Empire Industries Limited* v. *Union of India,* [1985] 3 SCC. 314. Learned counsel for the assessee attempted to distinguish this case that the said decision related to 'cotton fabrics' while our case is of 'woollen yarn'. An attempt was made by the learned counsel for the assessee that conversion of grey yarn into dyed yarn did not amount to any manufacture hence two separate duties are not leviable. We do not find any merit in this submission. Admittedly both 'dyed yarn' and 'grey yarn' are covered by two separate distinct head of tariff item with different duty. So this itself recognises they to be two different goods with separate levy. In view of this it cannot be urged that there is no manufacture of 'dyed yarn' from the 'grey yarn'.

Next the only short point pressed for decision is, whether appellant is entitled for set off under Rule 56A, when he has not followed the procedure as laid down under sub-rule (2) of the said Rule? It is true it is not in dispute that assessee has paid the duty on both 'grey yarn' and 'dyed yarn'. Assessee also qualifies for a proforma credit in case he applies in terms of sub-section (2) of Rule 56A. It is also not in dispute that assessee has not applied and has not followed the procedure as contemplated under sub-section (2) by

A making an application for proforma credit. It is also true that the said rule was amended on 21st Feb.,1981 by introducing sub-rule 2B, under which power was entrusted to the Collector both to condone the defect of any procedure of sub-rule (2) and to confer benefit to such assesses. But we find this rule was amended only on 21st Feb.,1981 the period to which we are concerned is of the year 1976-77. Hence, appellant cannot claim benefit of this amendment. In view of this we do not find any error in the Tribunal's judgment when it did not grant set off to the appellant. Admittedly, appellant never applied or claimed for proforma credit of the differential amount, hence claim was rightly rejected.

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C We are also informed the decision reported in [1985] 3 SCC 314 *Empire Industries Ltd.* v. *Union of India,* on which the Tribunal relied has been upheld by the Constitutional Bench in the case reported in [1989] 3 SCC 488. Hence for all these reasons we do not find any merit in this appeal and is accordingly dismissed.

D T.N.A. Appeal dismissed.