CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.41997 of 2015

(Arising out of Order-in-Original No. 04/ST/COMMR/2015 dated 29.05.2015 passed by Commissioner of Central Excise, Tirunelveli)

M/s. Thirumani Mariappan, **.... Appellant**
II Street, Thangammalpuram,
Muthiahpuram (P.O), Tuticorin-628 005.

VERSUS

The Commissioner of CGST & Central Excise **... Respondent**
Central Revenue Buildings,
Tractor Road,
N.G.O 'A' Colony,
Tirunelveli-627 007.

APPEARANCE :

Shri B. Ganesan, Consultant for the Appellant
Shri Sanjay Kakkar, Authorized Representative for the Respondent

CORAM :

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

FINAL ORDER No.40300/2025

DATE OF HEARING : 27.02.2025
DATE OF DECISION :27.02.2025

Per Mr. Vasa Seshagiri Rao

Service Tax Appeal No. 41997 of 2015 has been filed by M/s. Thirumani Mariappan (the appellant herein) challenging the order of the Commissioner of Central Excise, Tirunelveli *vide* Order-in-Original No. 04/ST/COMMR/2015 dated 29.05.2015.

2. Brief facts are that the appellant M/s. Thirumani Mariappan, having Service Tax Registration are providing taxable service under the category of "Commercial or Industrial Construction Service" in terms of the provision of the Chapter V of Finance Act, 1994. During the course of audit, it was noticed that the appellant had suppressed the taxable value and there by short paid service tax on the value of taxable service received.

3. In respect of the income earned from such "Commercial or Industrial Construction Service" the appellant paid appropriate service tax on 33% of the value after availing 67% abatement under Notification No. 01/2006 S.T. inasmuch as they rendered the said service on "with material" basis. They also regularly filed ST-3 returns by declaring their taxable income and service tax payable *etc*.

4. However, based on certain verification of records the IAD issued audit para No. 256/2011 (communicated in Range O.C. No. 1737/2012 dated 06.11.2012) that the appellant had suppressed the taxable value and short paid service tax to the tune of Rs. 66,99,807/- for the period October 2007 to March 2012.

5. The appellant replied *vide* Letter dated 07.02.2013 stated that: -

a. they had satisfied both the conditions of Notification 01/2006 ST by not availing any Cenvat on inputs and capital goods and also by not availing any exemption under Notification 12/2003 ST and hence, they were eligible for exemption from so much of the service tax in excess of 33% of service tax payable.

b. accordingly, they were liable to pay service tax only on 33% of the value of service provided by them and hence, the demand on 100% of value of service as made out in the audit para was incorrect.

6. Accordingly, SCN dated 18.04.2013 was issued to the appellant proposing to demand of service tax under Section 73(1) and for imposing penalties under Sections 79, 77 and 78 of the Finance Act, 1994. After due process of the law, the Original Adjudicating Authority *vide* Order-in-Original No. 04/ST/COMMR/2015 dated 29.05.2015 has confirmed the demand and penalties proposed. Aggrieved by the above order, the appellant came on appeal before this Tribunal.

7. During the hearing before the Tribunal the Ld. Consultant Shri B. Ganesan has intimated that the appellant Shri Thirumani Thangarajan died on 31.05.2022 and has enclosed a copy of the Death Certificate. The Death Certificate of Shri Thirumani Thangarajan is extracted below for ready reference: -

सत्यमेव जयते

படிவம் எண் 6
Form No. 6

தமிழ்நாடு அரசு
GOVERNMENT OF TAMIL NADU

நகராட்சி நிர்வாகம் மற்றும் குடிநீர் வழங்கல் துறை
DEPARTMENT OF MUNICIPAL ADMINISTRATION AND WATER SUPPLY

தூத்தூக்குடி மாநகராட்சி
THOOTHUKUDI CORPORATION

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, தூத்துக்குடி மாவட்டம், தூத்துக்குடி வட்டம், தூத்துக்குடி மாநகராட்சி பகுதி -11 மாநகராட்சி 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 THOOTHUKUDI CORPORATION DIV-11 OF THOOTHUKKUDI TALUK OF THOOTHUKKUDI DISTRICT OF TAMIL NADU STATE, INDIA.

NAME OF DECEASED / இறந்தவரின் பெயர் :
THIRUMANI THANGARAJAN / திருமணி தங்கராஜன்

SEX / பாலினம் : **MALE / ஆண்**

UID NUMBER OF DECEASED / இறந்தவரின் ஆதார் எண் :

DATE OF DEATH / இறந்த தேதி : **31/05/2022**
THIRTY ONE - MAY - TWO THOUSAND TWENTY TWO

PLACE OF DEATH / இறந்த இடம் :
SUNDARAM ARULRAJ HOSPITAL, 145 5B JEYARAJ ROAD, THOOTHUKUDI

சுந்தரம் அருள்ராஜ் மருத்துவமனை, 145 5B, ஜெயராஜ் ரோடு, தூத்துக்குடி

AGE OF DECEASED / இறந்தவரின் வயது : **65 YEARS**

NAME OF MOTHER / தாயின் பெயர் :
JANAKIAMMAL / ஜானகியம்மாள்

FATHER NAME / தந்தையின் பெயர் :
SHERMAN NADAR / சேர்மன் நாடார்

MOTHER'S UID NUMBER / தாயின் ஆதார் எண் :

FATHER'S UID NO. / தந்தையின் ஆதார் எண் :

HUSBAND / WIFE NAME / கணவர் / மனைவி பெயர் :
JEYALAKSHMI / ஜெயலெட்சுமி

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

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

5/2 M, THANGAMMAL PURAM, 2ND STREET, MUTHAIYAPURAM , THOOTHUKKUDI, THOOTHUKKUDI, TAMIL NADU - 628005

5/2 M, தங்கம்மாள் புரம், 2வது தெரு , முத்தையாபுரம் , , தூத்துக்குடி, தூத்துக்குடி , தமிழ்நாடு - 628005

PERMANENT ADDRESS OF DECEASED /
இறந்தவரின் நிரந்தர முகவரி :

5/2 M, THANGAMMAL PURAM, 2ND STREET, MUTHAIYAPURAM , , , THOOTHUKKUDI, THOOTHUKKUDI, TAMIL NADU -628005

5/2 M, தங்கம்மாள் புரம், 2வது தெரு , முத்தையாபுரம் , , தூத்துக்குடி, தூத்துக்குடி , தமிழ்நாடு - 628005

DATE OF REGISTRATION / பதிவு செய்த தேதி : **10/06/2022**

REGISTRATION NUMBER / பதிவு எண் :
D-2022:33-13216-000102

REMARKS (IF ANY) / குறிப்பு :

DATE OF ISSUE / வழங்கிய நாள் : 25/06/2022

Validity unknown

Digitally Signed by G. STALIN PACKIANATHAN
Date: 25-Jun-2022 (11:01:08)

ISSUING AUTHORITY/சான்றிதழ் அளிப்பவர்

REGISTRAR (BIRTH & DEATH)
பதிவாளர் (பிறப்பு & இறப்பு)
THOOTHUKUDI CORPORATION DIV-11
தூத்துக்குடி மாநகராட்சி பகுதி -11 மாநகராட்சி

THIS IS A COMPUTER GENERATED CERTIFICATE
THE GOVT.OF INDIA VIDE CIRCULAR NO.1/12/2014-VS(CRS) 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 மற்றும் இறப்பு பதிவு செய்வதை உறுதி செய்வீர்/ENSURE REGISTRATION OF EVERY BIRTH AND DEATH "

D55204533534935480/2022

8. The Ld. AR Shri Sanjay Kakkar represented the Department.

9. 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."*

10. After perusing the material on record, we find the Appellant who was a sole proprietor has died on 31.05.2022 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 31.05.2022, nearly three years passed already.

11. 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."*

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

(Order dictated and pronounced in the open court)

sd/- sd/-

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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