CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 61380 Of 2019

[Arising out ofOIA-LUD-EXCUS-001-APP-2806-2019-20 dated 12.09.2019 passed by the Commissioner (Appeals) of Central Excise and Service Tax-LUDHIANA]

M/s Deep Enterprises : **Appellant (s)**
Main Market Vishwakarma Colony Near
Gurudwara, LUDHIANA, PUNJAB, 141013

Vs

CCE & ST- Ludhiana : **Respondent (s)**
GST BHAWAN, F-BLOCK, RISHI NAGAR,
LUDHIANA, PUNJAB, 141001

APPEARANCE:
Shri Naveen Bindal, Advocate for the Appellant
Shri H. S. Brar, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

ORDER No. A/60856 / 2021

Date of Hearing:14.06.2021
Date of Decision:14.06.2021

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the Ld. Commissioner (Appeals) has remanded the matter back to the adjudicating authority to decide the liability of the appellant in the light of the decision of this Tribunal in the case of ***Blue Star Communication vs. CCE & ST- Ludhiana vide Final Order No. A/60167-60171/2019 dt. 22.02.2019.***

2. The facts of the case are that the appellant (M/s Deep Enterprises)was owned by Late Shri Kuldeep Singh who started the business of cable operator in October 2009 but unfortunately, he expired on 01.03.2014. Thereafter, a show cause notice was issued to the appellant for the period October 2009 to February 2014 to demand service tax on cable operator services. The matter was
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adjudicated, the demand of service tax was confirmed along with interest and penalty was imposed. The said order was challenged by the appellant firm through his son and the Ld. Commissioner (Appeals) remanded the matter back to determine the liability of service tax payable by the appellant during the impugned period relying on the decision of Blue Star Communication (supra). Against the said order, this appeal is filed.

3. The Ld. Counsel for the appellant submits that he has not opposing the order on merits, but his contention is that as Shri Kuldeep Singh has expired on 01.03.2014, therefore, the liability of service tax for the period October 2009 to 28.02.2014 are not sustainable in the light of the decision of the Hon'ble Apex Court in the case of***Shabina Abraham vs. Collector of Central Excise and Customs 2017 (50) STR 241 (S.C.)*** to say that as the proprietor of the firm has been expired, therefore, till then, he was the proprietor of the firm. There is no provision under The Finance Act, 1994 or Central Excise Act, 1944 for recovery of the dues of lifetime of the deceased proprietor, therefore, the demand for the period 0f lifetime of Late Sh. Kuldeep Singh is not sustainable.

4. On the other hand, the Ld. AR opposed the contention of the Ld. Counsel and submits that as the business of Shri Kuldeep Singh was taken over by his son who has filed an undertaking before the department of the liability of lifetime of his father, therefore, he is liable to pay service tax for the period October 2009 to 28.02.2014 also. It is his further contention that as the business has been taken over by his son, therefore, in the light of the decision of Hon'ble High Court of Karnataka in the case of ***CCE, Bangalore-Ill v/s Dhiren Gandhi -2012 (281) E.L.T. 64 (Kar.)***, the son is liable to pay the

dues. It is his further contention that on 10.09.2004 that in case of transfer or otherwise disposal of thebusiness or trade in whole or in part, or effects any change in the ownership thereof, the successor is liable to pay dues.

5. Heard the parties and considered the submissions.

6. After hearing the parties, the following issues has emerged is whether for the period October 2009 to February 2014, the successor or the son of Shri Kuldeep Singh is liable to pay dues of services provided by Shri Kuldeep Singh or not?

7. The Ld. AR has taken the argument that there is an amendment w.e.f. 10.09.2004 that the successor is liable to pay the dues. The said provision is incorporated herein as under: -

> *"Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums Of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes Of his business or trade in whole or in part, or effects any change in the ownership thereof in consequence Of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants machineries, vessels, utensils, implements and articles in the custody or possession Of the person so succeeding may also be attached and sold by such officer empowered by the Central Board Of Excise and Customs, after obtaining written approved from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposed of change."*

8. On going through the said provision, it is very much clear that in case of transfer or otherwise disposal of the business, in such circumstances, only the successor is liable to pay the dues. There is no provision in law till yet in case of death of the proprietor of the firm who will be liable to pay the dues thereof. The said issue has been settled by the Hon'ble Apex Court in the case of ***Shabina Abraham (supra)*** and observed as under:-

> ***"26.*** *It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in Murarilal's case (supra), we wish to add that so far as partnership firms are concerned, the Income Tax Act contains a*

specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in M/s. Murarilal's case (supra).

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.*

28. *Learned counsel for the revenue also relied upon the definition of a "person" under the General Clauses Act, 1897. Section 3(42) of the said Act defines "person" as under :-*

"(42) "Person" shall include any company or association or body of individuals whether incorporated or not."

It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135 at pages 140, 141 para 18 : (1966) Suppl. SCR 419 at 429 A-B, C.A. Abraham v. The Income-Tax Officer, Kottayam & Another, AIR 1961 SC 609 at 612 para 6 : (1961) 2 SCR 765 at page 771, The State of Tamil Nadu v. M.K. Kandaswami& Others, AIR 1975 SC 1871 (para 26) : (1975) 4 SCC 745 (para 26), Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different - it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion."

The Hon'ble Apex Court also taken note of the decision of ***Dhiren Gandhi (supra)*** also and observed as under:-

"30. *It remains to consider a judgment cited by learned counsel for the appellants, namely, Commissioner of Central Excise, Bangalore-III v. Dhiren Gandhi,2012 (281) E.L.T. 64 (Karnataka) = 2012 (27) S.T.R. 452 (Kar.). This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, 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. To the extent that this judgment holds what is set out hereinbelow, it is correct:-*

"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 Section 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." (at page 69)

31. *The impugned judgment in the present case has referred to Ellis C. Reid's case but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short-levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore, legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is therefore, necessary to reiterate the law as it stands. In Partington v. A.G., (1869) LR 4 HL 100 at 122, Lord Cairns stated :*

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute"."

and thereafter the Hon'ble Apex Court has held that in case of death of the proprietor of the firm, no liability can be fastened on the legal heir for the period till the lifetime of the proprietor.

9. In view of this, I hold that no demand of service tax can be fastened on the son of late Shri Kuldeep Singh for the period October 2009 to February 2014. Accordingly, the issue is answered in favour of the appellant.

10. In view of the above discussion, the impugned order is modified that the revenue shall determine the liability of the appellant firm w.e.f. 01.03.2014 in terms of the decision of this Tribunal in the case of Blue Star Communication (supra).

11. The appeal is disposed of in the above terms.

(Dictated & pronounced in the Court)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.