IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No.76051 of 2016
(On behalf of appellant)

(Arising out of Order-in-Original No.20/Pr.Commr./Kol.I/C.Ex./2015-16 dated 21.03.2016 passed by Principal Commissioner of Central Excise, Kolkata I)

M/s Ganpati Enterprises
BT-22, Ground Floor, Shalimar Bagh, New Delhi-110088

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Respondent

WITH

Customs Appeal No.76050 of 2016
(On behalf of appellant)

(Arising out of Order-in-Original No.20/Pr.Commr./Kol.I/C.Ex./2015-16 dated 21.03.2016 passed by Principal Commissioner of Central Excise, Kolkata I)

Shri Ritesh Agarwal
401,Flona, Hiranandani Estate, Gorbondur Road, Thane(W), Mumbai-400607

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Respondent

AND

Customs Appeal No.76052 of 2016
(On behalf of appellant)

(Arising out of Order-in-Original No.20/Pr.Commr./Kol.I/C.Ex./2015-16 dated 21.03.2016 passed by Principal Commissioner of Central Excise, Kolkata I)

Shri Jagdish Prasad Khaitan
Flat No.4/3 (Front Back), 37, Dr.Abani Dutta Road, Howrah-711106

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Respondent

APPERANCE :

Shri Piyush Kumar & Shri Ashish Bhatt, both Advocates for the Appellant
Shri Faiz Ahmed, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75492-75494/2024

DATE OF HEARING : 01.03.2024
DATE OF DECISION : 01.03.2024

Per Ashok Jindal :

This is second round of litigation. In earlier round, the matters were remanded back to the adjudicating authority for denovo adjudication.

2. The facts of the case are that M/s Ganpati Enterprises, who was the sole proprietorship concern of Shri Late Prahlad Agarwal, imported one consignment on 26.07.2001 and filed Bill of Entry on 31.07.2001. The goods were examined 1st on 20.08.2001 and thereafter, on 30.08.2001, the said officer examined the goods and found nylon fabric coated with polymer/co-polymer and nylon fabric (stock lot) forwarded samples to Appraising Officer.

2.1 On the basis of examination report and on perusal of samples, the Appraising Group classified 63906.78 MT nylon fabric coated with polymer/co-polymer under CTH 5903 90 and 1304.22 MT nylon fabric (stock lot) under CTH 4507 42 and quantified the duty.

2.2 On 13.09.2001, when the goods were transported from Kolkata to Delhi, the goods were intercepted by the Preventive Division at Varanasi. The truck driver produced the Waybill and copy of Bill of Entry. The Officers detained the goods on suspension of misdeclaration and short payment of duty. The officers carried out visual examination of the goods and alleged that the quantity of goods has been mis-declared and drew samples and forwarded to Controllerate of Quality Assurance , Textile and Clothing, Department of Defence Production, Government of India for testing.

2.3 Thereafter, a show-cause notice was issued the appellant on 06.03.2002 proposing demand of duty by classifying under CTH-5407 42.

2.4 The importer as well as the other appellants, prayed for re-testing of the samples by CRCL, but the same was not accepted.

2.5 Thereafter, on 14.08.2002, the appellants appeared before the ld.Commissioner and submitted a copy of test report and the samples drawn from the seized goods issued by Intertek Testing Service, New Delhi and another test certificate issued by China Textile Institute and prayed for provisional release of the goods.

2.6 At the time of provisional release, Shri Jagdish Khaitan, the appellant took the delivery of goods and after proper investigation, the proceedings were dropped on 16.01.2006 against all the appellants.

2.7 The said order examined by the Committee of Chief Commissioners and an appeal was filed before this Tribunal.

2.8 This Tribunal vide Order dated 03.03.2010, remanded back to the adjudicating authority to decide the case denovo after affording an opportunity to both sides.

2.9 Thereafter, on 04.03.2010, the sole proprietor of M/s Ganpati Enterprises, expired and a copy of Death Certificate was produced. But the adjudicating authority continued to adjudicate the case and the appellant, Shri Ritesh Agarwal received a communication to join the proceedings and Shri Jagdish Khaitan was also joined the proceedings and the adjudication order was passed proposing demand of duty as proposed in the show-cause notice and imposed penalties on all the appellants.

2.10 Aggrieved from the said order, the appellants are before us.

3. Heard both the parties and considered the submissions.

4. We find that no proceedings can continue under the Customs Act in case when the sole proprietor, Shri Prahlad Agarwal of M/s Ganpati Enterprises, on 04.03.2010 expired and the Death Certificate was also placed before the adjudicating authority. As the sole proprietor has passed away, then the proceedings against the importer, M/s Ganpati Enterprises, abates and there is no provisions under the Customs Act, 1962 to continue the proceedings against the the legal heir, Shri Ritesh Agarwal in the impugned proceedings as held by the Hon'ble Apex Court in the case of Shabina Abraham Vs. Collector of Central Excise & Customs reported in 2015 (322) ELT 372 (SC), wherein the Hon'ble Apex Court has held as under :

> *"**28.** Learned counsel for the revenue also relied upon the definition of a "person" under the General Clauses Act, 1897. Section 3(42) of the said Act defines "person" as under :-*
>
> *"(42) "Person" shall include any company or association or body of individuals whether incorporated or not."*
>
> *It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons*

who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135 at pages 140, 141 para 18 : (1966) Suppl. SCR 419 at 429 A-B, C.A. Abraham v. The Income-Tax Officer, Kottayam & Another, AIR 1961 SC 609 at 612 para 6 : (1961) 2 SCR 765 at page 771, The State of Tamil Nadu v. M.K. Kandaswami & Others, AIR 1975 SC 1871 (para 26) : (1975) 4 SCC 745 (para 26), Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different - it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion".

5. This issue has also examined by the Hon'ble High Court of Delhi in the case of Amandeep Singh Sehgal Vs. Commissioner of Customs (Preventive) reported in 2019 (368) ELT 560 (Del.) wherein the Hon'ble Delhi High Court has held as under :

*"**4.** The issue in Shabina Abraham v. Collector of Central Excise and Customs - 2015 (322) E.L.T. 372 (S.C.) was whether a show cause notice under the Central Excises and Salt Tax Act, 1944 ('CE Act') could be issued to the legal heirs of a sole proprietor after his death, against whom a show cause notice had been issued raising a demand of excise duty. The Supreme Court*

agreed with the appellant in the above-mentioned case that there was no machinery provision under the CE Act which enabled the continuation of such proceedings against the legal heirs of a deceased assessee.

5. *In the present case also, no machinery provision in the Customs Act, 1962 has been brought to the notice of this Court which enables the Customs Department to proceed against the legal heirs of a deceased noticee/assessee against whom there may be proceedings for recovery of customs duty.*

6. *Mr. Harpreet Singh, Learned Counsel for the Customs, submitted that unlike in the decision in Shabina Abraham (supra), in the present case a show cause notice (SCN) had already been issued to the petitioner's deceased father and the same was pending adjudication at the time of his death.*

7. *The above facts make no difference to the position that there is no machinery provision in the Customs Act whereby the dues owed by a proprietary concern or a partnership firm can be sought to be recovered from the legal heirs of the proprietor/partner of such concern/firm."*

6. Therefore, we hold that no proceedings can continue against the importer, M/s Ganpati Enterprises and Shri Ritesh Agarwal, who is the legal heir of the proprietor of M/s Ganpati Enterprises.

7. With regard to imposition of penalty on Shri Jagdish Prasad Khaitan, there is no role involved in the import of the impugned consignment by M/s Ganpati Enterprises as he was involved only at the time of delivery of the goods released provisionally, therefore, no nexus has been proved by the Revenue against Shri Jagdish Prasad Khaitan. Accordingly, no penalty is imposable on Shri Jagdish Prasad Khaitan.

8. In view of this, the impugned order is set aside and the appeal filed by M/s Ganpati Enterprises abates and the appeals filed by Shri Ritesh Agarwal and Shri Jagdish Prasad Khaitan, are allowed.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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