CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 53555 of 2018-SM

(Arising out of order-in-appeal No. 847 (CRM) CE/JDR/2018 dated 02.08.2018 passed by the Commissioner of Central Goods and Service Tax (Appeals), Jodhpur).

M/s J. S. Singh Engineering Contractor **Appellant**
353, Singh Bhawan, New Market Rawatbhata
Chittorgarh, Rajasthan.

VERSUS

Commissioner of Central Goods and Service Tax (Appeals) **Respondent**
G-105, New Industrial Area, Opp. Diesel Shed
Basni, Jodhpur.

AND

Service Tax Appeal No. 51864 of 2018-SM

(Arising out of order-in-appeal No. 06 (CRM) ST/JDR/2018-19 dated 05.04.2018 passed by the Commissioner of Central Goods and Service Tax, Jodhpur).

M/s J. S. Singh Engineering Contractor **Appellant**
353, Singh Bhawan, New Market Rawatbhata
Chittorgarh, Rajasthan.

VERSUS

Commissioner of Central Goods and Service Tax (Appeals) **Respondent**
G-105, New Industrial Area, Opp. Diesel Shed
Basni, Jodhpur.

APPEARANCE:

Shri Yash Dhadda, Advocate for the appellant
Shri K. Poddar, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NOs. 50933 – 50934/2019

DATE OF HEARING: 11.07.2019

DATE OF DECISION: 11.07.2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in these appeals are whether the show cause notice can be issued in the name of a dead person – proprietor, and whether the adjudication order has got any legal sanctity.

3. The brief facts are that late Jata Shankar Singh was carrying the business of supply of manpower as a Manpower Recruitment Agency under the name and style of "J. S. Singh Engg. Contractor" and took service tax registration No. AFRPS7282LST001 on 16.02.2006. He was providing manpower supply services to Nuclear Power Corporation of India Ltd., Udaipur, (NPCIL). The said Jata Shankar Singh died on 7.6.2010, as is evident from the death certificate dated 8.6.2010.

4. The son of late Shri Jata Shankar Singh viz. Sanjay Singh was in private service during the life time of late Shri Jata Shankar Singh and after his death, he created a new proprietorship firm in the name and style of "J. S. Singh Engg. and Contractors", having separate registration No. CVLPS5712HSD002 granted by the Certificate of Registration of Service Tax dated 12/07/2012. The business of proprietorship of Singh Sanjay Singh was similar, being supply of manpower.

5. Revenue obtained information from the 'service receiver' – NPCIL, and in response thereto by letter dated 5.3.2012, NPCIL supplied the details of payment, they were making to their suppliers of services, but it appears that they also included the earlier period

when the services were provided by late Shri Jata Shankar Singh till his death. It appeared to Revenue that the proprietorship firm of late Shri Jata Shankar Singh received payments from NPCIL for the period 2008-2009 till 2012-2013 and service tax has also been paid. It also appears that summons were also issued to late Shri Jata Shankar Singh, the appellant on the basis of the information received from NPCIL, and it also appeared to Revenue that late Shri Jata Shankar Singh had received towards provision of services Rs.1,22,35,150/- during the period 2008-2009 to 2011-2012 and the service tax was payable at Rs.13,43,760/-. Accordingly, show cause notice dated 21.10.2013 was issued invoking the extended period of limitation demanding service tax along with proposal to impose penalty.

6. In response to the show cause notice to legal heir filed reply through his advocate informing that the proprietor has died on 07.06.2010 and enclosed a copy of the death certificate. He also informed that the legal heir - Shri Sanjay Singh does not have any information and any details regarding the business of late Jata Shankar Singh. Vide order-in-original dated 19.04.2017, the Adjudicating Authority observed that although the proprietor, Shri Jata Shankar Singh has died, but there is no rebuttal from the assessee's side. Further, the details of services provided and the payments received have not been disputed by the legal heir. Further, it has been observed that non-filing of the return is sufficient ground for involving extended period of limitation, and was

pleased to confirm the demand along with interest on late Shri Jata Shankar Singh, Proprietor of "J. S. Singh Engg. Contractors".

7. Similarly, for the period 2012-13, the show cause notice dated 15.10.2014 was issued on late Shri Jata Shankar Singh proposing to recover an amount of Rs.1,42,686/- along with interest and proposal to impose penalty. The said show case notice was adjudicated vide order-in-original dated 30.06.2015 confirming the demand on similar findings, as stated hereinabove along with interest and also penalty under Section 70(1) and also under Section 78 of the Finance Act.

8. Being aggrieved, the legal heir and son of late Shri Jata Shankar Singh preferred separate appeals before the Commissioner (Appeals), who vide the impugned common order was pleased to reject both the appeals vide order-in-appeal holding that the legal heir, Shri Sanjay Singh was liable to pay the tax adjudicated on late Shri Jata Shankar Singh, in terms of Section 87 (c) of the Finance Act. Being aggrieved, the legal heir, Shri Sanjay Singh have filed the present appeal before this Tribunal.

9. Ld. Counsel for the appellant – Legal Heir, states the facts that late Shri Jata Shankar Singh died on 7.6.2010.Further, the admitted fact is that the show cause notice has been issued on a deceased person. He further submitted that Section 87 of the Finance Act provides for recovery of any amount payable by a person, which is/was adjudicated dues during the life time of an individual. There is no provision to serve a show cause notice on a deceased person or on the legal heir, thereafter adjudicate and recovery. On this

proposition, he relies on the ruling of the Hon'ble Supreme Court in the case of **Shabina Abraham vs. Collector of C. Ex. -2015 (322) ELT 372 (SC)**, wherein it has been held that it is impermissible to continue such assessment proceedings after the death of proprietor. The definition of 'assessee' in Section 4 (3)(a) of the Central Excise Act means 'person, who is liable to pay duty of excise under this Act and includes his agent. The use of the present tense indicates that person referred to can only be living person and use of the word "means and includes" indicates that it was exhaustive, with no scope of reading anything into it. Further, in absence of machinery provisions for proceeding against a dead person's legal heirs, duty and other dues do not became payable. Accordingly, he prays for setting aside the impugned orders.

10. Ld. Authorised Representative for the Revenue has relied upon the impugned orders and reiterates that Section 87(c) of the Finance Act, 1994 provides for recovery of tax dues and attachment of moveable and immovable property belonging to the deceased tax payer. Further, under proviso "to Section 87(c) it is provided that tax is recoverable in case of transfer or otherwise disposal of business or where change in the ownership is affected. Further, points out that as per the information received from NPCIL – service receiver, there has been payments for service received even after June, 2010, when the proprietor died. Thus, it appears that the legal heir was carrying on the business and accordingly, they have rightly been held responsible to pay tax as alleged.

11. Having considered the rival contentions, I hold that the issue of show cause notice in the name of deceased person under the provisions of Finance Act, 1994, is *ab initio void* in view of the ruling of the Hon'ble Supreme Court in the case of Shabina Abraham (supra). Further, I find that there is no specific provision or machinery provision for recovery of tax dues, after death of the proprietor. In the facts and circumstances of the case, I hold that Section 87 (c) of the Finance Act is not applicable. Accordingly, the appeals are allowed and the impugned orders are set aside.

12. However, Revenue is granted liberty to proceed against Sanjay Singh, for the services provided by him, if the same have escaped the liability of tax, in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

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