CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Excise Miscellaneous Application No. 20766 of 2024
in
Excise Appeal No. 23112 of 2014

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-147-14-15 dated 18.06.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals) Cochin]

M/s. Kunnath Pharmaceuticals
VII/318-B, Janasakthi Road
Mudavoor P.O
Muvattupuzha, Ernakulam
Kerala ......**Appellant(s)**

VERSUS

Commissioner of Central Excise
Cochin
C.R. Building, I.S Press Road
Ernakulam
Cochin – 682 018 ......**Respondent(s)**

with

Excise Miscellaneous Application No. 20767 of 2024
in
Excise Appeal No. 23316 of 2014

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-148-14-15 dated 18.06.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals) Cochin]

M/s. Kunnath Pharmaceuticals
VII/318-B, Janasakthi Road
Mudavoor P.O
Muvattupuzha, Ernakulam
Kerala ......**Appellant(s)**

VERSUS

Commissioner of Central Excise
Cochin
C.R. Building, I.S Press Road
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Cochin – 682 018 ......**Respondent(s)**

<u>APPEARANCE:</u>
Ms Varsha, Advocate for the Appellant
Mr. Rajesh Shastry, AR for the Respondent

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

Final Order Nos. 21624 - 21625/2024

Date of Hearing: 16.12.2024

Date of Decision: 16.12.2024

Per : P.A. Augustian

Mrs. Lisa Abraham, wife of Late K.C. Abraham, former proprietor of appellant-company has filed these miscellaneous applications for submission of the additional evidence under Rule 28 of the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982 to produce death certificate. The applications were allowed and taken on record. Now the primary issue in the present appeals is whether the appeal proceedings can continue when the proprietor of the appellant-Kunnath Pharmaceuticals has passed away during pendency of the appeal proceedings.

2. The present appeals were filed by Late K.C. Abraham, former proprietor of appellant-company before this Hon'ble Tribunal challenging the Orders-in-Appeal No. COC-EXCUS-000-APP-147-14-15 and COC-EXCUS-000-APP-148-14-15 both dated 18.06.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals) against the Order-in-Original No. 18/2008 dated 14.05.2008 issued by the Joint Commissioner of Central Excise & Customs, Cochin. In the Order-in-Original, the Joint Commissioner had demanded Central Excise duty along with interest and imposed penalty on the Late K.C. Abraham,

proprietor of appellant-company while he was alive. Aggrieved by said order, present appeals are filed.

3. When the matter came up for hearing, learned counsel for the appellant produced the death certificate of Late K.C. Abraham dated 06.12.2020 and further submits that in similar issue, 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 No. 21040/2024 dated 16.10.2024 had 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."

4. Heard both sides. Since proceedings are unsustainable due to death of the proprietor of appellant, the present appeals are abated on account of the death of the proprietor.

(Operative portion of the order was pronounced
in open court on 16.12.2024)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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