CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH

Service Tax Misc. Application No.50570 of 2021
(On behalf of Appellant)
In
Service Tax Appeal No. 51068 of 2020 [SM]

[Arising out of Order-in-Appeal No.29/ST/DLH/2020 dated 24.06.2020 passed by the Commissioner (Appeals-I), Central Tax, GST Delhi]

Commissioner of CGST,
Delhi North **...Appellant**

VERSUS

M/s. M.S. Cargo Services, **...Respondent**
40-41, 1st Floor, DSIDC Complex,
Mata Sunri Road,
New Delhi – 110 002.

APPEARANCE:

Mr.Mahesh Bhardwaj, Authorised Representative for the Appellant
Mr. R.M. Saxena, Advocate for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION: 22.11.2021

FINAL ORDER No. 52069/2021

RACHNA GUPTA

Heard Mr.Mahesh Bhardwaj, Authorised Representative for the Appellant and Mr. R.M. Saxena, Advocate for the Respondent

2. Miscellaneous Application has been filed on behalf of the respondent by the widow of deceased proprietor of respondent Proprietorship firm praying for the abatement of the present appeal filed by the Revenue. It is mentioned that the sole proprietor of respondent, namely, Mohammed Sadeqain Naqvi has expired on 16 October, 2020. The Death Certificate as

annexed with the Misc. Application is impressed upon. Ld. Counsel has also brought to the notice the Certificate of Registration in favour of the respondent showing it to be a Proprietorship firm of the deceased. Finally, relying upon the decision of this Tribunal Mumbai Bench in the case of **Commissioner of Service Tax, Mumbai vs. Kalpesh Transport reported in 2016 (44) STR 669,** ld. Counsel has prayed for the present appeal to be abated.

3. While rebutting these submissions, ld. D.R. has mentioned that the applicant/the widow of the deceased is the Legal representative of the deceased Proprietor of respondent and can definitely be continued being sued in the present appeal. No reason survives for the abatement of appeal as is prayed for. Miscellaneous application is prayed to be dismissed.

4. After hearing the rival contentions on the issue of abatement of appeal after the death of the sole proprietor of sued sole proprietorship concern, I am of the opinion that the relevant legal provision for the purpose is Rule 22 of Customs, Excise and Service Tax Appellate Tribunal (Procedure Rules), 1982 which reads as follows :-

> ***"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."

5. The word used herein is "shall" which makes it abundantly clear that if the sole proprietor of assessee in an appeal, irrespective the respondent therein, dies the appeal has mandatorily to abate except in a case where the legal representative of the deceased makes an application praying for continuance of the appeal. Apparently the said is not the circumstances for the present appeal. Rather the legal representative, the widow of the deceased sole proprietor, has prayed for the abatement of the present appeal.

6. The case law as relied upon by the appellant is also clear to hold that where the respondent being an individual dead person Revenue is not competent to file appeal against him. The proprietorship is equally and individual sole person as has also been clarified by Honble Supreme Court in the case of **Shabina Abraham vs. Collector of Central Excise and Customs reported in 2015 (322) ELT 372 (S.C.)** wherein it has been appreciated:

It was impermissible to continue such assessment proceedings where sole proprietor of assessee firm has died through natural causes. In definition of assessee in Section 4(3)(a) of Central

> *Excise Act, 1944 as "means person who is liable to pay duty of Excise under this Act and includes his agent", (i) use of present tense indicates that person referred to can only be living person, and (ii) use of "means and includes" indicates that it was exhaustive, with no scope of reading anything into it. In absence of machinery provisions for proceeding against dead person's legal heirs, duty and other sums do not become "payable" to apply recovery provisions under Section 11 ibid. Situation was not similar to one where firm is dissolved as device to evade tax, as it cannot be said that individual proprietor, who died through natural causes, maneuvered his death to evade Excise duty. Plea that Section 11A ibid was machinery provision which must be construed to make it workable, rejected as there was no charge to Excise duty under main charging provision of dead person. Section 6 ibid does not say anything about how dead person's assessment is to continue after his death in respect of Excise duty that may have escaped assessment. Definition of "person" under Section 3(42) of General Clauses Act, 1897 was not applicable as it does not include legal representatives of deceased."*

Section 4 (3) (a) of Central Excise Act where the definition of person is there in accordance to said definition sole proprietorship is the sole person and with his death the appeal even of Revenue has to abate. Further is observed that Rule 22 prescribes for a period of limitation of 60 days from the date of the death. The sole Proprietor of respondent assessee expired on 15.10.2020. The impugned request of abatement for the first time was raised on 11.11.2021. However, Hon'ble Apex Court vide its order dated 23rd September, 2021 in Misc. Application No.665 of 2021 has ordered for exclusion of period w.e.f. 15 March, 2020 till 2nd October, 2021.

The M.A. No.665 of 2021 has been disposed of with the following directions in addition to others:-

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

7. After excluding the said period as directed by Hon'ble Apex Court, the present application falls within the period of limitation prescribed under Rule 22 of CESTAT Procedure Rules.

8. Keeping in view the entire above discussion, the request on behalf of respondent is hereby accepted. The **appeal, accordingly, is hereby ordered to stands abated**.

9. Misc. application is allowed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita