

**Universal Cables Ltd. Vs. Commissioner of Central Excise**

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

**Decided On :** Jan-13-2003

**Reported in :** (2003)(154)ELT292TriDel

**Judge :** K Usha, N T C.N.B.

**Appellant :** Universal Cables Ltd.

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. These appeals at the instance of the assessee arise out of a common order passed by the Commissioner of Central Excise (Appeals) vide order-in-appeal No. 299-233-C.E./BPL/2002, dated 28-2-2002. The issue raised in these appeals is whether the appellant is entitled to claim refund in respect of duty paid against demands confirmed under orders-in-original passed by the adjudicating authority which are not appealed against. According to the appellant, it had challenged order-in-original passed for a different period where identical issue was raised and it was decided in its favour by the Tribunal under order dated 12-9-97. Therefore, it is contended that it is entitled to refund in respect of duty paid for different periods which were affirmed by the adjudicating authority under separate orders-in-original.

2. In support of the above contention, the learned counsel for the appellant placed reliance on a decision of a learned Single Member of the Tribunal in Samurai Electronics Pvt. Ltd. v. CCE, Jaipur - 1998 (97) E.L.T. 85 (T). He also placed

reliance on the decision of the Supreme Court in Mafatlal Industries Ltd. v. UOI 3. The learned DR would submit that so long as the appellant had not challenged the orders of the adjudicating authority affirming the duty demand for the period covered by those orders, it cannot claim refund of the duty paid which were the subject matter of those orders. It was also contended that interpretation given by the learned Single Member to Rule 233B of the Central Excise Rules, 1944 in Samurai Electronics Pvt. Ltd. is not correct. On the other hand, if the dictum laid down by the Supreme Court in Collector of Central Excise v. Flock India Pvt.

Ltd. - 2000 (120) E.L.T. 285 (S.C.) is applied so long as the order confirming the demand is not got set aside, no claim for refund would be sustained. Learned DR pointed out that decision of the Supreme Court in Mafatlal Industries Ltd. is also of no help in the facts of the case. Rule 233B reads as follows :- "Rule 233B. Procedure to be followed in cases where duty is paid under protest. - (1) Where an assessee desires to pay duty under protest he shall deliver to the proper officer a letter to this effect and give grounds for payment of the duty under protest.

(2) On receipt of the said letter, the proper officer shall give an acknowledgement to it.

(3) The acknowledgement so given shall, subject to the provisions of Sub-rule (4), be the proof that the assessee has paid the duty under protest from the day on which the letter of protest was delivered to the proper officer.

(4) An endorsement "Duty paid under protest" shall be made on all copies of the gate pass, the Application of Removal and Form RT 12 or Form 13, as the case may be.

(5) In cases where the remedy of an appeal or revision is not available to the assessee against an order or decision which necessitated him to deposit the duty under protest, he may, within three months of the date of delivery of the letter of protest, give a detailed representation to the Assistant Commissioner of Central Excise.

(6) In cases where the remedy of an appeal or revision is available to the assessee against an order or revision which necessitated him to deposit the duty under protest, he may file an appeal or revision within the period specified for filing such appeal or revision, as the case may be.

(7) On service of the decision on the representation referred to in Sub-rule (5) or of the appeal or revision referred to in Sub-rule (6) the assessee shall have no right to deposit the duty under protest : Provided that an assessee shall be allowed to deposit the duty under protest during the period available to him for filing an appeal or revision, as the case may be during the pendency of such appeal or revision, as the case may be.

(8) If any of the provisions of the rule has not been observed, it shall be deemed that the assessee has paid the duty without protest.

Note - A letter of protest or a representation under the rule shall not constitute a claim for refund." 4. After referring to Rules 6, 7 and the proviso thereunder the learned Single Member took in Samurai Electronics Pvt. Ltd. the view that since the appellants had already filed appeal against the previous adjudication on the same issue pertaining to exemption of goods and since payment made by them for other periods was accepted under protest, the appeal or revision of the impugned order would be saved by their payment under protest.

5. Sub-rule (5) provides that where a remedy of appeal or revision is not available to assessee against the order which necessitated him to deposit the duty under protest, he can file a representation within three months from the date of delivery of letter of protest. Sub-rule (6) provides that when a remedy of appeal or revision is available he can deposit duty under protest and can file an appeal or revision.

Sub-rule (7) provides that the assessee will have no right to deposit duty under protest when order under Sub-rule (5) or (6) is served on him. The proviso only allows the assessee to deposit the duty under protest during the period available to him for filing an appeal or revision and during the pendency of such appeal or revision. The above would show that none of the provisions in Rule 233B would enable the assessee to contend that the duty paid pursuant to an order of

adjudication was one paid under protest even when he does not file an appeal from the order of adjudication. Reliance placed by the learned counsel on Para 83 of the decision of the Supreme Court in Mafatlal Industries Ltd. is also of no relevance. What has been held there is that filing an appeal by an assessee has to be taken as a protest against the demand. In the present case admittedly the assessee has not filed any appeal against the orders confirming the demand. Under these circumstances, we are of the view that the authorities below are fully justified in rejecting the claim for refund made by the assessee. In the result, the appeals fail and they stand dismissed.

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