

M/S. PRIYA BLUE INDUSTRIES LTD.  
v.  
COMMISSIONER OF CUSTOMS (PREVENTIVE)

SEPTEMBER 17, 2004

[S.N. VARIAVA AND H.K. SEMA, JJ.]

*Customs Act, 1962—Section 27—Duty—Claim for refund—Without challenging the Assessment order—Maintainability of the claim—Held: Not maintainable unless the Assessment order is reviewed or modified in appeal—Officer considering refund claim cannot review an Assessment Order.*

**Appellant-Company had paid duty on imported ship under protest. Its claim for refund of the duty was rejected. Its appeal against the rejection of refund was also rejected. Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) dismissed the appeal holding that refund claim was not maintainable as no appeal was filed against the Assessment Order. Appeal before this Court was also dismissed. Hence the present review petition.**

**Appellant contended that claim for refund was maintainable even if Assessment was not challenged because correctness of Assessment could be examined whilst considering the claim for refund; that the words “in pursuance of an Order of Assessment” imply that claim for refund can be made without challenging the Assessment; and that the provision providing limitation period of 1 year or 6 months for filing claim for refund showed that refund could be claimed even without challenging the Assessment.**

**Dismissing the petition, the Court**

**HELD: 1. Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of Assessment has been reviewed under Section 28 of Customs Act, 1962 and/or modified in appeal, that order stands. So long as the order or Assessment stands the duty would be payable as per that order of Assessment. A refund claim is not an appeal proceeding. The Officer considering a refund claim cannot sit in appeal over an Assessment made by a competent Officer.**

**A** The Officer considering the refund claim cannot also review an Assessment order. [504-A, B]

**B** 2. The words “in pursuance of an Order of Assessment” only indicate the party/person who can make a claim for refund. In other words, they enable a person who has paid duty in pursuance of an order of Assessment to claim refund. These words do not lead to the conclusion that without the order of Assessment having been modified in appeal or reviewed a claim for refund can be maintained. [504-D, E]

**C** 3. The provisions for a period of limitation do not indicate that a refund claim could be filed without filing an appeal. [504-C]

*Collector of Central Excise v. Flock (India) Pvt. Ltd.*, (2000) 6 SCC 650, relied on.

**D** CIVIL APPELLATE JURISDICTION : Review Petition (C) Nos. 96 of 2004.

IN

Civil Appeal No. 9045 of 2003.

**E** From the Judgment and Order dated 28.5.2002 and 27.6.2003 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in A. No. C/588/2001-B and C/ROM/222/2002-B and F.O. Nos. 261/2002-B and Misc. O. No. 72 of 2003-B.

**F** Vikram Nankani, Tarun Gulati and S. Hariharan for the Petitioner/Appellant.

Mohan Parasaran, Additional Solicitor General, Rupesh Kumar and P. Parmeswaran for the Respondent.

**G** The Judgment of the Court was delivered by

**S.N. VARIAVA, J.** : By this Review Petition, an Order dated 14th November, 2003 is sought to be reviewed.

**H** The facts necessary for the purposes of this Order are as follows:

The Petitioners had imported a ship for breaking purposes. They filed a Bill of Entry. The amount of duty payable was assessed. The Petitioners paid the duty under protest. They then filed a Claim for refund of Rs. 79,64,648 on the ground that duty had been wrongly levied. Their refund was rejected on 30th August, 2000. The Appeal filed by them was rejected on 31st October, 2001. The further Appeal filed before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) was dismissed by the Tribunal on 28th May, 2002. The Tribunal followed the Judgment of this Court in the case of *Collector of Central Excise v. Flock (India) Pvt. Ltd.* reported in [2000] 6 SCC 650. The Tribunal held that as no Appeal had been filed against the Assessment Order the refund claim was not maintainable. The Civil Appeal filed before this Court was dismissed by our Order dated 14th November, 2003.

As it has been contended that the provisions of the Customs Act, 1962 are not in para-materia with the provisions of the Excise Act and that the Judgment of this Court in *Flock (India)*'s case (supra) would not be applicable, notice was issued.

We have heard parties at great length.

Under Section 27 of the Customs Act, 1962 a claim for refund can be made by any person who had (a) paid duty in pursuance of an Order of Assessment or (b) a person who had borne the duty. It has been strenuously submitted that the words "in pursuance of an Order of Assessment" necessarily imply that a claim for refund can be made without challenging the Assessment in an Appeal. It is submitted that if the assessment is not correct, a party could file a claim for refund and the correctness of the Assessment Order can be examined whilst considering the claim for refund. It was submitted that the wording of Section 27, particularly, the provisions regarding filing of a claim for refund within the period of 1 year or 6 months also showed that a claim for refund could be made even though no Appeal had been filed against the Assessment Order. It was submitted that if a claim for refund could only be made after an Appeal was filed by the party, then the provisions regarding filing of a claim within 1 year or 6 months would become redundant as the Appeal proceedings would never be over within that period. It was submitted that in the claim for refund the party could take up the contention that the Order of Assessment was not correct and could claim refund on that basis even without filing an Appeal.

A We are unable to accept this submission. Just such a contention has been negated by this Court in *Flock (India)*'s case (supra). Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order.

C We also see no substance in the contention that provisions for a period of limitation indicates that a refund claim could be filed without filing an Appeal. Even under Rule 11 under the Excise Act the claim for refund had to be filed within a period of six months. It was still held, in *Flock (India)*'s case (supra), that in the absence of an Appeal having been filed no refund claim could be made.

D The words "in pursuance of an Order of assessment" only indicate the party/person who can make a claim for refund. In other words, they enable a person who has paid duty in pursuance of an Order of assessment to claim refund. These words do not lead to the conclusion that without the Order of assessment having been modified in Appeal or reviewed a claim for refund can be maintained.

E In our view, the ratio in *Flock (India)*'s case (supra) fully applies. We, therefore, see no substance in the Review Petition. Accordingly, the Review Petition stands dismissed with no order as to costs.

F K.K.T.

Petition dismissed.