Filing date	04/02/2017		
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Disposed on	27/04/2026		
Duration	D	M	Y

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE, JHAGADIA

SP. C. S. No.:- 01/2017

Exhibit :-

Plaintiff : M/s. Century Enka Limited (Rajashree Polyfil, Division),Reg. Office at: Plot no. 72 & 72-A, MIDC, Bhosari, Pune - 411023, Maharashtra for its unit knows as "Rajashree Polyfil (A Div. of Century Enka Ltd) situated at Rajashree Nagar, Po. Umalla, Tal. Jhagadia, Dist. Bharuch.

v/s.

Defendant : Rashmi Yars Limited having its industrial unit at Plot No. 6, S. No. 301/1, M.D. Industrial Estate, Basra Road, Village-Masat, Silvasa (Ut. of D.N. & H) and Admn. Office at 405, Metro Tower, Ring Road, Surat.

Appearance :-

Learned Advocate for the plaintiff	P. R. Purohit
Learned Advocate for the defendant	S. M. Parmar

Subject : -Suit for recovery of Rs. 9,56,943/-.

- : : JUDGMENT : : -

1. **Facts of the plaint.**

The facts of the plaintiff's case as adumbrated in the plaint are that the plaintiff is a registered company, incorporated under the provisions of Companies Act, 1956. The plaintiff carries on the business of manufacturing Polyester Filament Yarn, Nylong Filament Yarn, Polyester POY, Polyester and Nylon Chips of industrial and fabric grade and Nylon Industrial Yarn and Nylon Tyre Cord Fabrics and for such manufacturing process the plaintiff has equipped and installed unit at Post Umalla, Dist. Bharuch with highly sophisticated machineries and equipments and accordingly sales the aforementioned finished products to its purchasers as per their requirements and raises the invoices along with the statutory levies and taxes viz. Central Sales Tax, State Sales Tax etc. whichever is applicable and purchaser is liable to pay all such levies and taxes.

That Plaintiff is under an obligation to recover the Central Sales Tax on the each and every sale transaction but any purchaser, who is claiming an exemption from any such Tax liability is required to furnish the appropriate, valid and legal Tax exemption form from the appropriate authority under the scheme provided in the

Statute and is also bound to observe and satisfy each and every requirements of the relevant provisions under which such exemptions are claimed by such Purchaser otherwise the liability to pay the Tax never ceases.

That defendant is a company incorporated under the provisions of the Companies Act, and defendant is claiming to be engaged in the manufacturing of Textures and Polyester Yarns and the defendant approached the plaintiff to purchase polyester yarn during the Financial year 2013-14. The plaintiff supplied the aforementioned goods i.e. polyester yarn to the defendant and in the name of the defendant and defendant being a dealer - exporter and considering a defendant be a penultimate purchaser and is a final exporter who submitted Form H being a Certificate of Export issued by the Central Sales Tax Department, Union Territory Dadra & Nagar Haveli, Silvassa.

That on submission of the duly signed declarations and thereby, satisfying all the requisite and necessary requirements, the Certificate of Exports was issued by the prescribed authority and further it is very much essential to note at this juncture that defendant has acted as defendant is a penultimate purchaser and is a final exporter but after availing such certificate and purchasing the exempted goods with an oblique and malice intention to commit a fraud, sold it to other parties and claimed himself to be a manufacturer for availing undue advantage from such exports though the defendant was bound to observer, comply and fulfill all and every assurances, promises, declarations, commitments, statutory rules, regulations along with the stipulated terms, conditions incorporated in the Certificate of Exports by the authority, for exemption from tax.

That Thereafter, a notice was issued by the office of the Commercial Tax Commissioner, Gujarat State, Ahmedabad, which was served to the plaintiff on 9/3/2016 for the Financial Year 2013-14 and an assessment order was passed on 1/5/2017 rejecting the Form 'H' submitted by the defendant to the plaintiff and imposing 5% tax being Rs. 5,40,527/- for the goods sold by the plaintiff to the defendant against Form 'H' i.e. without charging Central Sales Tax on total sum amounting to Rs. 1,08,10,536/- which was recovered from the amount which could have been refunded with interest from the credit balance and hence plaintiff is entitled to recover the sum of Rs. 5,40,527/-.

That, during the course of assessment, the plaintiff had made numerous efforts via tele - communication for submitting the various documents which were in your custody as export was a subsequent event to establish the exports of the goods sold to the defendant as a penultimate purchaser and a final exporter by the plaintiff against Form 'H'. Further, even a telephonic conversation was arranged for between the Deputy Commissioner of Commercial Tax and Mr. L. B. Wagh, representative of the defendant company, wherein the statutory compliance was requested with respect to the subsequent event of export but the defendant was found guilty of criminal offences and though the defendant was not penultimate purchaser or a final exporter an exemption was availed by submitting false declarations and thereby defendant has committed an offence u/s. 193, 406 ,420 and other ancillary provisions of I. P. C.

That, it transpires from the defendant's attitude and conducts that Certificate of Exports was obtained by unfair practice by the defendant with an oblique and malice intention since beginning and surprisingly though the attempts were made by the Deputy Commissioner Tax Dept. Dadra and Nagar Haveli, Silvassa and thereby demanded the export documents but was a futile attempt.

That the benefit of an exemption from tax is granted to penultimate sale preceding the export of the goods, subject to compliance by the penultimate purchaser/defendant all conditions, inclusive of pre-existing order for export and the such goods (same consignment) are exported but you deliberately failed in availing any such exemption and as such defendant's dishonest intention was to establish himself as a manufacturer and to and custom documents specifically shows defendant as a manufacturer instead of the goods were manufactured by the plaint under the plaintiff's trademark.

That, it is important to state that, even the Form 'H' submitted by defendant is also defective as the details regarding pre-existing export order and other details and schedule are left completely blank and on the contrary the defendant being a penultimate purchaser and is a final exporter, instead of exporting impugned goods, it was sold by defendant and thereby violated the very basic root of the exemption and such deliberate acts, misdeeds and conducts establishes an undeniable fact of complete failure on part of defendant and consequently the form 'H' i.e. Certificate of Export was rejected and recovery of Rs. 5,40,527/- was imposed under the assessment order passed by the authority on 1/5/2017 and Rs. 5,40,527/- was deducted from the credit available before the authority, otherwise the sum of Rs. 5,40,527/- would have been refunded with interest or otherwise the plaintiff would have compelled to pay the same with interest @18% with monthly rests till satisfaction and penalty also may have been imposed.

That the plaintiff often requested and demanded to pay the sum of Rs. 5,40,527/- as it is a sole liability of the defendant and arising out of gross failures and false certification and violation of conditions of exemptions by the defendant but was neglected by the defendant and hence the plaintiff issued a notice dt. 20/7/2017 and called upon the defendant to repay the aforesaid amount which has been duly served upon the defendant 28/7/2017 but till date the defendant has neither paid nor replied the notice received by them till 31/10/17 and hence plaintiff is compelled to institute this suit and after a lapsus of reasonable time a vague and obscure reply dt. 2/11/2017 was given by the defendant which is absolutely bad in Law and does not expel nor thrust out from the suit liability.

Plaintiff has claimed principle amount Rs. 5,40,527/- and inerest amount Rs.4,11,416 (18% rate of interest from 1/5/2017 to 31/10/17) and notice fees Rs. 5,000/- total Rs. 9,56,943/- with 18% inerest from the date of suit till the satisfaction of decree from the defendant.

2. Filing of Written Statement.

The defendant is duly served with the summons / notice of the suit and defendant appeared before this court through his Advocate on dt. 18/08/2018 but did not filed his written statement though sufficient oppertunity has been given, hence, this court has closed the right of the defendant to file written statement on dt. 10/05/2019.

3. Evidence of Plaintiff

The plaintiff has produced following oral as well as documentary evidence in support of the case.

ORAL EVIDENCE :-

Sr. No.	Particulars	Exhibit
1.	Affidavit of examination-in-chief of the	45

	plaintiff.	

DOCUMENTARY EVIDENCE : -

Sr. No.	Particulars	Exhibit
1.	Form H FF0020605	22
2.	invoice No. 03799	23
3.	invoice No. 04149	24
4.	invoice No. 04150	25
5.	invoice No. 04183	26
6.	invoice No. 04265	27
7.	invoice No. 04324	28
8.	invoice No. 04416	29
9.	invoice No. 04417	30
10.	invoice No. 04419	31
11.	Form H FF0020606	32
12.	invoice No. 04567	33
13.	invoice No. 05664	34
14.	invoice No. 05803	35
15.	Letter of Dy.Commissioner of corporate cell, Ahmedabad	36
16.	Assesement order	37
17.	Notice from Plaintiff	38
18.	Notice reply from defendand	39
19.	Invoice No. E-14.	46
20.	Invoice No. E-15.	47
21.	Form ARE.1 SLV-II/R-V/143/13-14.	48

22.	Certification by the Central Excise Office.	49
23.	Shipping Bill No. 6445808.	50
24.	Commercial Invoice No. ZSPL/EXP/033/2013-14.	51
25.	Packing List No. ZSPL/EXP/033/2013-14.	52
26.	Disclaimer Certificate.	53
27.	Bill of Landing No. GMSUBOM0071603.	54
28.	Material Receipt No. ZIMU0844042.	55
29.	Form ARE. SLV-II/R-V/150/13-14.	56
12.	Invoice No. E-16.	57
13.	Form ARE.1 SLV-II/R-V/150/13-14.	58
14.	Certification by the Central Excise Office.	59
15.	Shipping Bill No. 6565893.	60
16.	Commercial Invoice No. KIPL/EXP/745/13-14.	61
17.	Packing List No. KIPL/EXP745/13-14.	62
18.	Bill of Lading No. INJNP/IRBND/627559.	63
19.	Material Receipt No. 2773.	64
20.	Disclaimer Certificate.	65
21.	Invoice No. E-17.	66
22.	Form ARE.1 SLV-II/R-V/768/13-14.	67
23.	Certification by the Central Excise Office.	68
24.	Shipping Bill No. 6805628.	69
25.	Commercial Invoice No. KIPL/EXP/768/13-14.	70
26.	Packing List No. KIPL/EXP/768/13-14.	71
27.	Bill of Lading No. BWNVBND1308002.	72

28.	Material Receipt No. 178.	73
29.	Disclaimer Certificate.	74
30.	Statement of Bank Realisation.	75
31.	Statement of Bank Realisation.	76
32.	Statement of Bank Realisation.	77
33.	Invoice No. E-20.	78
34.	Form ARE.1 SLV-II/R-V/200/3-14.	79
35.	Certification by the Central Excise Office.	80
36.	Shipping Bill No. 7074047.	81
37.	Commercial Invoice No. KIPL/EXP/794/13-14.	82
38.	Packing List No. KIPL/EXP/794/13-14.	83
39.	Bill of Lading No. NSABND1312346.	84
40.	Material Receipt No. 110547.	85
41.	Disclaimer Certificate.	86
42.	Invoice No. E-21.	87
43.	Form ARE.1 SLV-II/R-V/226/13-14.	88
44.	Certification by the Central Excise Office.	89
45.	Shipping Bill No. 7326787.	90
46.	Commercial Invoice No. E-21.	91
47.	Packing List No. E-21.	92
48.	Examination Report for factory seal packages/container.	93
49.	Bill of Lading No. HDMUNSBK1364573.	94
50.	Material Receipt No. 16153.	95

4. The plaintiff side has filed closing pursis vide Exh-40 stating that the plaintiff side does not wish to lead further any oral or documentary evidence.

5. Evidence of Defendant

Defendant did not remained present and cross exeamined the plaintiff and defendant's right to cross examined the plaintiff has been closed. Defendant did not remained present and produced his evidence and hence his right has been closed accordingly. Hence, there is no oral or documentary evidence on behalf of defendant.

6. Final Arguments.

6.1. Ld. Advocate for the plaintiff Mr.P.R. Purohit carried out arguments. He has stated that from examination-in-chief, case of the plaintiff is also proved. He also stated that, defendants have not cross-examined the plaintiff and thus, the plaintiff's evidences are left unchallenged. Thus, he has submitted that when all documentary evidences and examination-in-chief of the plaintiff is left unchallenged, same can be relied upon to decree that suit of plaintiff. Lastly, he prayed to allow the suit of plaintiff.

6.2. No argument from the side of defendant**.**

7. Issues

For determination of this suit, following issues were framed by Ld. Predecesser Judge vide Exh.-15.

i. Whether the plaintiff proves that the plaintiff company is a registered Company?

ii. Whether the plaintiff proves that the defendant has purchased Polysters Yarn 103133.050 Kgs worth Rs. 10810536.00/- from plaintiff company?

iii. Whether the plaintiff proves that defendant has acted as, defendant is a penultimate purchaser and is a final exporter and the defendant has availed Tax exemption by submitting false declarations?

iv. Whether the plaintiff proves that, plaintiff has to pay 5% tax being Rs. 5,40,527/- for the goods sold by the plaintiff to the defendant against form "H" (i.e. without charging Central Sales Tax/Vat, u/s 5(3) of the Central Sales Tax Act, 1957)?

v. Whether the plaintiff proves that he is entitled to recover Rs. 9,56,943/- from the defendant?

vi. Whether the present suit is barred by the period of limitation?

vii. Whether the plaintiff is entitled to get interest? If yes, at what rate?

viii. What is due to the plaintiff?

ix. What order and decree?

8. Findings on the above issues are as under ;

Issues	**Findings**
Issue No.1	In Affirmative

Issue No.2	In Affirmative
Issue No.3	In Affirmative
Issue No.4	In Affirmative
Issue No.5	Partly Affirmative
Issue No. 6	No
Issue No. 7	As per final order
Issue No. 8	As per final order
Issue No. 9	As per Final Order

:: Reasons ::

9. Issue Nos. 1 to 8 :-

9.1. As all the issues are interconnected and all same are required to be decided on the same set of evidence, same allows this Court to discuss all the issue together.

9.2. In this case, plaintiff has approached this Court claiming recovery of Central Sales Tax amount which has to pay by the plaintiff as the defendant has wrongly claimed the exemption under Form H. Defendant has failed to repay the due amount. Thus, he had breached terms and conditions. Plaintiff has sought the reliefs as mentioned above.

9.3 To prove case of the plaintiff, firstly, examination-in-chief came to be filed by the plaintiff at Exhibit-18, along-with documentary evidences vide Exhibits- 22 to 39 and vide Exhibits- 45 to 95 . It is also required to be note that, all these documentary evidences are exhibited as plaintiff has filed certificate under section 63 of Bhartiya Sakshya Adhiniyam/ under section 65(B) of Indian Evidence Act. In this suit defendants have not participated in the Court proceedings. Hence, it can be said that, all the documentary evidences which are produced on record vide Exhibits - 22 to 39 and 45 to 95 are in support of the plaintiff's case.

9.4 It is the case of the plaintiff that defendant is a company incorporated under the provisions of the Companies Act, and defendant is claiming to be engaged in the manufacturing of Textures and Polyester Yarns and the defendant approached the plaintiff to purchase polyester yarn during the Financial year 2013-14. The plaintiff supplied the aforementioned goods i.e. polyester yarn to the defendant and in the name of the defendant and defendant being a dealer - exporter and considering a defendant be a penultimate purchaser and is a final exporter who submitted Form H being a Certificate of

Export issued by the Central Sales Tax Department, Union Territory Dadra & Nagar Haveli, Silvassa.

Thereafter, a notice was issued by the office of the Commercial Tax Commissioner, Gujarat State, Ahmedabad, which was served to the plaintiff on 9/3/2016 for the Financial Year 2013-14 and an assessment order was passed on 1/5/2017 rejecting the Form 'H' submitted by the defendant to the plaintiff and imposing 5% tax being Rs. 5,40,527/- for the goods sold by the plaintiff to the defendant against Form 'H' i.e. without charging Central Sales Tax on total sum amounting to Rs. 1,08,10,536/- which was recovered from the amount which could have been refunded with interest from the credit balance and hence plaintiff is entitled to recover the sum of Rs. 5,40,527/-.

9.5 Now, as per the documents produced from the side of plaintiff, it very well proved that plaintiff has sold the goods to the defendant company and defendant has also issued and submitted Form H to the plaintiff company. Document produced from the side of plaintiff below ex-39 that is reply by the defendant company to the plaintiff company in which defendant has admitted that they puchased the goods and submitted Form H. By this reply it is also clear that defendant comany has been aware about the fact that Assessing authorites has not accepted Form H as it has not mentioned detail of export order.

9.6 Now, it may be presume that defendant company has knowledge that assessing authority has rised some queries against the Form H and availing tax exemption. It is the duty of defendant company to put their fact before the assessing authority. If defendant company believes that they have exported all goods to foreign contary which has been purchesed from plaintiff then defendant have to come forwered to prove their fact not only before the assessing authority but also before the present court. Documents produced from the side of plaintiff, it appears that defendant company has sold the goods, claiming own company as manufacturare, to the other local companies and those companies had exported the goods. Thus here it is a clear violation of Form H requirement. It is prove that plaintiff have to pay that tax amount of Rs. 5,40,527/- as per the order of Commissioner of Commercial Tax department dt. 01/05/2017. Plaintiff has produced this order below ex-37. Defendant has not produced any evidence to counter the fact of the plaintiff. Plaintiff has send legal notice to the defendant on dt. 20/07/2017 and demand due amount which has been paid by plaintiff i.e. Rs.5,40,527/-. The said notice produced below ex- 37. Defendant has reply on dt.02/11/2017 but not paid the amount and hence plaintiff has filed the present suit on dt. 04/12/2017. Thus plaint seems to be filed within limitation period.

9.7 Now, as per the plaint, plaintiff has claimed principle amount Rs. 5,40,527/- and inerest amount Rs.4,11,416 (18% rate of interest from 1/5/2017 to 31/10/17) and notice fees Rs. 5,000/- Total Rs. 9,56,943. Here, as per above discussion plaintiff is entitle to recover the due amount of Rs.5,40,527/- Plaintiff has not explained how and under which agreement they charged interest on the said amount on such a higher interest rate. Plaintiff is not entitle for such interest amount.

Here, it appears from the evidence of the plaintiff that on the day of legal notice to the defendant on dt. 20/07/17 Rs. 5,40,527/- was climed as a due amount and plaintiff has not stated any where about how he charge the interest and on basis of which agreement. Defendant company has not challenge the suit but only for that reason plaintiff liability to prove the fact of plaint is not reduced.

9.8 As per the above mentioned discussion defendant company is liable to pay the due amount of Rs. 5,40,527/-.

10. Grant of interest.

In this suit, plaintiff claim due amount with interest @18% p.a. from filing of suit till its realization but plaintiff has not produced any agreement or contract between them about the interest rate on non-payment of principal amount. Hence, plaintiff is entitle for reasonable rate of interest i.e. 7% p.a. from the date of filling of suit till its realization.

11. Hence, issue no. 1 to 8 are answered accordingly and for the issue no. 9 following final order is passed in better interest of justice.

:: FINAL ORDER ::

(a) The present suit is hereby partly **allowed & decreed.**

(b) Defendant of the present suit is hereby liable and directed to pay the amount of Rs. 5,40,527/- (Five Lakh Forty Thousand Five Hundred Twenty Seven only) at the rate of 7**% interest p.a.** from the **date of institution of suit till its realization** and in the default of the same, the plaintiff is entitled to be recover the amount from the movable and immovable properties of the defendant company.

(c) Defendant to pay cost of the suit to the plaintiff.

(d) Decree to be drawn accordingly.

Pronounced and signed in the open Court today on his 27th day of April, 2026 at Jhagadia.

Date :- 27/04/2026
Place :- Jhagadia.

(E. R. KSHATRIYA)
Principal Senior Civil Judge,
Jhagadia. Code-GJ01197.