IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL : CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40549 of 2015

(Arising out of Order-in-Original No.MAD-CEX-000-COM-008-2014 dated 08.12.2014 with Corrigendum dated 23.02.2015 passed by the Commissioner of Central Excise, Central Revenue Buildings, No.4, Lal Bahadur Shastri Road, Bibikulam, Madurai-625 002)

M/s. CNC & CO., **...Appellant**
4/369, Gandhiji Nagar,
Trichy Road,
Dindigul-624 005.

Versus

Commissioner of GST and Central Excise **...Respondent**
Central Revenue Building,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai-625 002.

And

Service Tax Appeal No. 42482 of 2016

(Arising out of Order-in-Appeal No.MAD-ST-000-APP-119-2016 dated 23.09.2016 passed by the Commissioner of Central Excise (Appeals-I), Central Revenue Buildings, Lal Bahadur Shastri Road, Madurai-625 002)

M/s. CNC & CO., **...Appellant**
No.35, Durairaj Nagar,
1st Street, West Govindapuram,
Dindigul-624 001.

Versus

Commissioner of GST and Central Excise **...Respondent**
Central Revenue Building,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai-625 002.

APPEARANCE:

Shri R. Balagopal, Consultant for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER Nos.40164-40165/2025

DATE OF HEARING: 04.02.2025
DATE OF DECISION: 04.02.2025

Per Mr. Vasa Seshagiri Rao

Service Tax Appeal Nos. 40549 of 2015 and 42482 of 2016 have been filed by M/s. CNC & CO (the appellant herein) challenging the order of the Commissioner of Central Excise, Madurai *vide* Order-in-Original No. MAD-CEX-000-COM-008-2014 dated 08.12.2014 and Commissioner of Central Excise (Appeals-I), Madurai *vide* Order-in-Appeal No.MAD-ST-000-APP-119-2016 dated 23.09.2016.

2. Brief facts of the appeals are that the Appellant is a registered service provider rendering construction services and works contract services. The periods involved in the present appeals are from April 2008 to March 2012 and from April 2012 to June 2012 respectively. During the period of dispute, the appellant had paid service tax under the category of

commercial and industrial construction service after availing abatement under Notification No.1/2006-ST dated 01.03.2006. However, the appellant was issued with two Show Cause Notices dated 03.10.2013 and 07.05.2014 alleging that the appellant had failed to include the value of materials supplied free of cost by the service recipients/customers. After due process of the law, the Lower Adjudicating Authority *vide* Orders-in-Original dated 08.12.2014 and 09.09.2015 respectively has confirmed the duty of Rs.1,67,79,261/- was demanded for the period from April 2008 to March 2012, and Rs. 1,38,578/ for the period from April 2012 to June 2012 and also imposed the penalties of Rs. 1,67,79,261/ under Section 78 and Rs. 69,289/-under Section 76 respectively for the former and latter period and the penalty of Rs. 10,000/ was also imposed under Section 77(2) for each notice. Aggrieved, the appellant came on appeal before this Tribunal.

3. During the hearing before the Tribunal the Ld. Consultant Shri R. Balagopal has intimated that the appellant Shri AR Manickam died on 16.08.2021 and

has enclosed a copy of the Death Certificate. The Death Certificate of Shri AR Manickam is extracted below for ready reference: -

CA.NO: 83/2021 Dated: 31.08.

படிவம் எண் 6
Form No. 6

தமிழ்நாடு அரசு
GOVERNMENT OF TAMIL NADU
பேரூராட்சிகள் துறை
DEPARTMENT OF TOWN PANCHAYATS
நெற்குப்பை பேரூராட்சி
NERKUPPAI TOWN PANCHAYAT

இறப்பு சான்றிதழ் / DEATH CERTIFICATE

(பிறப்பு மற்றும் இறப்பு பதிவு சட்டம், 1969ன் பிரிவு 12/17 மற்றும் தமிழ்நாடு பிறப்பு இறப்பு பதிவு விதிகள் 2000 விதி எண். 8/13 இன் கீழ் வழங்கப்படுகிறது.)

(ISSUED UNDER SECTION 12/17 OF THE REGISTRATION OF BIRTHS & DEATHS ACT, 1969 AND RULE 8/13 OF THE TAMIL NADU REGISTRATION OF BIRTH AND DEATH RULES 2000.)

கீழ்கண்ட தகவல் இந்தியா, தமிழ்நாடு மாநிலம், சிவகங்கை மாவட்டம், திருப்பத்தூர் வட்டம், நெற்குப்பை பேரூராட்சி சேர்ந்த அசல் இறப்பு பதிவேட்டிலிருந்து எடுக்கப்பட்டவை என சான்று அளிக்கப்படுகிறது.

THIS IS TO CERTIFY THAT THE FOLLOWING INFORMATION HAS BEEN TAKEN FROM THE ORIGINAL RECORD OF DEATH WHICH IS THE REGISTER FOR NERKUPPAI TOWN PANCHAYAT OF THIRUPPATHUR TALUK OF SIVAGANGA DISTRICT OF TAMIL NADU STATE, INDIA.

NAME OF DECEASED / இறந்தவரின் பெயர் :
MANICKAM / மாணிக்கம்

DATE OF DEATH / இறந்த தேதி : 16/08/2021
SIXTEEN - AUGUST - TWO THOUSAND TWENTY ONE

AGE OF DECEASED / இறந்தவரின் வயது : 79 YEARS

NAME OF MOTHER / தாயின் பெயர் :
VALLIYAMMAI / வள்ளியம்மை

FATHER NAME / தந்தையின் பெயர் :
ARUNACHALAM / அருணாச்சலம்

HUSBAND / WIFE NAME / கணவர் / மனைவி பெயர் :
YEGAMMAI / ஏகம்மை

ADDRESS OF THE DECEASED AT THE TIME OF DEATH / இறப்பின் போது இறந்தவரின் முகவரி :

, KILAKKU RATHA VEETHI, NERKUPPAI, NERKUPPAI , THIRUPPATHUR, SIVAGANGA, TAMIL NADU - 630405

, கிழக்கு ரத வீதி , நெற்குப்பை , நெற்குப்பை , திருப்பத்தூர், சிவகங்கை , தமிழ்நாடு - 630405

SEX / பாலினம் : MALE / ஆண்

UID NUMBER OF DECEASED / இறந்தவரின் ஆதார் எண் :

PLACE OF DEATH / இறந்த இடம் :
KILAKKU RATHA VEETHI, NERKUPPAI, SIVAGANGAI DISTRICT - 630405

கிழக்கு ரத வீதி, நெற்குப்பை, சிவகங்கை மாவட்டம் - 630405

MOTHER'S UID NUMBER / தாயின் ஆதார் எண் :

FATHER'S UID NO. / தந்தையின் ஆதார் எண் :

HUSBAND / WIFE UID NO. / கணவர் / மனைவி ஆதார் எண் :

PERMANENT ADDRESS OF DECEASED / இறந்தவரின் நிரந்தர முகவரி :

, KILAKKU RATHA VEETHI, NERKUPPAI, NERKUPPAI , , THIRUPPATHUR, SIVAGANGA, TAMIL NADU -630405

, கிழக்கு ரத வீதி , நெற்குப்பை , நெற்குப்பை , திருப்பத்தூர், சிவகங்கை , தமிழ்நாடு - 630405

REGISTRATION NUMBER / பதிவு எண் :
D-2021:33-8197-000055

REMARKS (IF ANY) / குறிப்பு :

DATE OF ISSUE / வழங்கிய நாள் : 31/08/2021

DATE OF REGISTRATION / பதிவு செய்த தேதி : 31/08/2021

Signature valid
Digitally Signed by TN19004
Date: 31-Aug-2021 (13:01:54)

ISSUING AUTHORITY/சான்றிதழ் அளிப்பவர்

REGISTRAR (BIRTH & DEATH)
பதிவாளர் (பிறப்பு & இறப்பு)
Nerkuppai TOWN PANCHAYAT
நெற்குப்பை பேரூராட்சி

THIS IS A COMPUTER GENERATED CERTIFICATE
THE GOVT. OF INDIA VIDE CIRCULAR NO. ... DATED 27-JULY-2015 HAS APPROVED THIS CERTIFICATE AS A VALID LEGAL DOCUMENT FOR ALL OFFICIAL PURPOSES.
THE REGISTRATION NUMBER IS UNIQUE TO EACH EVENT.

பிறப்பு இறப்பு பதிவை உறுதி செய்வீர் / ENSURE REGISTRATION OF EVERY BIRTH AND DEATH

D54346520793773585/2021

S.M. PRABHAKARAN, B.A., B.L.,
ADVOCATE & NOTARY PUBLIC
(GOVT. OF INDIA) Enr.No 1349/92
28, RATHY BUILDING,
GOPALAPURAM STREET,
COIMBATORE
CELL. 9894

TRUE COPY

NOTARY
S.M. PRABHAKARAN
REG.NO 6315
TAMIL NADU
COIMBATORE DISTRICT

4. The Ld. AR Ms. Anandalakshmi Ganeshram has appeared for the Department.

5. On the death of the appellant, the appeal stands abated in terms of provisions of Rule 22 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982. Rule 22 of the CESTAT (Procedure) Rules, 1982 reads as under:-

> *"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."*

6. After perusing the material on record, we find the Appellant who was a sole proprietor has died on 16.08.2021 during the pendency of the present appeals. We also find that in terms of Rule 22 of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982, on the death of the

appellant, the proceedings will be abated unless an application is made for continuance of such proceedings by the legal Heirs of the Appellant. In this case, no such application has been received. As the Death has occurred on 16.08.2021, nearly four years passed already.

7. We find that in view of the judgement of the Hon'ble Supreme Court in the case of ***Shabina Abraham & Ors. Vs. Collector of Central Excise & Customs*** *[2015 (322) E.L.T. 372 (SC)]*, wherein it has been held that no proceedings can be initiated or continued against a dead person as it amounts to violation of natural justice in as much as the dead person, who is proceeded against is not alive to defend himself. It is apt to quote from the case of Shabina Abraham & Ors. Vs. CCE,

> *"1. "Nothing is certain except death and taxes. Thus spake Benjamin Franklin in his letter of November 13, 1789 to Jean Baptiste Leroy. To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person's property. This appeal raises questions as to whether the dead person's property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute. The precise question that arises in the present case is whether as assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a*

sole proprietor/manufacturer after he is dead."

8. In view of the above, we hold that on the death of the appellant, the appeals stand abated and disposed of in terms of Rule 22 of the CESTAT procedure Rules, 1982.

(Order dictated and pronounced in open court)

sd/-

(AJAYAN T.V.)
Member (Judicial)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

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