CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing: 03.07.2017

Appeal No. E/2122/2011-EX[SM]

[Arising out of the Order-in-Appeal No. 106/BPL/2011 dated 30.05.2011, passed by the Commissioner of Central Excise, Bhopal]

Shri Mithailal Gupta … Appellant

Vs.

CCE Bhopal ... Respondent

Appearance:

Present Shri P.C. Kashiv, Consultant for the appellant
Present Shri G.R. Sharma, DR for the respondent

Coram: Hon'ble Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No. 54541/2017

Per V. Padmanabhan:

The present appeal has been filed against the order in appeal no. 06/2011 dated 30.05.2011.

2. The brief facts of the case are that Shri Ramdas Gupta was the proprietor of M/s. Kismat Kabir Tobacco Bhandar, Satna and M/s. Ramdas Enterprises, Satna and was engaged in the manufacture and trading of chewing tobacco covered under Chapter sub-heading no. 24039930 of the schedule to the Central Excise Tariff Act, 1985. That Department had initiated demand against Shri Ramdas Gupta proprietor of aforesaid firm. Against the demand confirmed in the said proceedings Shri Ramdas Gupta had preferred appeal before Tribunal and in

pursuance to the stay order dated passed by the Hon'ble Cestat an amount of Rs. 3,00,000/- was paid as pre-deposit. Pending appeal with Tribunal Shri Ramdas Gupta died. Subsequently, Hon'ble CESTAT vide final order no. 1057-1060/2008 dated 19.02.2008 remanded back the case to the Adjudicating authority to examine the evidence produced by the assessee and pass a fresh order.

3. After remand, order the appellant, a son of late Shri Ramdas Gupta, filed a refund on 29.09.2009 on the strength Vasiyatnama dated 15.07.2007 made in his favour by Late Shri Ramdas Gupta. He claimed that Shri Ramdas Gupta has made him in charge of his property and business and therefore he was eligible for the refund of amount deposited by Shri Ramdas Gupta against the stay order and which is now refundable.

4. The original adjudicating authority rejected the claim of the appellant for refund on the ground that the appellant could not produce "pro-bate certificate issued by the court in his favour confirming that the will is in his favour to hold that he is the legitimate successor of Shri Ram Das Gupta. The rejection order was also upheld by the Commissioner (A) in the impugned order. Aggrieved by the same, the present appeal has been filed. With the above background, I have heard Shri P.C. Kashiv, consultant for the appellant and Shri G.R. Sharma, DR for the respondent.

5. The Ld. Counsel submitted that a copy of the vasiyatnama said to have been executed by Shri Ram Das Gupta in which it is clearly mentioned that after his death the tobacco business will

be transferred to his son Shri Mithai Lal Gupta. It is also mentioned that the Vasiyatnama has been duly registered with the Sub Registrar, Satna, MP. In terms of the above document, Shri Mithai Lal Gupta, Vasiyat holder will be entitled to receive the refund of the pre deposit.

6. Ld. DR supported the impugned order. He argued that even though the vasiyatnama is executed in favour of Shri Mithai Lal Gupta, such a will is to be probated by the appropriate court and only after such a process can the refund be issued in favour of Shri Mithai Lal Gupta, as claimed to be the successor.

7. Heard both the sides and perused the documents.

8. There is no dispute that the pre despite amount of Rs. 3 lakhs is due to be refunded in as much as the Hon'ble Cestat vide the final order dated 19.02.2008 has remanded the case to the adjudicating authority after passing the fresh order. The dispute is however with reference to whom the refund is to be paid. Shri Ram Das Gupta, who was the proprietor of M/s. Kismat Kabir Tobacco, Bhandar died on 18.02.2002 as seen from the copy of the death certificate produced by the appellant. I have also perused the vasiyatnama which is said to have been executed by Shri Ram Das Gupta. Even though the vasiyatnama mentions that Shri Mithai Lal Gupta will inherit the tobacco business of Shri Ram Das Gupta after his death, I find that the appellant has failed to produce the probate certificate issued by the appropriate court in his favour confirming the fact that he is the legitimate successor of Shri Ram Das Gupta for the purpose of claiming the refund amount.

9. In the absence of such a probate certificate issued by appropriate court, I find no reason to interfere with the impugned order which is upheld and the appeal is dismissed.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

Bhanu