CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 22890 of 2014

[Arising out of Order-in-Appeal No. 87/2014-CE dated 27.05.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals) Cochin]

M/s. Arch Ply N Boards
Ward-MP II/118
Kunjathur, Manjeswar
Kasaragod – 671 323

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax,
Calicut
Central Revenue Building
Mananchira, Calicut
Kozhikode – 673 001

Respondent(s)

APPEARANCE:

Mr. Syed Peeran & Mr. Tushar Sharma, Advocates for the Appellant
Mr. Maneesh Akhoury, AR for the Respondent

Coram:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20910 /2024

Date of Hearing: 24.09.2024
Date of Decision: 24.09.2024

Per : P.A. Augustian

The issue in the present appeal is whether the appeal proceedings can continue, if the proprietor of the appellant has expired during pendency of the appeal proceedings. Late Sh. Usman Darvesh the prop. of M/s. Arch Ply Boards was having a factory in Manjeswar manufacturing and clearance of plywood. Though the annual turnover of the appellant has crossed the limit of SSI unit, they have failed to make proper declaration and considering the same, adjudication authority as per the impugned order confirmed the demand of duty with interest and also imposed penalty. Aggrieved by said order, present appeal is filed.

2. When the matter came up for hearing, learned counsel for the appellant produced the death certificate of Mr. Darvesh Usman Suleman dated 11.12.2007 and further submits that the proceedings against the very same proprietary concern was dropped by this Tribunal after following the decision of the Apex Court in the matter of ***Shabina Abraham Vs. CCE reported in 2015 (322) E.L.T. 372 SC.*** This Tribunal in Final Order Nos. 20466 – 20470/2017 dated 05.04.2017 abated the proceedings as per the following:

> *"3. With the above background, we have heard Sh. PRV Ramanan, Special Counsel representing Revenue as well as Sh. G. Shivdass, ld. Counsel representing the assessees and the Props. During the course of argument Sh. Shivdass, ld. Counsel submitted that Sh. Usman Darvesh the prop. of M/s. Arch Ply Boards is no more. In the absence of machinery provisions for proceeding against a dead person, duty and other sums do not become "payable" to attract recovery provisions under Section 11 of the Central Excise Act, 1944. It is submitted that the proceedings initiated against the deceased, abated on his death, in the absence of any provision in the Central Excise Act to continue assessment proceedings against a dead person in the hands of the legal representatives. Therefore, the demand in respect of M/s. Arch Ply*

Boards as well as penal proceedings on the proprietor should stand abated on the death of its proprietor.

4. Ld. counsel placed reliance on the decision of Hon'ble Supreme Court in case of Shabina Abraham V. CCE – 2015 (322) E.L.T. 372 (S.C) = 2017 (50) S.T.R. 211 (S.C) herein the Hon'ble Court while dealing with a similar case of sustainability of demand of excise duty on a proprietorship concern on the death of the proprietor, held that there was no charge to excise duty under main charging provision on a dead person.

5. In view of the above he submitted that the demand of duty on the proprietary concern (Arch Ply) as well as the penalty imposed on the Prop. would abate on account of the death of the proprietor."

3. Heard both sides. Since proceedings are unsustainable due to death of the proprietor of appellant, the appeal is abated on account of the death of the proprietor.

(Operative portion of the order was pronounced
in open court on 24.09.2024)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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