

**Commissioner of Central Excise Vs. Klasspak Pvt. Ltd.**

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

**Decided On :** Apr-30-2004

**Reported in :** (2005)(179)ELT365Tri(Mum.)bai

**Judge :** M T K.D.

**Appellant :** Commissioner of Central Excise

**Respondent :** Klasspak Pvt. Ltd.

**Judgement :**

1. This appeal from the revenue is directed against the order-in-appeal passed by the Commissioner (Appeals), whereby the refund claim of Rs. 5,662.50 was allowed. The respondents had made excess payment of duty erroneously and sought its refund which was denied by the Assistant Commissioner vide order dated 30-12-96. On appeal against the rejection, the Commissioner (Appeals) vide Order dated 28-5-99 allowed the appeal and set aside the order of rejection. Following the directions contained in the order of the Commissioner (Appeals) dated 28-5-99, the A.C. sanctioned the refund. The revenue reviewed the order of the A.C. sanctioning the refund and filed the appeal before Commissioner (A), who rejected the revenue's appeal vide the impugned order, which is under challenge.

3. As can be seen from the facts narrated above the order of the Assistant Commissioner sanctioning the refund, was to give effect to the order-in-appeal dated 28-5-99 passed by the Commissioner (Appeals).

There is nothing on record to show that, the said order was ever challenged. The appeal filed by the revenue to Commissioner (Appeals) was without any basis and was liable to be dismissed as such. However, Commissioner (Appeals) had also given his reasoning to reject the appeal stating that, when the matter is under litigation the payment made is deemed to be a protest payment even though there is no express mention of the payment having been made under protest.

4. In this connection the observations of the honourable Supreme Court of India in Paragraph 83 of their judgement in the case of Mafatlal Industries Ltd. v. Union of India reported in 1997 (89) E.L.T. 247 (S.C.) are relevant.

I quote "Now, where a person proposes to contest his liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest." In the light of these observations the claim could not be rejected on the ground of time bar. The revenue appeal is therefore without any merits.

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