

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No. ST/70288/2017-CU[DB]

(Arising out of Order-in-Appeal No.10/ST/APPL-ALLD/LKO/2017 dated 06/01/2017 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Azad Engineering Works

Appellant

Vs.

**Commissioner of Central Excise
& Service Tax, Allahabad**

Respondent

Appearance:

Shri Sita Ram (Consultant)
Shri Mohd. Altaf (Asstt. Commr.) AR

for Appellant
for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 07/12/2018
Date of Decision : 07/12/2018

FINAL ORDER NO. - **72826/2018**

Per: Anil G. Shakkarwar

After hearing both the sides, duly represented by Shri Sita Ram learned Consultant appearing for the appellant and Shri Mohd. Altaf learned A.R. appearing for the Revenue, we note that in the present case as submitted by the learned consultant the proprietor of the appellant's Shri Kailash Nath Singh had died before the

Order-in-Original dated 25/02/2014 was passed and the fact of death of Shri Kailash Nath Singh is also recorded by learned Commissioner (Appeals) in impugned Order-in-Appeal. The fact of the death of Shri Kailash Nath Singh was not brought to the knowledge of the Original Authority. We also note that Original Authority has passed *ex parte* order against the proprietorship concern. Recovery proceedings were initiated which were sustained before Commissioner (Appeals). The learned Commissioner (Appeals) has set aside the penalties and did not interfere with the confirmation of demand of duty. Aggrieved by the said order appellant is before this Tribunal. We note that learned counsel for the appellant has relied on ruling by Hon'ble Supreme Court in the case of Shabina Abraham vs. Collector of Central Excise & Customs reported as 2017 (50) S.T.R. 241 (S.C.). Learned A.R. fairly agrees with that the said ruling of Hon'ble Supreme Court is squarely applicable in the present case. We note that Hon'ble Supreme Court in the said case of Shabina Abraham had held that "in the absence of machinery provisions for proceeding against dead person's legal heirs, duty and other sums do not become payable to apply recovery provisions under Section 11 of Central Excise Act, 1944." We note that

present proceedings are initiated under Finance Act, 1994 and Section 87 of Finance Act, 1994 is invoked for recovery. We also note that provisions of Section 11 of Central Excise Act, 1994 and provisions of Section 87 of Finance Act, 1994 are *pari materia*. We, therefore, hold the ruling of Hon'ble Supreme Court in the case of Shabina Abraham is squarely applicable in the present case. Therefore, we hold that the demand confirmed through Order-in-Original dated 25/02/2014 sustained through impugned Order-in-Appeal cannot be recovered from the legal heirs of Shri Kailash Nath Singh.

2. In above terms the appeal is allowed.

(Dictated & Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks