CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE
REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20161 of 2014
Customs Misc. Application No. 20460 of 2025
(Arising out of Order-in-Appeal No. 14/46/93 Pr. Cus. dated 28.04.1994 passed by the Collector of Custom House, Cochin)

K V Ismail
15/131, Zakeenas, Kuruva Road,
Cannanore, Kerala, -03 **........Appellant**

VERSUS

Commissioner of Customs, Cochin
Custom House, Cochin,
Kerala -09 **...........Respondent**

Appearance:

Ms. Nisha Bineesh, Advocate for the Appellant
Shri Maneesh Akhoury, Authorised Representative (AR) for the Revenue

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

<u>Final Order No. 20434 /2026</u>

Date of Hearing: 19.01.2026
Date of Decision: 19.01.2026

Per: P. A. Augustian

Issue in the present appeal is regarding penalty on appellant and whether on demises of the Appellant, the appeal pending before the Tribunal has to be abated or not.

2. Alleging involvement of the Appellant along with other 24 accused on illegal import of silver bar, proceedings were initiated and Adjudication authority as per order dated 31.03.1994 imposed penalty of Rs. 20 lakhs on the Appellant. Similar penalty was imposed on 13 others on their involvement. Allegation against 11 others were dropped. Aggrieved by said order, an appeal was filed before this Tribunal on 17.01.2014 and the date of receipt of the order is shown by the Appellant in their memo of appeal was 03.01.2014. When the matter

listed before the Bench, Appellant were directed to file an Affidavit to substantiate that the impugned order dated 03.03.1994 was received by him on 03.01.2014. Accordingly, an Affidavit was filed stating that the Appellant left India on 02.10.1993 and returned to India only in 06.11.2010 and again left to Oman on a brief stay, because his entire family was in Oman. It is also stated that Appellant was not aware about the adjudication order passed against him as he did not receive copy of it. It is further stated that as informed by his brother, when concerned Tahsildar has issued sale notice of immovable property for the recovery of penalty amount, he obtained copy of the order from the Advocate of another accused on 03.01.2014 and then on 17.01.2014 he filed present appeal before this Tribunal.

3. In response to the Affidavit, Learned AR submitted that the order dated 28.04.1994 passed by Collector of Customs, Cochin and it was send by registered post. As per the evidence on record, said order was received by the Appellant on 12.05.1994 and since the order was properly served, the period of limitation starts from 12.05.1994 and the appeal should have been filed before 12.08.1994 whereas the appeal was filed on 17.01.2014. After considering the issue in detail, appeal was dismissed by this Tribunal on 28.06.2016 as barred by limitation. Aggrieved by said order, Writ Petition was filed before the Hon'ble High Court of Kerala and Hon'ble High Court vide judgment dated 04.06.2025 held that:-

> *"Therefore this Writ Petition would stand allowed setting aside the Exhibit P-6 and directing the Tribunal to consider the appeal filed on 17.01.2014 by the petitioner as one filed within time. In the light of the above finding, Tribunal to consider the appeal No. C/2016/2014-SM arising from Exhibit P-2 order on its merits, as expeditiously as possible at any rate within the period of eight months from the receipt of copy of this judgment".*

4. Thereafter on 16.07.2025, son of the petitioner filed a petition for abatement of the proceedings due to death of the Appellant and submits that during the pendency of the Writ Petition, Shri.K.V Ismail against whom the impugned order was passed expired on 08.12.2020 and also draw our attention to the death certificate dated 08.01.2021 issued by the Registrar of Birth & Death, Cheranelloor Grama Panchayath. It is further submitted that the penalty under Section 112(a) is personal in nature and as per the judgment of Hon'ble

Supreme Court in the matter of **M/s Shabina Abraham Vs. CCE (2015 (322) E.L.T 372 (SC)),** penalty proceedings cannot be continued against the legal heirs if the noticee is dead. The proceedings against deceased person abets since no legal heir can be held personally liable for the penal consequences under Section 112(a) which requires personal knowledge, intent or mens rea. Thus, appeal proceedings may be considered as closed having abated and penalty have been stand extinguished.

5. Learned AR appearing for the Revenue strongly objected the petition and prayer for abetting the proceedings on the ground that once the Department has proceeded against the Appellant and recovery proceedings were initiated, the legal heirs have no legal right to seek abetment of the proceedings and Department have already proceeded against the legal heirs for recovery of due amount. Learned AR further submits that as per the judgment of Hon'ble High Court, this Tribunal is directed to consider the appeal on merit and to pass appropriate order. Ld AR further submits that the general principle is that an action begun in a Court of law by a person does not cease with his death. In view of the above, hearing of the Appeal on merit is required at this stage as directed by the Hon'ble High Court and appeal cannot be disposed as abetted as submitted by the legal heirs of the Appellant herein.

6. Heard both sides and perused the records. Law is settled 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. There is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. Further Rule 22 of CESTAT (Procedure) Rules, 1982 reads as follows:

> *RULE 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application. — Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-*

in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be:

Provided that every such application shall be made within a period of sixty days of the occurrence of the event:

Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit.

7. I further find that in the present case, the issue is regarding personal penalty imposed the deceased and the issue is also settled as per the judgment of Hon'ble Supreme Court in the matter of **M/s Shabina Abraham Vs. Collector of Central Excise (2017 (50) STR 241 (SC)** where it is held that; penal liability cannot be survived on the death of an individual and cannot continue against legal heirs.

8. Accordingly, the appeal abates and petition is disposed.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(P.A.AUGUSTIAN)
MEMBER (JUDICIAL)

Sasi