IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –II

Customs Appeal No.C/1002-1003/2005 - CU [DB]

[Arising out of Common Order- in- Original No.03/ SKM/ CC/ DRI/NCH/05 dated 8th April, 2005 passed by the Commissioner of Customs (Adj.), New Delhi]

Shri Manmohan Kaur Sehgal
Amandeep Singh …Appellant

Vs.

C.C., New Delhi &
C.C., Kolkata (In Amandeep Singh case) … Respondent

Present for the Appellant : Ms. Ms.Reena Khair, Advocate
Present for the Respondent: Mr.R.K. Maji, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 01/09/2017

FINAL ORDER NO. 56672-56673/2017

PER: B.RAVICHANDRAN

These two appeals are against order dated 08.04.2005 of Commissioner of Central Excise (Adjudication), New Custom House, Airport, New Delhi. Smt. Manmohan Gaur Sehgal (1st Appellant) is wife of Shri Gurmeet Singh Sehgal and Shri Amandeep Singh (2nd appellant) is the son of Shri Gurmeet

Singh Sehgal. The impugned order dealt with the re-assessment of imported consignments on a show cause notice issued to 8 parties, against whom customs duty demand/ penalties were confirmed. Appeals were before the Tribunal. The Tribunal vide Final Order No. 53823-53828/2017 dated 09.06.2017 disposed of these appeals by setting aside the impugned order and remanding the matter to the Original Authority to first decide the issue of jurisdiction of issue of show cause notice, in view of the decision of Hon'ble Delhi High Court in Mangali Impex vs. Union of India – 2016 (335) E.L.T. 605 (Del.), which is pending in SLP before the Hon'ble Supreme Court. Apex Court granted stay on the said order. The original authority was directed to decide the issue after the Hon'ble Supreme Court disposed of the issue. The present two appeals though against the impugned order are on different footings. The appellants did not receive any notice under the provisions of Customs Act, 1962. For the matter now under appeal, they were not parties in the proceedings before the Commissioner (Adjudication). In fact, as seen from para 149 of the impugned order, the present two appellants, who are family members of Shri Gurmeet Singh Sehgal , Proprietor of M/s. Prince Electronics were brought into the picture as purported legal heir of Shri Gurmeet Sehgal. The acts and omissions of Shri Sehgal, which resulted in the duty demand and penal consequence, were fastened on these two appellants as legal heirs. The show cause notice dated May, 1999 was issued, among others, to Shri Gurmeet Singh Sehgal alleging various misdoings, under the provisions of Customs Act, 1962. The case was adjudicated resulting in impugned order dated 08.04.2005. Shri Gurmeet Singh Sehgal passed away on 04.06.2001, much before the adjudication order was issued. The death of Shri Gurmeet Singh Sehgal was taken note of in the Adjudication proceeding. However, the original authority proceeded to hold the present 2 appellants as liable for customs duty and redemption fine on the impugned goods, the import of which was attributed to Shri Gurmeet Singh Sehgal.

2. The ld. Counsel appearing for both the appellants submitted that they were never issued with any show cause notice on the matter now held against them. Further, at the time of assessment and determination of duty liability through the impugned order, the alleged importer Shri Gurmeet Singh Sehgal is not alive. Relying on the decision of Hon'ble Supreme Court in Shabina Abraham –2015 (322) ELT 372 (S.C.), the ld. Counsel submitted that no duty demand and consequences can be fastened on the appellants, as no assessment for duty demand can be passed after the death of the importer. There is no legal machinery to transfer the liabilities to the purported legal heir of the importer.

3. The ld. AR reiterated the findings of the original authority.

4. We have heard both the sides and perused the appeal records. The facts of the case are not in dispute. There was no notice to the present appellants in the proceedings which concluded in the impugned order. On this ground alone the liability, if any, on the appellants as confirmed by the impugned order cannot be sustained.

5. On the legal issue, whether the assessment can continue after the death of the "assessee", the Hon'ble Supreme Court in Shabina Abraham (supra) categorically held as below:-

> ***8.*** *On a reading of the aforesaid provisions, it is clear that Shri Rajshekhar Rao, learned counsel appearing on behalf of the appellants is correct - there is in fact no separate machinery provided by the Central Excises and Salt Act to proceed against a dead person when it comes to assessing him to tax under the Act.*
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> ***9.*** *The position under the Income Tax Act, 1922 was also the same until Section 24B was introduced by the Income Tax (Second Amendment) Act of 1933. Prior to the introduction of the aforesaid Section, the Bombay High Court had occasion to deal with a similar question in Commissioner of Income Tax, Bombay v. Ellis C. Reid, AIR 1931 Bombay 333. A Division Bench of the Bombay High Court noticed the definition of "assessee" contained in Section 2(2) of the 1922 Act which definition stated that "assessee' means a person by whom income tax is payable". The Division Bench went on to say that the words "or by whose estate" are conspicuous by their absence in the said definition. The Division Bench then went on to say that there appears to be nothing in the*

charging section to suggest that a man who has once become liable to tax can avoid payment of tax by dying before such tax has been assessed or paid. However, the Act has to contain appropriate provisions for continuing an assessment and collecting tax from the estate of a deceased person which was found to be absent in the 1922 Act before it was amended by insertion of Section 24B. Having noticed various provisions of the said Act, the Division Bench went on to say :-

"These are, I think, the only material provisions, of the Act. It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present to the mind of the legislature that whatever privileges the payment of Income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and in practically every case, before the last installment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from, the estate of a deceased person. In order that the Government may succeed and the assessment made in this case may be held legal I think, one must do a certain amount of violence to the language of Section 23(4); I think one must either do a certain amount of violence - I should say a considerable amount of violence - to the language of Section 27, or else hold that the privilege conferred on a living person assessed under Section 23(4) of getting the assessment set aside is not to be enjoyed by the estate of a deceased person - a distinction for which I can see no logical reason. One must also construe Section 29 so as to give to the word "assessee" one meaning in one place and another meaning in another place.

In my judgment, in construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. If the legislature intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the legislature must provide proper machinery and not leave it to the Court to endeavour to extract the appropriate machinery out of the very unsuitable language of the statute. We are not concerned with the case which may arise of the death of a person after assessment but before payment." (at page 335)

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> ***17.*** *It will be seen that the definition of "assessee" contained in Section 4(3)(a) of the Central Excises and Salt Act is similar to the definition of assessee contained in the Income Tax Act, 1922. Under that Act, as we have already seen, an assessee means "a person by whom income tax is payable." Under the Central Excises and Salt Act, an assessee means "the person who is liable to pay the duty of excise under this Act". The present tense being used, it is clear that the person referred to can only be a living person as was held in Ellis C. Reid (supra). Further, the only extension of the definition of "assessee" under the Central Excises and Salt Act is that it would also include an assessee's agent, which has nothing to do with the facts of the present case. It is well settled that a "means and includes" definition is exhaustive in nature and that there is no scope to read anything further into the said definition.*
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> ***18.*** *As has been correctly pointed out by learned counsel for the appellants, the notice that is served under Section 11A is only on the person chargeable with excise duty, which takes us back to "assessee" as defined.*

6. In the present case, Shri Gurmeet Singh Sehgal was issued with notice for demand of Customs Duty as well as for penal proceedings. The present appellants were nowhere in the picture in the proceedings before the adjudicating authority. We note that it is not the case of Revenue recovery proceedings on confirmed duty liability during the life time of an importer. It is a case where the duty liability itself was determined after the death of the proprietor – importer. In such situation, following the ratio of Hon'ble Supreme Court, we note that such demand of duty cannot be confirmed against the deceased person. Consequently, there can be no question of liability on the purported legal heir either for duty or redemption fine. We find no legal support for such finding by

the original authority. Accordingly, impugned order, in so far as, relates to the liability being fixed on these appellants for duty or fine, is set aside. The appeals are allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita