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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9060/2018 & CM APPL. 34888-34889/2018**

MONIKA CHADDHA

..... Petitioner

Through: Ms.Vidushi Shubham, Advocate.

versus

ADDITIONAL COMMISSIONER OF CUSTOMS

..... Respondent

Through: Mr.Abhishek Ghai, Advocate for
Mr.Sanjeev Narula, SSC for Customs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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12.09.2018

The imposition of penalty by the Additional Commissioner of Customs on Shri Nagesh Chaddha under Sections 112(a), 112(b) and 114 (AA) of Customs Act, 1962 to the tune of ₹27,31,000/- (Rupees Twenty Seven Lakh Thirty One Thousand) has been challenged in this proceedings under Article 226 of the Constitution of India, initiated by his widow. It appears that Shri Nagesh Chaddha passed away on 05.04.2018; death certificate in support of the event has been produced in this proceedings. The respondent has not denied that Shri Nagesh Chaddha has indeed passed away on that date.

The penalty was imposed pursuant to show-cause notice of 17.12.2014, with respect to smuggling of gold.

The petitioner relied upon judgment of the Supreme Court in

Shabina Abraham & Ors. vs. Collector of Central Excise & Customs, (2015) 10 SCC 770 and submits that criminal proceedings abate on the death of the assessee, especially when the proceedings culminate by imposition of penalty.

In *Shabina Abraham* (supra), the Court states that “Since the excise duty is not personal tax, nevertheless, in the absence of any machinery provisions to assess and collect excise or other similar imposition from deceased person, all proceedings against him or her would abate”.

The Court enunciated the position as follows:

“22. This judgment is a complete answer to the contention of the learned counsel for the Revenue inasmuch as on a parity of reasoning, sales tax is not a personal tax but a tax on the sale of goods. Nevertheless, this Court held that in the absence of any machinery provisions to assess and collect sales tax from a deceased person—in that case it was a dissolved partnership firm—all proceedings against such deceased person/dissolved firm abate. The aforesaid judgment has been followed by this Court in Khushi Ram Behari Lal & Co. v. Assessing Authority [(1967) 19 STC 381 (SC)] and in Tahsildar v. Gendalal [(1968) 21 STC 263 (SC)].

27. It is clear on a reading of the aforesaid paragraph that what Revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in Murarilal case [(1975) 2 SCC 736] , we wish to add that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the assessing officer shall make an assessment of the total income

of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in Murarilal case [(1975) 2 SCC 736] .

28. The argument that Section 11-A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing Section 11-A read with the definition of “assessee” earlier in this judgment.

30. The learned counsel for the Revenue also cited Girijanandini Devi v. Bijendra Narain Choudhary [AIR 1967 SC 1124 : (1967) 1 SCR 93] , AIR at para 14, and Rameshwar Manjhi v. Sangramgarh Colliery [(1994) 1 SCC 292 : 1994 SCC (L&S) 521 : (1994) 26 ATC 594] , SCC at para 12, in support of the general principle that an action begun in a court of law by a person does not cease with his death. The context of both decisions was very different. The first decision was in the context of proceedings in relation to partition of a joint family whereas the second was under the Industrial Disputes Act. Neither judgment has any direct bearing on the controversy before us.

31. It remains to consider a judgment cited by the learned counsel for the appellants, namely, CCE v. Dhiren Gandhi [(2012) 281 ELT 64 (Kant)] . This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To the extent that this judgment holds what is set out hereinbelow, it is correct: (ELT p. 69)

“We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way Sections 11 and 11-A are worded, it is amply clear, the legislature has consciously kept away the legal heirs from answering to liabilities under the Act.”

In the present case too, subject matter of the final order in original was penalty. In view of the judgment in *Shabina Abraham* (supra), the proceedings against Shri Nagesh Chaddha, deem to have abated on his death.

Impugned order to the extent that it imposed penalty upon Shri Nagesh Chaddha cannot be enforced against the petitioner, his widow or any of his legal heirs.

The writ petition is accordingly allowed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 12, 2018

SSC