

IN THE HIGH COURT AT CALCUTTA  
SPECIAL JURISDICTION (CENTRAL EXCISE)  
ORIGINAL SIDE

IA NO: GA/4/2022  
In  
CEXA/22/2021  
COMMISSIONER OF CGST AND CENTRAL EXCISE. HOWRAH COMMISSIONERATE  
VS.  
M/S. ASHIRWAD FOUNDRIES PRIVATE LIMITED AND ANR.

IA NO: GA/5/2022  
In  
CEXA/22/2021  
COMMISSIONER OF CGST AND CENTRAL EXCISE. HOWRAH COMMISSIONERATE  
VS.  
M/S. ASHIRWAD FOUNDRIES PRIVATE LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 30<sup>th</sup> June, 2022.

Appearance:

*Mr. Uday Shankar Bhattacharyya, Adv.*

*...for apellant*

*Mr. Somak Basu, Adv.*

*...for respondent.*

**GA/1/2021**

The Court : After hearing the learned Advocates for the parties and considering the reasons given in the application for condonation of delay under Section 5 of the Limitation Act, 1963 in preferring the appeal, we are of the view that the delay in preferring the instant appeal should be condoned and the same is accordingly condoned.

GA/1/2021 stands allowed and the delay in preferring the appeal stands condoned.

**GA/4/2021**

This application has been filed by the revenue to condone the delay of 1013 days in filing substitution application In GA/5/2022. The averments set out in the affidavit filed in support of the application that the delay is not attributable to the department as the department received information about the legal heirs of the deceased of the second respondent only after the same was communicated by the learned Advocate appearing for the assessee. Therefore, we are satisfied that sufficient cause has been shown for condonation of the delay in filing the application for substitution.

Accordingly GA/4/2021 is allowed.

**GA/3/2022 & GA/5/2022**

Let the affidavit -in-opposition filed in connection with the GA/3/2022 be taken on record.

Since the nature of relief which the parties seek in these applications are inter connected, they are taken up together. GA/5/2022 has been filed by the revenue to substitute the two legal heirs of the deceased second respondent.

The second respondent Shri Shankar Lal Agarwal was the director of the first respondent company M/s. Ashirvad Foundries Private Limited. The second respondent passed away on 14<sup>th</sup>

September, 2019. This application has been filed by the revenue to bring on record these two legal heirs, namely, his spouse Smt. Kiran Devi Agarwal and the son Mr. Ranjan Agarwal as the successors in interest of the deceased second respondent. The prayer sought for by the revenue is opposed by the learned Advocate who had entered appearance on behalf of the assessee. In fact, the first respondent company has filed GA/3/2022 with a prayer that the name of the second respondent Late Shankar Lal Agarwal should be withdrawn from the present appeal, rather his name should be expunged from the cause title and consequently the revenue cannot proceed against the deceased second respondent and, therefore, an application of substitution of his legal heirs is not maintainable.

We have elaborately heard Mr. Uday Shankar Bhattacharyya, learned standing Counsel assisted by Ms. Aishwarya Rajyashree with Ms. Banani Bhattacharyya for the revenue and Mr. Somak Basu, learned Advocate appearing for the respondent company.

We need not labour much to decide the issue of substitution arising in the instant case on account of the decision of the Hon'ble Supreme Court in SHABINA ABRAHAM AND OTHERS Versus COLLECTOR OF CENTRAL EXCISE AND CUSTOMS; (2015) 10 Supreme Court Cases 770. In the said case one sole proprietor of a Tyre and Rubber Company limited in or about October 1985, the proprietor concerned stopped manufacturing activities and

thereafter by show cause notice dated 12<sup>th</sup> June, 1987, it was held that assessee has manufactured and cleared tread rubber from the factory by suppressing the fact of such production with the intent to evade payment of excise duty. The provisions of Section 11A of the Central Excise And Salt Act stood invoked and duty was demanded, apart from imposition of penalty for clandestine removal. The proprietor passed away on 14<sup>th</sup> March, 1989. As a result of his death a second show cause was issued to his wife and four daughters calling upon them to make their submission with regard to the demand of duty made in the show cause notice dated 12<sup>th</sup> June, 1987 issued to the deceased proprietor. The deceased by letter informed that none of them had any personal association with the deceased in his proprietorship and they were not in a position to locate any business record and further the recorded proceedings initiated against the deceased abated on his death in the absence of any provision in the Central Excise and Salt Act to continue assessment proceedings against a dead person in the hands of the legal heirs. Therefore, the show cause notice was challenged as being without jurisdiction. Since, the Central Excise Authority refused to pass any order on the maintainability of the show cause notice the legal heirs approached the High Court of Kerala by filing a writ petition. The learned Writ Court by Judgment in LEELAMMA GEORGE V. CCE Original Petition No. 291 of 1990, dated 10-1-1997 (Ker), quashed the proceedings against the

legal heirs. Against the said judgment the revenue preferred an appeal and the Division Bench reversed the judgment of the learned Single Judge as reported in 2003 SCC Online Kerala 193. Challenging the said order the legal heirs of the deceased assessee preferred appeal before the Hon'ble Supreme Court.

The Hon'ble Supreme Court after noting the relevant provision of the Central Excise and Salt Act agreed with the assessee that there is no separate machinery provided under the Central Excise and Salt Act to proceed against the dead person when it comes to assessing him to tax under the Act. The Court also took note of the position under the Income Tax Act, 1922, which was the same until Section 24B was introduced by **Income Tax (2<sup>nd</sup> amendment) Act, 1993**.

The Hon'ble Supreme Court proceeded to take note of the definition of assessee as contained in Section 4(3)(a) of the Central Excise and Salt Act and found the same to be similar to the definition of assessee contained in Income Tax Act, 1922. Further Court pointed out that under the Income Tax Act, 1922 an assessee means "A person by whom income tax is payable" whereas under the Central Excise and Salt Act, an assessee means "The person who is liable to pay duty of excise of excise under this Act". Therefore, it was pointed out that the present tense being used, it is clear that the person referred to can only be a living person.

The Hon'ble Supreme Court agreed with the contention of the appellant that notice that may be served under Section 11A can be only on the person chargeable with excise duty which is referable to the definition of assessee.

The revenue contended that the principles applied in case of Income Tax Act should not be applied to the Central Excise and Salt Act as the said Act is a tax on manufacture of goods and not on the person. That argument was rejected taking note of the decision of the Hon'ble Supreme Court in STATE OF PUNJAB Versus JULLUNDER VEGETABLES SYNDICATE; AIR 1966 SC 1295.

On behalf of the revenue it was argued that section 11A of the Central Excise and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision on a dead person, which had been referred to when the Hon'ble Supreme Court discussed Section 11A of the Act. Reliance was placed by the revenue on Section 3(42) of the General Clauses Act, 1897 which defines 'person' and the argument placed on the said provision was rejected by holding that the definition does not include legal representatives of persons, who are since deceased. Further the Hon'ble Supreme Court noted the Section 6 of the Central Excise Act which prescribes a procedure for the registration of certain person who are engaged in the process of production or manufacture of any specified goods mentioned in the

schedule to the said Act does not throw any light on the question before the Hon'ble Supreme Court as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment.

The Hon'ble Supreme Court quoted the decision in CCE Versus DHIREN GANDHI reported at 2012 281 ELT 64 (Kant) and approved the said decision. In the said decision it was held that legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions.

The Hon'ble Supreme Court also took note of the celebrated decision of the King's Bench in CAPE BRANDY SYNDICATE Versus IRC reported in (1921) 1 KB 64, wherein it was pointed out that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment; there is no equity about a tax; there is no presumption as to tax. Nothing is to be read in, nothing is to be implied and one can only look fairly at the language used.

Further the Hon'ble Supreme Court referred to the decision in CST V. MODI SUGAR MILLS LTD; AIR 1961 SC 1047, wherein the Court pointed out as to how a taxing statute is to be interpreted on any presumptions and the Court must look squarely at the words of the statute and interpret them. It cannot imply

anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.

In the light of the above decision, the prayer for substitution made by the revenue to substitute the legal heirs made by the revenue in GA/5/2022 to substitute the legal heirs of the deceased second respondent is not maintainable. We are conscious of the fact that in the instant case the adjudication process was over and an order in original was passed by the Commissioner of Central Excise, CGST & Central Excise, Howrah Commissionerate on 28<sup>th</sup> October, 2017. The assessee, namely, the company and the deceased second respondent filed an appeal before the Tribunal which was allowed by the impugned order. The revenue now seeks to challenge the order passed by the tribunal. Thus, the appeal being the continuation of the proceedings, the law as interpreted by the Hon'ble Supreme Court in Shabina Abraham (supra) would squarely apply to the instant case on hand.

Mr. Bhattacharya, learned counsel appearing for the appellant, places reliance upon a decision of the Division Bench of the High Court at Patna in the case of Bhagwan Banka & Ors. Vs. R.B. Sinha & Ors., reported at 1986(26) ELT 890 (Pat.) and contended that in the said judgement it was held that the certificate officer can proceed against the legal representatives in view of section 52 of the Public Demand Recovery Act, 1914. The said decision does not deal with the liability of a director of a



company. It deals with certificate proceedings and is thus distinguishable on facts. Further, the decision of the Hon'ble Supreme Court in the case of Shabina Abraham (supra) squarely applies to the facts of this case as observed hereinbefore and the same is binding upon this Court. In view thereof, we are of the view that the decision in the case of Shabina Abraham (supra) is to be applied to the case on hand.

Therefore, the objection raised on behalf of the assessee in GA/3/2022 is sustained. In the result, the GA/5/2022 is dismissed and GA/3/2022 is allowed. Consequently, the second respondent late Sankarlal Agarwal is deleted from the array of the parties and the relief granted in the name of the deceased persons by the tribunal stands affirmed. The appellant/revenue would be entitled to argue the matter as against the first respondent.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)