

**P.V.P. Ltd. Vs. Collector of Central Excise**

**P.V.P. Ltd. Vs. Collector of Central Excise**

**SooperKanoon Citation :** [sooperkanoon.com/16396](http://sooperkanoon.com/16396)

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

**Decided On :** Aug-05-1999

**Reported in :** (2000)(67)ECC117

**Appellant :** P.V.P. Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. This is an appeal against non-refund of an amount of Rs. 2.5 lakhs which was deposited by the assessee on the insistence of the Department.

2. The facts of the case briefly stated are that Central Excise Officers visited the factory of the assessee on 25-10-1991. They saw some stocks of raw oils and vegetable ghee which were alleged to be unaccounted for. Shri S.M. Agarwal, Managing Director was required to make the deposit. In his statement recorded on 1-11-1991 he stated that he had provisionally deposited Rs. 1.5 lakhs by cheque of 1-11-1991 drawn on State Bank of Bikaner and Jaipur. He further stated that he deposited this amount to cover the duty payable on goods, if, at all, payable to cover up the liability of Central Excise Duty if at all that arises during the course of investigation. A SCN was accordingly issued to the appellant. The Assistant Collector rejected the refund claim.

The assessee filed an appeal before the Collector (Appeals) who also observed that he does not find merits in the appeal and therefore, rejected the appeal. Hence the appeal before us.

3. Arguing the case Shri A.C. Jain, Id. Counsel submits that the amount was deposited as duty if at all leviable under protest. He submits that in one of the challans the word "under protest" appears under that challan. The assessee had deposited a sum of Rs. one lakh. He submits that another sum of Rs. 1.5 lakhs was deposited under another challan of 1-11-1991 and that in respect of that challan, the assessee had immediately intimated to the Department that the amount was being deposited provisionally and under protest subject to out-come of the proceedings. Id. Counsel submits that the case was adjudicated and no demand of duty was confirmed and the SCN was dropped. He submits that the demand was dropped on 23-12-1992 and the claim for refund of Rs. 2.5 lakhs was filed on 29-12-1992. He submits that since the amount was deposited under protest as duty, therefore, the question of its being hit by limitation did not arise. He submits that there are a number of judgments of the Tribunal in which a simple letter of protest has been treated as a protest for purpose of Rule 233B of the Central Excise Rules. He submits that since there was no question of limitation being applicable to their case, the refund of Rs. 2.5 lakhs has wrongly been rejected and prays that the refund claim of the appellant for Rs. 2.5 lakhs may be allowed.

4. Shri D.K. Nayyar, Id. JDR along with Shri Sanjeev Srivastava appeared for the Revenue and submitted that all types of claims are covered by the judgment of the Apex Court in the case of Mafatlal Industries Ltd. reported in 1997 (89) E.L.T. 247. He submits that the deposit is not covered by Section 11B and as such the refund cannot be allowed. He reiterates the findings of the authorities below.

5. We have heard the rival contentions. We find that in the instant case the deposit was made by the assessee before any notice of demand was issued. This deposit actually was made pursuant to the visit of Central Excise Officers and their observation that there has been some evasion of duty. In the instant case, however, when the matter was adjudicated the proceedings themselves were dropped, therefore, the assessee filed a refund claim within six days from the date of dropping of the proceedings. We note that an amount of Rs. 1.5 lakhs was deposited under TR 6 challan and another amount of Rs. one lakh was further deposited and in the challan itself, there was an endorsement as paid 'under

protest'. Simultaneously on 2-11-1991 the assessee sent a letter stating that the amount is being paid under protest and that the same may be adjusted against duty, if any, leviable on the goods or arising in this case. The Commissioner (Appeals) in the appeal order held that "The refund claim in this case was therefore of duty and within the purview of Section 11B which does not provide for computation of six months period from the date of adjudication order as being treated by the appellant." We note that if any amount was deposited it was deposited under protest. We agree with the contention of the Id. Counsel that there are a number of judgments of the Tribunal where a simple letter of protest has been treated as sufficient protest for purpose of Rule 233B of the Central Excise Rules, 1944. The position in the present case is that the amount was paid under protest and therefore, it will not be subject to limitation under Section 11B. In the circumstances the refund has wrongly been denied by the authorities below. The impugned order is therefore, set aside and the appeal is allowed. Consequential relief, if any, shall be admissible to the appellants in accordance with law.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**