CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO.1

Appeal(s) Involved:

E/270/2008-DB

[Arising out of Order-in-Original No. 16-2007 dated 23/10/2007 passed by CCE, Bangalore]

K.G RAVINDRAN
PLOT NO- 98, KOFFICERS MODEL HOUSING COLONY T. DSARAHALLI, BANGALORE — Appellant(s)

VERSUS

Commissioner of Central Excise And Service Tax BANGALORE-III
NULL PB.NO.5400...QUEENS ROAD,
CENTRAL REVENUES BUILDING,
BANGALORE, - 560001
KARNATAKA — Respondent(s)

Appearance:

Shri Raghavendra, Advcoate
G.SAMPATH & S. RAGHU
543,12TH CROSS,8TH MAIN J.P NAGARA 2ND PAHASE,
BANGALORE - 560078
KARNATAKA — For the Appellant

Shri Madhupsharan, Asst. Commissioner(AR) — For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No: 20424 / 2019

Date of Hearing: 15/05/2019
Date of Decision: 15/05/2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 26/09/2007 passed by the Commissioner whereby the

Commissioner has imposed a penalty of Rs.1 lakh on the appellant under Rule 209A of the erstwhile Central Excise Rules, 1944.

2. Briefly the facts of the present case are that the appellant was looking after the affairs of firm M/s. Suraj Machine Tools till 10/05/1999 and from 10/05/1999, entire management of the company was looked after by Shri a.g. Surendra and Shri Satish. The Revenue conducted investigation into the clearances and activities of M/s. Suraj Machine Tools who were engaged in the manufacture of borewell button bits and during the investigation, statements were obtained from one Shri P.M. Bahseer, one or two buyers and one transporter M/s. Shiva Transport Company apart from Shri A.G. Surendra and Shri Satish. On completion of investigation, show-cause notice was issued to the company M/s. Suraj Machine Tools and also to the appellant. After following the due process, the adjudicating authority confirmed the demand against the firm and also imposed penalty of Rs.1 lakh on the appellant. Aggrieved by the said order, appellant filed appeal before the CESTAT and the CESTAT remanded the appeal to the original authority with certain directions and after the remand, the original authority has again confirmed the demand and also imposed penalty of Rs.1 lakhs on the appellant. Aggrieved by the said order, appellant filed the present appeal.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the appellant had died during the pendency of the present appeal. He further submitted that on the appellant, only a penalty of Rs.1 lakh was imposed under Rule 209A of the erstwhile Central Excise Rules, 1944 on the allegation that he has aided and abetted the clandestine removal by the proprietorship firm M/s. Suraj Machine Tools. He further submitted that during the pendency of this appeal, appellant had died on 07/07/2017 and a copy of death certificate also produced

on record and prayed that in view of the death of the appellant on whom only penalty was imposed, the present appeal abates. For this submission, he relied upon the decision of the Apex Court in the case of Shabina Abraham Vs. CCE [2017(SO) STR 241 (SC)].

5. On the other hand, the learned AR also admitted regarding the death of the appellant.

6. We have gone through the decision of Hon'ble Apex Court in the case of Shabina Ahbraham wherein it has been held that no proceedings can be initiated against the dead person as it amounts to violation of principles of natural justice inasmuch as the dead person who is proceeded against is not alive to defend himself. Further as per Rule 22 of CESTAT (Procedure) Rules, the appeal shall abate on the death of the appellant unless an application is made for continuation of such proceedings by or against the successor in interest, executor, administrator, receiver, liquidator or other legal representatives of the appellant or applicant or respondent, as the case may be. Further we find that the decision of the Apex Court in the case of Shabina Abhrahm is applicable in the facts and circumstances of this case. Therefore by following the ratio of the above said decision, we hold that the present appeal abates on the death of the appellant on whom only penalty was imposed under Rule 209A of the erstwhile Central Excise Rules, 1944. Appeal is accordingly disposed of.

(Operative portion of this order was pronounced
on conclusion of hearing on **15/05/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

Raja...