CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No.632 Of 2012

[Arising out of Order-in-Original No.01/LdH/12 dated 17.02.2012 passed by the Commissioner of Central Excise, Ludhiana]

M/s Royal Builders : **Appellant (s)**
205, Second Floor, 92,
Surya Kiran Complex,
Mall Road, Ludhiana

Vs

The Commissioner of Central
Excise and Service Tax- Ludhiana : **Respondent (s)**
Central Excise House, F-Block,
Rishi Nagar, Ludhiana,
Punjab-141001

APPEARANCE:
Shri Naveen Bindal and Shri Aman Garg, Advocates for the Appellant
Shri Nikhil Kumar Singh, Authorised Representative for the Respondent

CORAM :
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60231/2023

Date of Hearing:27.07.2023

Date of Decision:27.07.2023

Per : S. S. GARG

The present appeal is directed against the Order-in-Original dated 17.02.2012 passed by the Commissioner of Central Excise, Ludhiana whereby the demand of service tax amounting to Rs.86,80,467/- was confirmed along with interest and penalty.
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2. At the outset, learned Counsel for the appellant submitted that the appellant was a proprietorship concern of Shri Vishal Bhatia which is evident from Para 1.4 of the impugned order wherein it has been mentioned that the statement of Shri Vishal Bhatia has been recorded and the present appeal was also signed by Shri Vishal Bhatia being proprietor of the appellant. He further submitted that during the pendency of the appeal, Shri Vishal Bhatia has passed away on 30.10.2019 and the death certificate has also been placed on record. He further submitted that on death of the proprietor, the present appeal stands abated in terms of Rule 22 of the CESTAT Procedure Rules and continuation of proceedings would also be in violation of principle of natural justice. He also submitted that under the Central Excise Act or under the Finance Act, 1994, there is no provision under which service tax dues can be demanded from the legal heir of the deceased/ proprietor and the liability cannot be sustained on the legal heir of the deceased. He also submitted that since it was a case of rendition of service, therefore, there is no question of takeover of the business of the deceased. In support of his submissions, he relied upon the following decisions:

- *SHABINA ABRAHAM Versus COLLECTOR OF CENTRAL EXCISE AND CUSTOMS- 2015 (322) E.L.T. 372 (S.C.)*
- *COMMISSIONER OF C. EX., BANGALORE-III Versus DHIREN GANDHI- 2012 (27) S.T.R. 452 (Kar.)*
- *BHARATI MULCHAND CHHEDA Versus COMMISSIONER OF C. EX., MUMBAI-V- 2016 (336) E.L.T. 93 (Tri. - Mumbai)*
- *VIRA SCOOTERS Versus COMMISSIONER OF CENTRAL EXCISE, LUDHIANA-2017 (358) E.L.T. 447 (Tri. - Chan.)*
- *NEW SHARADA INDUSTRIES Versus COMMISSIONER OF C. EX., BANGALORE-I*

- *M.K. ENTERPRISES Versus COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH-I- 2016 (45) S.T.R. 141 (Tri. - Chan.)*
- *USMAN SULEIMAN DARVESH Versus COMMISSIONER OF C. EX., CALICUT-2017 (358) E.L.T. 1014 (Tri. - Bang.)*
- *AMANDEEP SINGH SEHGAL Versus COMMISSIONER OF CUSTOMS (PREVENTIVE)- 2019 (368) E.L.T. 560 (Del.)*

3. On the other hand, learned Authorized Representative for the Department reiterated the findings of the impugned order and relied upon the judgment in the case of *Satya Prakash Vs UOI and Others- 1987 (32) ELT 666 (All.)*. Learned AR submitted that recovery proceedings can be made from the movable or immovable property inherited by the legal heir from his father but not from the personal property of the deceased.

4. After considering the submissions of both the parties and perusal of the material on record, we find that this issue is no more *res integra* and has been settled by various decisions of the Tribunal, High Courts as well as the Supreme Court and Hon'ble Supreme Court has settled this issue in the case of Shabina Abraham (supra) which has been followed by the Tribunal in the case of Bharati Mulchand Cheeda (supra). Further, the Hon'ble Karnataka High Court in the case of Dhiren Gandhi (supra) has held as under:

> *"We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way Sec. 11 and 11A are worded, it is amply clear, the legislature has consciously kept away the legal heirs from answering to liabilities under the Act. The reason is obvious. In the normal course, a manufacturing activity which involves*

huge investment and infrastructure is carried on by companies, partnership firms and association of persons. May be in very few instances, individuals undertake such commercial adventure. In all the cases of such commercial activity being carried on, except that of an individual, the death of any person who is involved in the manufacturing activity, has no impact on the business or manufacturing activity."

4.1. This judgment of Hon'ble Karnataka High Court is upheld by the Hon'ble Apex Court as reported in 2015 (322) ELT 372. It is pertinent to reproduce Para 19 & 27 of the Hon'ble Apex Court in the case of Shabina Abraham (supra) which is reproduced in Para 7 herein below:

*"**7.** We have perused the cited decision of the Hon'ble Supreme Court in the case of Shabina Ahraham (supra). Drawing reference to the provisions of the Income-tax Act, 1961, the Apex Court held as follows :*

19...... We have seen that the Act contains no machinery provisions for proceeding against a dead person's legal heirs, such as are contained in the Income-tax Act. Obviously, therefore, duty and other sums do not become "payable" without such machinery provisions. Further, Section 11 deals with modes of recovery of tax payable and does not deal with the subject matter at hand - namely machinery provisions for assessment in the hands of the estate of a dead person and, therefore, does not have much bearing on the matter in issue in the present case.

27.The argument that Section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing Section 11A read with the definition of "assessee" earlier in this judgment ".

5. Therefore by following the ratio of the decisions cited supra, we are of the considered view that the present appeal stands abated

under Rule 22 of CESTAT Procedure Rules. The appeal is, accordingly, disposed of.

(Operative part of the order pronounced in the open Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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