IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14801 of 1991 (O&M)
Date of decision: May 21, 2018

Nobat Singh now deceased through legal representatives:- Sunita and Santosh.

……Petitioners

Vs.

Union of India and another.

…..Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Surender Dhull, Advocate for Mr. Saurabh Dalal, Advocate for the petitioner.

Mr. Sourabh Goel, Advocate for the respondent.

Ajay Kumar Mittal,ACJ.

1. Prayer in this petition under Articles 226/227 of the Constitution of India is for quashing the various certificates issued by respondent No.2 qua the petitioner for realisation of Arrears of Excise Duty, Additional Excise Duty and Penalty if any.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner – Nobat Singh (since deceased) was a freedom fighter who remained in various jails for a period of about seven and a half years during the freedom struggle of the nation. In the year 1969, he started the business of curing of tobacco leaves but the same had to be closed within about a year because of constant

and uncalled for interference and demands of illegal gratification by the officials of the department of Central Excise. He filed a complaint to the Director General, Central Bureau of Investigation against Shri S.K.Khanna, Excise Inspector in May 1969. On May 20, 1969, a raid was conducted and the said Shri S.K. Khanna was caught red handed while accepting an illegal gratification of ₹200/-. This exemplary and praiseworthy act of the petitioner antagonised various officials of the department who became his enemies. Under these circumstances, he had to close his business. On one occasion, in the absence of the petitioner, the officials of the department impounded about 1000 maunds of tobacco leaves stocked in his various godowns and took his entire stock away alongwith the account books and other documents. On enquiring from the department, the petitioner was told that the stock was impounded for realising the arrears of excise duty due towards him. The total value of uncured tobacco leaves and 3000 gunny bags in which the same were kept at the rates then prevailing was about ₹1,80,000/-. The petitioner protested before the authorities that there was nothing due against him by way of excise duty or additional excise duty or by way of penalty. On 4.9.1991, a Peon from the office of Tehsildar came to the residence of the petitioner and informed him that the Tehsildar wanted to see him immediately. On going to the Tehsil office, the petitioner was shown the impugned letter written by Superintendent, Central Excise, Bhiwani dated 30.3.1990 addressed to the Collector, Bhiwani. The letter directed the Collector to initiate proceedings for recovery of alleged arrears of excise duty etc. As per details provided in the letter, an amount of ₹ 1,60,271/51 paise was to be recovered from the petitioner. Relying upon Sections 11 and 11A of the Central Excise and Salt Act, 1944, (in short, "the 1944 Act") the petitioner submitted that the directions were illegal, malafide and against the principles of natural justice and fairplay. As per Section 11A of the 1944 Act, a notice has to be served within six months of the relevant date. According to the petitioner, no notice was ever served upon him within the specified period of six months or even thereafter at any time. No proceedings were ever initiated within the prescribed period of six months. Hence the instant petition by the petitioner.

3. A written statement was filed on behalf of the respondents by Shir SC Gulati, Central Excise Division, Rohtak. It was inter alia stated that the petitioner had a remedy of filing an appeal against the adjudication orders under Section 35 of the 1944 Act. Show cause notices were sent to the petitioner. He even submitted replies and was heard in person. On these premises, prayer for dismissal of the petition has been made.

4. Replication to the written statement was filed by the petitioner controverting the averments made therein and reiterating the averments made in the writ petition.

5. We have heard learned counsel for the parties.

6. At the outset, learned counsel for the petitioner submitted that the petitioner - Nobat Singh had died on 12.12.2000 during the pendency of the writ petition and, therefore, in the absence of machinery provisions for proceeding against dead person's legal heirs, duty and other sums do not become payable by applying recovery provisions under Section 11 of the 1944 Act against the legal representatives of Nobat Singh. Learned counsel gathered support from the Bombay High Court in ***Gaurav Agarwal Vs. Deputy Commissioner of Central Excise,*** 2017 (354) ELT 476(Bom.) which had applied Apex Court decision in ***Shabina Abraham vs. Collector of Central Excise and Customs***, 2015(322) ELT 372. Reliance was also

placed on the Supreme Court judgment in ***Commissioner of Service Tax Vs. Bhayana Builders Private Limited,*** 2018 (10) GSTL 118 (SC).

7. In ***Gaurav Agarwal's*** case (supra), the Bombay High Court was dealing with the maintainability of recovery proceedings against legal heir of deceased sole proprietor, wherein applying the dictum of Supreme Court in ***Shabina Abraham's*** case (supra) it was recorded as under:-

> "5. It is not seriously disputed by both sides that the issue raised stands answered by a judgment of the Hon'ble Supreme Court of India in case of ***Shabina Abraham Vs. Collector of Central Excise and Customs*** -2015(322) ELT 372.
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> 6. Having perused this judgment with the assistance of Mr. Raichandani and Mr. Dwivedi we are satisfied that the attachment cannot continue. The law itself does not permit continuation of the recovery proceedings against the heirs and legal representatives of sole proprietors/proprietress who are carrying on business of manufacturing of excisable goods as a sole proprietor/ proprietress. Their concern, after their death, therefore, does not exist and the heirs of such deceased sole proprietor/proprietress cannot be proceeded against in the absence of a clear legal stipulation. That being the agreed position and emerging from the judgment of the Hon'ble Supreme Court which binds us, we have no alternative, but to allow this writ petition. It is, accordingly, allowed. The attachment order and the warrant in that behalf are set aside."

8. In the present case, the petitioner - Shri Nobat Singh, had died during the pendency of the petition on 12.12.2000. His legal heirs have been impleaded. After considering the overall facts and circumstances of the case and in view of the position of law as noticed above, no recovery can be effected from the legal heirs of the petitioner - Shri Nobat Singh, after his death about 18 years back. As a result, the petition is allowed. The impugned

certificates for recovery of arrears amounting to ₹1,60,271/51 paise are quashed. No recovery be effected from the legal representatives of the deceased-petitioner - Nobat Singh.

(Ajay Kumar Mittal)
Acting Chief Justice

May 21, 2018 **(Tejinder Singh Dhindsa)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**