IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.02.2025

PRONOUNCED ON: 30.04.2025

CORAM :

THE HONOURABLE DR.JUSTICEANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C. KUMARAPPAN

C.M.A.Nos.3581 & 3582 of 2014
and MP.Nos.1 and 1 of 2014

1.S.Hidayathullah @ Mannady Bharakath (Died)
2.H.Hidaya Banu
3.Praveen Banu
4.Anees Fathima
5.Thasneem Banu
6.H.Mohamed Barakath Sulthan
7.Maheesha Banu H
8.Fareena H … Appellants
(Sole Appellant Died - Appellants 2 to 8
Are brought on record as LRs)

Vs.

1.The Commissioner of Customs,
Airport Customs House,
Chennai-1.

2.Customs Excise and Service Tax
Appellate Tribunal Southern Regional Branch
Shastri Bhavan F Floor
26 Haddows Road, Chennai-6. … Respondents
(R2 Deleted vide court
order dated 06/06/2017)

COMMON PRAYER: APPEALS filed under Section 130(1) of the Customs Act, 1962, to set aside the impugned order against Appeal No.c/26/2003 DB and Appeal No.c/26/2003 DB, dated 6.1.2014 passed by CESTAT Chennai.

(In both CMAs)
For Appellants : Mr.B.Kumar, Senior Counsel for Mr.M.A.Abdul Huq

For Respondents : Ms.Anu Ganesan Standing Counsel

COMMON JUDGMENT

(Delivered by Dr.ANITA SUMANTH.,J)

One Hidyathulla alias Mannady Bharakath, (assessee) had suffered orders-in-original under the provisions of the Customs Act 1962 (Act) holding him to be guilty of smuggling. The officer had confiscated two consignments of 106 gold bars each, concealed in air conditioner units and brought into the Country under 2 Airway bills bearing numbers 176-1723-7150 and 176-1743-7146. Penalty of Rs.10,00,000/- was imposed in each instance. Those orders, dated 24.10.2002, were the subject matter of appeals before the Customs Excise and Service Tax Appellate Tribunal (CESTAT/Tribunal) that, on 06.01.2014, came to be dismissed.

2.The present Civil Miscellaneous Appeals were instituted in 2014, and pending the same, Hidyathulla alias Mannady Bharakath passed away on 21.06.2020. His legal heirs, being A2 to A8, have been brought on record vide order dated 04.02.2025 in various CMPs filed for that purpose. Miscellaneous Petitions had also come to filed in 2024 by his legal heirs seeking condonation of delay in filing petitions seeking setting aside of abatement caused by the demise of late assessee and seeking to set aside the abatement of the appeals. Those petitions had been ordered on 04.02.2025 recording that the respondent had no objection to the same being ordered and no counter had been filed.

3.However, Mr.B.Kumar, learned Senior Counsel for Mr.M.A.Abdul Huq, learned counsel for the appellant, would argue that with the demise of the assessee, the appeals have in fact, abated. He argues that with such abatement, the demands raised under the orders-in-original stand extinguished and the consequence thereof is that the legal representatives (LRs) of the deceased assessee stand exonerated from the impugned proceedings/demands. He would hence urge that the miscellaneous petitions filed by the LRs of the assessee ought not to have been filed.

4.He points out that the subject matter of the orders passed by the Commissioner, Customs, and confirmed by the CESTAT on 06.01.2014 were in respect of penalty that would not survive post the demise of the concerned assessee. For this proposition, he relies on a decision of the Division Bench of this Court in *Chief Commissioner v. Kannan Karuppasamy*[1] to the effect that penalty imposed on one person cannot be recovered from another.

[1]WA.No.792 & 793 of 2011, dated 12.07.2016

5. Next, he cites a decision of a learned Judge of this Court in *S.Jayalakshmi v. Deputy Commissioner of Customs, Cuddalore*[2], where the Court concluded that penalty under Section 112 of the Act is a liability which is personal in nature and cannot be recovered as against the estate of the deceased and a decision of a learned Judge of the Calcutta High Court in *Tarak Nath Gayen and others v. Customs, Excise and Gold Control Tribunal*[3] to similar effect.

6. Thus, according to Mr.Kumar, the issue that, penalty imposed on an assessee cannot be recovered from his legal representatives, is no longer res integra and there is no purpose to be achieved in pursuing the present appeals that must be closed as abated. Alternatively, and without prejudice to the aforesaid argument, Mr. Kumar assails the orders-in-original as well as the order of the Tribunal, arguing that no effective opportunity had been granted to the Appellants in finalising the impugned proceedings.

7. In fact, the confirmation of the demand had been made based upon a Statement said to have been recorded from the Appellant whereas that Statement had been retracted by him. For this purpose, he relies upon a judgement of the Supreme Court in the case of *A.Tajudeen V Union of India* (2015 4 Supreme Court Cases 435) and a decision of the CESTAT in *T.P.Rajmohan V Commissioner of Customs* (2006 195 ELT 39). Thus, even

---

[2] 356 ELT 23
[3] 31 ELT 631

assuming that the appeals were held to be maintainable, they are liable to be quashed on merits.

8.Per contra, Ms.Anu Ganesan, learned Standing Counsel for the Customs Department would point out the distinction between abatement of penalty and extinguishment of the same. She contests the proposition put forth by the appellant and advances detailed arguments that are summarized below.

9.The first submission is that a levy, to be complete, comprises three stages, imposition, assessment and recovery. In the present case, the first two stages stand completed and what remains is the question of recovery alone. She relies on the case of *Chatturam and others v. Commissioner of Income Tax, Bihar*[4].

10. Her next argument is that an appeal does not automatically abate upon the demise of an assessee as it is a statutory right. There is no provision in the Customs Act, 1962 (in short 'Act') setting out the circumstances when an appeal filed by an assessee would abate, and hence such appeal remains to be adjudicated in accordance with the appropriate legal provisions. For this proposition, she relies on the judgments in (i) *Imperatrix v. Dongaji Andaji*[5], *(ii)Pranab Kumar Mitra v. The State of West Bengal and Others*[6] and *(iii)Bondada Gajapathy Rao v. State of Andhra Pradesh.*[7]

[4]AIR 1947 SC 32
[5]ILR (1878) 2 Bom. 564
[6]AIR 1959 SC 144
[7]AIR 1964 SC 1645

11.Reference is then made to Section 306 of the Indian Succession Act, 1925 which elucidates as to which causes of action would survive and which would abate, and for this purpose, learned counsel relies upon the judgements in *Rustomji Dorebji v. W.H. Nurse and Parthasarathy Naidu*[8], *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair*[9] and *M.Veerappa v. Evelyn Sequeira & Ors*[10].

12.Adverting to Section 25 of the General Clauses Act, 1897, learned counsel refers to the decision in *Ajikumar v. District Collector*[11]. In fine, learned Standing Counsel would argue that there is no provision under the Customs Act for abatement of appeal and hence, the plea for abatement is misconceived. She would expressly argue that even assuming for any reason that the Court is inclined to hold that the appeal has abated, this would not exonerate the appellant from payment of the fine. Hence, and in this view of the matter, it would be in their interests to pursue the appeal, as the right of the Department to collect/recover the penalty would not cease until such demand were to be extinguished in a manner known to law.

13. We have heard the rival contentions and perused the material papers. The issues for consideration are, as to whether the demand of penalty raised on the deceased assessee, Hidayatullah alias Mannady Bharakath would survive post his demise, whether, with his demise, the appeal filed by him challenging

[8]1920 SCC Mad. 266
[9]AIR 1986 SC 411
[10]AIR 1988 SC 506
[11]2020 SCC OnLine Ker. 2052

the order of the Tribunal confirming the levy of penalty has abated, and whether the Department may proceed to recover that demand from his LRs.

14. The impugned orders have been passed under the applicable provisions of the Customs Act and the present appeals have been filed in terms of Section 130 of the Act. Learned Standing counsel has argued that there is no question of abatement as the Customs Act is silent on the effect of the demise of an assessee. We contrast in this context, the provisions of the Income tax Act 1961, which specifically provides for the procedure to be followed in the event of demise of the assessee, by bringing on record his legal representative/assessee under Section 161 thereof. There is no such corresponding provision under the Customs Act 1962.

15. Undoubtedly, penalty attaches to the person, in that it is premised on the intention of the person to have committed an illegal act. In the present case, the levy of penalty is under Section 112(a) of the Act that deals with *'Improper importation of goods'*. Clause (a) stands attracted in the case of a person, who, in relation to any goods, does, or omits to do any act which would render such goods liable to confiscation under Section 111 of the Act or abets the doing or omission of such act. Thus the issues for consideration have to be decided both from the view point of the levy (of penalty), as well as the statutory scheme of the Customs Act.

16. We now discuss briefly the judgements cited by the revenue. In the case of *Imperatrix*[12], it was held that the estate of the deceased is liable for discharge of a fine imposed on the deceased in terms of Section 70 of the Indian Penal Code (IPC) as no right has been given to a legal representative to prosecute an appeal. Hence, the position was that while the appeal may not be pursued, the estate would still be liable for discharge of the fine imposed on the deceased.

17.In *Pranab Kumar Mitra*[13], it was held that the right of appeal, being a statutory right, would have to be expressly conferred, or at least conferred by necessary implication. If the fine imposed on the deceased convict is a liability upon the estate of the deceased, then that would be a ground to grant to the legal heirs of the deceased, the right to continue the appeal.

18.In *Bondada Gajapathy Rao*[14], it was held that the interest of the heirs would only be pecuniary and as there would be no other reason why the estate would be affected by the conviction, consequently, there would be no ground to allow intervention of the heirs. While the interest of the legal heir to clear the name and reputation of the convict is a legitimate one, such right, to pursue the appeal to clear his reputation, must be conferred by legislature.

19. In *M.Veerappa's*[15] case, the Supreme Court held that a suit claim founded on tort would abate with the demise of the plaintiff but one founded on

[12]Supra Footnote 5
[13]Supra Footnote 6
[14]Supra Footnote 7
[15]Supra Footnote 13

contract, would survive and in *Ajikumar's*[16] case, Section 25 of the General Clauses Act, 1897 was discussed in the context of Section 63 to 70 of the IPC.

20. We have carefully perused the judgements cited but are of the view that they would have little bearing on the issue before us as they have been rendered in the context of Criminal law. The matters before us relate to a fiscal enactment where the Statute must contain a specific and enabling provision to assess and recover tax/duty.

21. The learned Standing Counsel has relied upon the position that the Customs Act does not have a provision stating that an appeal would abate upon the demise of an assessee. In our view, that would be an incorrect question to pose, as, what is to be noted, is not whether there is a provision for abatement, but rather, whether there is a provision enabling the continuance of proceedings including that of recovery, as against a legal representative of the deceased assessee.

22. Section 142 provides for the recovery of sums due to the Government by a person. The term 'person' is not defined under the Act. However, and on an application of first principles, since an assessment of duty and levy of penalty can be with respect to a 'person' alone, the recovery contemplated under Section 142 is also expected to be from the same person and no other unless the concerned enactment provides for the continuance of the proceedings for assessment/recovery in the hands of any other person. Even for recovery to

[16]Supra Footnote 15

be continued/taken, the concerned Department must specifically be enabled by way of a mechanism.

23. The Supreme Court in the Judgement in *Shabina Abraham and others V Collector and Central Excise and Others*[17] was concerned with the recovery of arrears of Central Excise in the hands of the appellant, who was the legal representative of an assessee who had died. The Hon'ble Bench commences the judgment with the following observations:

> *'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 an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representative/estate of a sole proprietor/manufacturer after he is dead. The facts of the case are as follows.*

. . . .

24. The issue framed for resolution in the above matter was thus whether assessment proceedings under the Central Excise and Salt Act, 1944 (CES Act) may continue against the legal representative/estate of an assessee under the aforesaid act after his demise. In that case, not even the assessment was complete when the assessee passed away. The legal representatives were brought on record by that assessing officer, who issued a show cause notice to

[17]((2015) 10 Supreme CourtCases 770)

the widow and four daughters reiterating the demand made under an earlier show cause notice that had been issued to the deceased assessee.

25. The stand taken by the legal representatives was that the proceedings initiated against the demised assessee would abate, since there was no enabling provision in the Central Excise and Salt Act to continue assessment proceedings against a dead person in the hands of the legal representative.

26. The learned Single Judge, before whom the LRs sought a quash of the second show cause notice issued to them, allowed the writ petition, but that order was reversed by the Division Bench. In appeal filed at the instance of the legal representatives, the Supreme Court considered various provisions of the Central Excise and Salt Act, Sections 2(f), 3, 4(3)(a), 11 and 11(A) to accept the appellant's stand that nowhere did the aforesaid provisions, or any other provision for that matter, lead to a conclusion that proceedings for assessment may continue in the hands of the legal representatives of a dead assessee.

27. The argument of the revenue in that case, similar to that advanced before us, was that the Central Excise and Salt Act provided for recovery of amounts due to the Department from an assessee by various methods including attachment and sale of excisable goods belonging to the assessee. The Department relied on the provisions of Section 11 contending that that provision would enable the revenue to continue with assessment proceedings and, should such proceedings be concluded adverse to the assessee represented by the legal

representative, then the demand as raised, could be recovered from the legal representatives of the deceased assessee.

28. The above stand was repelled by the Court that held that such proceedings required specific machinery to enable the authorities to assess and recover dues of a dead assessee from the LRs. Since the Central Excise and Salt Act did not contain the requisite provisions, the proceedings initiated by the assessing officer were liable to be quashed.

29. The Court had noted that there was no definition of the word 'assessee' under the Central Excise and Salt Act. Referring to the definition of 'person' under the General Clauses Act, the Court concluded that there was no definition of 'assessee' that included a dead person. The operative portion of the judgment in favour of the assessee is as follows:

> *It remains to consider a judgment cited by learned counsel for the appellants, namely,Commissioner of Central Excise, Bangalore –III v. Dhiren Gandhi, 2012 (281) E.L.T. 64(Karnataka). This judgment is correct in its conclusion that while interpreting the provisions of theCentral Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Actcannot be brought within the ambit of the Act by stretching its provisions. To the extent that thisjudgment holds what is set out hereinbelow, it is correct:-*
>
> > *"We do not find any provision in the Act which foists any such liability in the case ofintestate succession. In other words, there is no provision which empowers theauthorities to recover due from a deceased assessee by proceeding against his legalheirs. The way section 11 and 11A are worded, it is amply clear, the legislature hasconsciously kept away the legal heirs from answering to liabilities under the Act." (atpage 69)*

30. The aforesaid judgement has been followed by the Division Bench of the Calcutta High Court in *Commissioner of CGST and Central Excise Howrah Commissionerate V Ashirwad Foundries Private Limited and Another*[18]

31. The assessee in the above case too had passed away even prior to an assessment having been made. A show cause notice had been issued to Ashirwad Foundries alleging suppression of clearances with the intent of evading payment of excess duty. Duty was demanded along with penalty for clandestine removal. Even at that stage, the proprietor had passed away and his legal heirs were sought to be brought on record. Hence, in that case the proceedings had not concluded as against the assessee, but were sought to be continued as against his legal heirs.

32. In the present case, the proceedings have been concluded in the hands of the assessee. To that extent the facts are a little different. However, the difference is no so much, so as to make a difference to the legal position as there is no provision in the Customs Act for continuing proceedings even for recovery, in the hands of the legal heirs. To that extent, the ratio of the judgment supra, that the concerned enactment must contain suitable machinery to enable certain actions to be taken, would be equally applicable in this case as well.

33. Though Section 142 provides for the method by which the Department may recover dues, there is no enabling provision therein for the

[18](2022) 7 TMI 140

continuance of recovery in the hands of his legal representatives.Section 142 reads thus:

> *142. Recovery of sums due to Government.—(1) Where any sum payable by any person] under this Act 6 [including the amount required to be paid to the credit of the Central Government under section 28B] is not paid, —*
>
> *(a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs; or*
>
> *(b) the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may recover or may require any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] or such other officer of customs; or*
>
> *[(c) if the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b)—*
>
> *(i) the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified there under as if it were an arrear of land revenue; or*
>
> *(ii) the proper officer may, on an authorisation by 3 [Principal Commissioner of Customs or Commissioner of Customs] and in accordance with the rules made in this*

> *behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus, if any, to such person;*
>
> . . . .

34. The power to recover sums due to the Government as set out in Section 142 is to be read along with the requisite Rules in this regard, being the *Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules 1995* (in short 'Rules'). The aforesaid Rules were very much in force when the demands were raised under the Orders-in-Original passed in 2002. Those Rules define Government Rules to mean *'duty, drawback, interest or penalty payable by any person under the Act'*. It also defines the term 'defaulter' to mean any person from whom Government dues are recoverable under the Act.

35. In these Rules as well, the term 'person' has not been defined and hence the inference to be drawn is that the term 'assessee' or 'person' would mean that individual upon whom the order-in-original/order of adjudication has been passed.

36. Under Chapter II of those Rules setting out the procedure for attachment of property, an assessing officer under the provisions of the Customs Act is required to prepare a certificate signed by him specifying the amount due from the defaulter. This Certificate under Rule 3, should be sent to the Commissioner having jurisdiction over the place where the defaulter either owns movable or immovable property, or resides, or carries on business, or has bank accounts.

37. Rule 4 sets out the procedure to be followed for service of that Certificate on the defaulter stipulating that seven (7) days time is given to the defaulter to pay the amount specified therein. The Certificate should intimate that, if the dues are not settled within that time, the officer who serves the notice on the defaulter has been authorised to take steps to realise the amount in terms of the Rules.

38. Rule 5 provides for attachment of the property and realisation of the amount by sale thereof. The service of the notice of attachment is to be in the same manner as prescribed for the service of an order as provided under Section 153 of the Act and the attachment is required to be proclaimed, under Rule 13 by beating of drum or other customary modes of proclamation. A copy of the order is to be a affixed on a conspicuous part of the property and in the notice board of the office of the proper officer. The method for the sale of the property has been set out thereafter.

39. In the present case, no material has been brought on record nor is it the case of the Department that the property had been attached by way of a Certificate of attachment as per the Rules.

40. Finally, Section 142A has been inserted by Act 8 of 2011 providing for any liability under the Act to be a first charge upon the property of the assessee or the person, as the case may be. Section 142A reads under:

> *142A. Liability under Act to be first charge.— Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956 (1 of 1956), the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and 2 [the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) and the Insolvency and Bankruptcy Code, 2016 (31 of 2016).*

41. As we have noted earlier, neither the term 'assessee' nor the term 'person'has defined under the Act. The terms have been used interchangeably as there are only two instances where the word 'assessee' has been used, the first is Section 127-I relating to the *'Power of Settlement Commission to send a case back to the proper officer'* and the second in Section 142 A extracted above.

42. The scheme of the Act thus contemplates recovery only as set out under Section 142 or Section 142A, read with the Rules. Pre-2011, the Department could embark on recovery in the manner as set out under the Rules,

in the case of those Assessees where Certificates had been drawn up and the procedure as contemplated under the Rules. Post 2011, the demands raised after the date of insertion of Section 142A will be a charge on the property of an assessee. However, Sections 142, 142A and the Rules are silent as to the impact of the recovery provisions in the case of demise of an assessee, and Legislature has consciously not provided for such a situation.

43. To put it alternatively, and as the Supreme Court has held in *Shabina Abraham's* case, the scheme of the Customs Act has consciously kept legal heirs away from the rigour of answering to liabilities under that Act. With this, the position stands settled that a demand under a fiscal statute, be it of tax, duty, interest or penalty, cannot be pursued by the concerned Revenue Department, except if the relevant Statute enables such pursuit.

44. The assessments in the present case have been framed as early as on 24.10.2002 when there was no enabling provision under the Customs Act stipulating that the demands under those orders could be enforced as a first charge. In such circumstances, and on the facts of the present case, Section 142A of the Act also cannot come to the aid of the Department.

45. For the aforesaid reasons, we are of the considered view that the appeals abate. In the absence of a mechanism under the Act prior to 2011 for enforcement of the demand of duty, penalty, interest or any other sum payable by an assessee or a person under Customs Act, 1962, the demands raised under

orders dated 24.10.2002 lapse. If at all, the department could only have pursued the demand by way of civil suit,which is not possible at this distance of time. We re-call orders dated 04.02.2025 and dismiss these Civil Miscellaneous Appeals as abated. All connected Miscellaneous Petitions are also closed with no order as to costs.

[A.S.M., J]   [C.K., J]

30.04.2025

Index:Yes
Speaking order
Neutral Citation:Yes
vs

To

The Commissioner of Customs,
Airport Customs House,
Chennai-1.

Dr.ANITA SUMANTH,J.
AND
C.KUMARAPPAN,J.

vs

C.M.A.Nos.3581 & 3582 of 2014

30.04.2025

C.M.A.Nos.3581 & 3582 of 2014

Dr.ANITA SUMANTH,J.

and

C.KUMARAPPAN,J.

(Order of the Court was made by Dr.ANITA SUMANTH.,J.)

This matter has come up under the caption 'for being mentioned'.

2.Let corrections in the prayer as indicated by the Registry be carried out by the Registry while issuing the order.

[A.S.M.,J] [C.K.,J]

07.07.2025

vs