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IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgment reserved on: 20 August 2024****Judgment pronounced on: 06 September 2024****+ W.P.(C) 13025/2019 & CM APPL. 53138/2019****SANGEETA GOYAL**

..... Petitioner

Through: Ms. Reena Rawat & Ms. Jyotika
Sharma, Advocates.

versus

COMMISSIONER OF CUSTOMS (EXPORTS) RespondentThrough: Mr. Harpreet Singh, SSC with
Ms. Suhani Mathur, Mr. Jatin
Kumar Gaur and Ms. Pritika
Nagpal, Advocates.**CORAM:****HON'BLE MR. JUSTICE YASHWANT VARMA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****J U D G M E N T****RAVINDER DUDEJA, J.**

1. The present Writ Petition has been filed by the writ petitioner with the following prayer:-

“(a) Issue a Writ of Mandamus or any other appropriate Writ, direction or order directing learned Respondent to drop the recovery proceedings initiated against the Petitioner vide Recovery Notice dated 12.09.2019;

(b) Issue Rule Nisi in terms of prayers at (a) above and confirm the same after hearing the parties;

(c) Pass ad-interim ex-parte order in terms of prayer at (a) above;

(d) Award cost of this Petition.”

2. Brief facts of the case are that petitioner's husband, late Arun Kumar Goyal effected certain exports during 2009-2014 through ICD Tughlakabad and availed benefit of Duty Drawback Scheme in terms of Section 75 of the Customs Act, 1962 [“Act”] read with the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.



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3. Petitioner's husband expired on 17.08.2018, leaving behind petitioner and two sons. Consequent to his demise, the activities of the firm abruptly stopped.
4. Respondent sent a letter dated 09.02.2017 in the name of Arun Kumar Goyal, requesting to submit copies of pending 48 BRCs in which total drawback of Rs. 22,62,352/- was involved but the letter was returned undelivered by postal authority with the remarks "Kaafi Poochh Taachh Par Firm Ka Pata Nahin Chala". On verification of exporter's BRC details at the website, it was found that no e-BRC in respect of the exporter was available there.
5. In view of the above, a Demand cum Show Cause Notice ["SCN"] dated 28.09.2018 was issued to the exporter, asking him to explain and to show cause as to why the availed drawback amounting to Rs. 22,62,352/- against the shipping bills could not be recovered from him along with applicable interest and why penalty should not be imposed upon him under the Act. SCN was returned 'undelivered'. No reply was filed.
6. Order-in-Original dated 31.05.2019 was passed confirming the demand of duty drawback amounting to Rs. 22,62,352/- and orders were passed for its recovery along with penalty of Rs. 1,00,000/- upon M/s. L.V. Tools & Components.
7. Pursuant to the passing of Order-in-Original, a recovery notice dated 12.09.2019 was issued in the name of late husband of the petitioner, which has been challenged before us.
8. During the pendency of the petition, learned counsel for the respondent confirmed that out of 48 invoices, remittances against 24



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invoices were already received and insofar as the remaining invoices are concerned, petitioner has filed an affidavit pointing out that the remittances against the 8 invoices were substantially received as there were minor differences between the amounts received and the invoiced amounts.

9. It has been argued by the learned counsel for the petitioner that the late husband of the petitioner was the sole proprietor of M/s. L.V. Tools & Components and consequent to his death and closure of the proprietorship firm, no recovery can be effected from his legal heirs in terms of the law propounded by the Supreme Court in the case of **Shabina Abraham vs. Collector of Central Excise and Customs 2015 (10) SCC 770** and the order of this Court in **Amandeep Singh Sehgal vs. Commissioner of Customs (Preventive) Delhi W.P. No. 3523/2018**.

10. Per contra, the learned counsel appearing for the respondent has submitted that upon the death of exporter, the recovery proceedings would not abate and that the government dues can be recovered from his properties falling into the hands of his legal heirs by inheritance.

11. Undisputably, husband of the petitioner was the sole proprietor of M/s. L.V. Tools & Components which affected the exports and claimed duty drawback. Admittedly, he expired on 17.08.2018.

12. Section 75(1) of the Act stipulates that if the sale proceeds in respect of the goods of which duty drawback has been allowed are not received by or on behalf of the exporter in India within the time stipulated under Foreign Exchange Management Act, 1999, such drawback shall be deemed never to have been allowed and the Central



Government may by Rule made under Sub Section (2) specify the procedure for the recovery of adjustment of the amount of such drawback.

13. Relevant part of Rule 16-A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 stipulates that:-

“2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act 1999 or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be of Deputy Commissioner of Customs shall cause notice to be issued to for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be or Deputy Commissioner of Customs shall pass an order to recover the amount of drawback paid to claimant and the exporter shall repay the amount so demanded within) thirty days of the receipt of the said order:

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.”

14. Thus, as per the aforesaid rule, issuance of notice is sine qua none before affecting the recovery of erroneously availed drawback. The requirement of issuing notice in the name of a right person and not a dead person is not merely a procedural requirement but is a condition precedent to the notice being valid in law. Such notice was issued in the name of the exporter on 28.09.2018, after his death. The notice therefore suffers from fundamental jurisdictional error as it was issued in the name of a dead person and the proceedings initiated consequent to such notice were also proposed in the case of a dead person. No steps



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were taken to bring the legal heirs of the deceased/exporter on record at the time of issuance of the Demand cum Show Cause Notice. The issue of the validity of a notice issued against a dead person is no longer res-integra. This Court in **Savita Kapila v. Assistant Commissioner of Income Tax in W.P. (C) No. 3258 of 2020** has held as under:-

“26. In the opinion of this court the issuance of a notice under section 148 of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. (See *Sumit Balkrishna Gupta v. Asst. CIT* [2019] 414 ITR 292 (Bom); [2019] 2 TMI 1209- Bombay High Court).

27. In *Chandresh Jayantibhai Patel v ITO* [2019] 413 ITR 276 (Guj), [2019] (1) TMI 353-the Gujarat High Court has also held (page 290 of 413 ITR) : “the question that therefore arises for consideration is whether the notice under section 148 of the Act issued against the deceased-assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under section 148 of the Act is a jurisdictional notice, and existence of a valid notice under section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under section 147 of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the the validity of the proceedings for assessment or reassessment. A notice issued under section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection.” Consequently, in view of the above, a reopening notice under Section 148 of the Act, 1961 issued in the name of a deceased-assessee is null and void.

Also, no notice under Section 148 of the Act, 1961 was ever issued upon the petitioner during the period of limitation. Consequently the proceedings against the petitioner are barred by limitation as per section 149(1)(b) of the Act, 1961.

As in the present case proceedings were not initiated/pending against the assessee when he was alive and after his death the legal representative did not step into the shoes of the deceased assessee, section 159 of the act, 1961 does not apply to the present case.”



15. Since the Show Cause Notice dated 28.09.2018 was issued against a dead person and the Order-in-Original has been passed against the dead person without bringing on record his legal representatives, therefore, the Order-in-Original confirming the demand of duty drawback amounting to Rs. 22,62,352/- and penalty of Rs. 1,00,000/- and the subsequent notice of recovery are liable to be set aside.

16. We are also in agreement with the argument of learned counsel for the petitioner that consequent to the death of the petitioner's husband, the sole proprietor of M/s. L.V. Tools & Components, no recovery can be effected from his legal heirs in terms of law propounded by the Supreme Court in the matter of Shabina Abraham (supra) and Amandeep Singh Sehgal (supra). This Court in the case of Amandeep Singh Sehgal (supra), while taking note of the decision of the Supreme Court in the case of Shabina Abraham (supra) observed as under:-

“2. As far as the Petitioner herein is concerned, he is a Director of a private limited company by the name of M/s. Gardiner Exim Pvt. Ltd. The liabilities owed by the aforementioned five firms of the Petitioner's deceased father have not been shown to be transferred to M/s. Gardiner Exim Pvt. Ltd. There has to be some basic exercise undertaken by the Department before issuing summons to the Petitioner in his individual capacity asking him to provide evidence/documents relating to the Petitioner's company which has no relation with the five firms associated with his deceased father from whom such government dues were actually to be recovered.

3. The impugned summons dated 13th March, 2018 proceeds on the basis that there are government dues owed by the Petitioner which admittedly is not the case.

4. The issue in *Shabina Abraham v. Collector of Central Excise and Customs 2015 332 ELT 372 (SC)* was whether a show-cause notice under the Central Excise 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



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of excise duty. The Supreme Court agreed with the Appellant in the abovementioned 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 notice/assessee against whom there may be proceedings for recovery of customs duty.”

17. Taking note of the above position, we are of the view that Show Cause Notice dated 28.09.2018, having been issued against a dead person cannot be sustained and consequently the recovery proceedings initiated pursuant thereto are quashed.

18. Petition is accordingly allowed in the above terms.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

06 September 2024

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