

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41700 of 2013

(Arising out of Order-in-Appeal C.Cus. No. 705/2013 dated 10.05.2013 passed by the Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 001.)

The Commissioner of Customs,

Chennai Export Commissionerate,
60, Rajaji Salai,
Custom House,
Chennai – 600 001.

: Appellant

VERSUS

M/s. K.V. Paints & Chemicals Co.,

No.70, Najafgarh Road,
New Delhi – 110 015.

: Respondent

APPEARANCE:

Mr. S. Balakumar, Asst. Commissioner / Authorised Representative
For the Appellant

Ms. Shobana Krishnan, Advocate
For the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40419/ 2023

DATE OF HEARING : 25.05.2023

DATE OF DECISION: 12.06.2023

Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]

The Commissioner of Customs Seaport, Chennai has filed this appeal against the order passed by the Commissioner (Appeals) *vide* Order-in-Appeal C.Cus. No. 705/2013 dated 10.05.2013, wherein the departmental

appeal was rejected in respect of sanction of SAD Refund to the Respondent.

2. Briefly stated the facts are M/s. K.V. Paints & Chemical Co. No.70, Najafgarh Road, New Delhi – 110 015, has filed the refund claim of 4% Additional Duty of Customs in respect of Eighteen Bills of Entry in terms of Notification No.102/2007-Cus dated 14.09.2007 as amended by Notification No.93/2008 dated 01.08.2008 read with Board's Circulars No.6/2008-Cus dated 28.04.2008 and 16/2008-Cus dated 13.10.2008.

3. The original refund sanctioning authority on scrutiny of the documents submitted by the responded, sanctioned the refund amount of Rs.20,82,736/- to the importer *vide* Order-in-Original No.12670/2010 dated 13.08.2010. It appears that the refund sanctioning authority has not verified compliance to the important conditions for sanctioning the SAD refund. The importer has to comply with the following conditions before sanctioning the refund:

(i) The importer has sold the goods to the consignment agents by an agreement. While issuing the invoice for sale of the goods, the importer or his agent shall specifically indicate on the invoice that "In respect of the goods covered therein, no credit of the Additional Duty of Customs levied under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible";

(ii) The importer shall pay on sale of the said goods, appropriate Sales Tax or Value Added Tax, as the case may be;

(iii) The importer should produce documents evidencing payment of appropriate Sales Tax or Value Added Tax;

(iv) Documents evidencing payment of said additional duty and invoices of sale of the imported goods

in respect of which refund of the said Additional Duty is claimed;

4.1 When the case was posted for hearing on 25.05.2023 before the Tribunal, the learned Advocate Ms. Shobana Krishnan has stated that the Respondent M/s. K.V. Paints & Chemicals Co., is a sole proprietorship concern and its sole proprietor is Mr. Kishan Chand Ohri, who died on 22.08.2019 and the Death Certificate issued by Government of Haryana, Municipal Corporation Gurugram has been submitted. Further, Directorate General of Foreign Trade's IEC Registration of K.V. Paints & Chemicals Co., indicates that it is a sole proprietorship and the proprietor is Mr. Kishan Chand. She has drawn our attention to Rule 22 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982. Rule 22 of CESTAT (Procedure) Rules reads as under:

"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."

4.2 In terms of the above Rule, any proceeding will be abated on the death unless an application has been made for continuation of such proceedings within sixty days of the occurrence of the event.

5. The learned AR has accepted the death of the Respondent during the pendency of the proceedings.

6. After perusing the material on record, we find the Respondent has died on 22.08.2019 during the pendency of the present appeal. We also find that in terms of Rule 22 of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 on the death of the Respondent, the proceedings will be abated unless an application is made for continuance of such proceedings. In this case no such application is made. As the Death has occurred on 22.08.2019, more than three and half years passed already.

7. We find that in view of the judgement of the Hon'ble Supreme Court in the case of *Shabina Abraham & Ors. Vs. Collector of Central Excise & Customs, 2015 (322) E.L.T. 372 (SC)*, wherein it has been held that no proceedings can be initiated or continued against a dead person as it amounts to violation of natural justice in as much as the dead person, who is proceeded against is not alive to defend himself. It is apt to quote from the case of *Shabina Abraham & Ors. Vs. CCE*,

"1. "Nothing is certain except death and taxes. Thus spake Benjamin Franklin in his letter of November 13, 1789 to Jean Baptiste Leroy. To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person's property. This appeal raises questions as to whether the dead person's property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute. The precise question that arises in the present case is

whether as assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacturer after he is dead."

8. In view of the above, we hold that on the death of the Respondent, the appeal stands abated. The appeal is accordingly disposed of.

(Order pronounced in the open court on 12.06.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)

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