



आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O No	दिनांक / Date
	V2/6/EA2/GDM/2016	16/JC/2016	19.09.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-113-2017-18

आदेश का दिनांक / Date of Order:	05.12.2017	जारी करने की तारीख / Date of issue:	06.12.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग उपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गन्धिधाम द्वारा उपस्थित जली
मूल आदेश से उत्पन्न /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax,
Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-
M/s. Vinod Roadlines, Kavita V Nair, H No. 197, Namdanvan Society Nr. Abhlisha
Chaar rasta new sama road Vadodara -390024 (New Address)

इस आदेश(अपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताने गए अपील के अलावा सब सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (शिस्टैट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामली भवन असावी अहमदाबाद- 380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अन्तर्गत निर्धारित फीट एवं प्रपत्र EA-3 को धार प्रतिपत्तियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि, ब्याज की राशि और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो ब्याज: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबन्धित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्निज बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबन्धित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबन्धित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में धार प्रतिपत्तियों में की जा सकती है एवं उसके साथ जित आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (इनमें से एक प्रति प्रमाणित होगी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि, ब्याज की राशि और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो ब्याज: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबन्धित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्निज बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबन्धित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबन्धित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमसूची, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि इस कठोर रूप से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'आव किय गए शुल्क' से निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
(ii) सेल्वेट जमा की ली गई गलत राशि
(iii) सेल्वेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारणीय स्थान नहीं एवं अपील को लागू नहीं होगा। /

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण प्राधिकार विनियमित आदेशों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पंक्तिक के अंतर्गत उच्च सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद भवन, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid.

- (i) यदि मांग के किसी नुकसान के मामले में, जहां नुकसान किसी मांग को किसी कारखाने से अंडर गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंडर गृह से दूसरे अंडर गृह पारगमन के दौरान, या किसी अंडर गृह में या अंडरगृह में मांग के प्रत्यक्षपण के दौरान, किसी कारखाने या किसी अंडर गृह में मांग के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे मांग के विनिर्माण में प्रयुक्त कच्चे मांग पर गरी गई केन्द्रीय उत्पाद शुल्क के लुप्त (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को मांग निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुविधागत उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इवर्टी क्रेडिट इस अधिनियम एवं इसके विभिन्न धाराओं के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा निर्यात की गईं तारीख अथवा समावृत्ति पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संदर्भ के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश न अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ के ऑर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Chaffan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ विनियमित निर्धारित शुल्क की अदायगी की जानी चाहिए। /
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का सम्बन्ध है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त दंग से किया जाना चाहिए। इस तथ्य के होने हुए भी की विधा नहीं रुपये से रुपये के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केटीथ सरकार को एक आवेदन किया जाता है। /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं संलग्न आदेश की प्रति पर विधित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को अभिलेखित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम धारणाओं के लिए, अपीलीय विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

000073

The present appeal filed by Assistant Commissioner of Service Tax Division, Gandhidham on behalf of the Commissioner of Central Excise & Service Tax, Kutch (hereinafter referred to as "the appellant") against the Order-In-Original No. 16/JC/2016 dated 19.09.2016 (hereinafter referred to as the "impugned order") passed by the Joint Commissioner, Central Excise, Gandhidham (hereinafter referred to as the "lower adjudicating authority").

2. Brief facts of the case are that M/s. Vinod Roadlines, "Pournami", Plot No. 316, NU-4, Bhattnagar Society, Gandhidham holding Service Tax registration No. ABQPN4148PST001 (hereinafter referred to as "the respondent") are engaged in providing services falling under the taxable category of "Manpower Recruitment or Supply Agency Service" falling under Section 65(105) (k), "Management Maintenance & Repair Services" falling under Section 65 (105) (zzg) and "Cargo Handling Services" falling under Section 65(105)(zr) of the Finance Act, 1994 (hereinafter referred to as "the Act") to M/s. Indian Farmers Fertilizer Co-Operative Ltd., Kandla (hereinafter referred to as "IFFCO" for sake of brevity).

2.1 It was found that the respondent was providing various services to IFFCO, charging and collecting Service Tax but no Service Tax was paid by them during the period from 2009-10 to 2013-14 which led to initiation of inquiry against the respondent. Shri Vinod Gopinath Nair, Proprietor of the respondent in his statement dated 28.04.2014 confessed of providing various services to IFFCO, collecting Service Tax from them but not depositing the same to the account of Government exchequer.

2.2 Show Cause Notice No. V.ST/AR-GDM/ADC(PV)/138/2014-15 dated 07.10.2014 was issued to the respondent demanding Service Tax of Rs. 36,76,742/- including Education Cess and Secondary & Higher Education Cess under proviso to Section 73(1) read with Section 68 alongwith interest under Section 75 of the Act and proposing to impose penalties under Section 77 and 78 of the Act. The lower adjudicating authority decided the Show Cause Notice vide impugned order wherein he abated the proceedings initiated vide Show Cause Notice dated 07.10.2014 and dropped all charges by relying Hon'ble Supreme Court judgement that there is no machinery provision in the law to continue proceedings against deceased person or proprietor.

3. Being aggrieved with the impugned order, department preferred the present appeal, inter-alia, on the following grounds:

- (i) The adjudicating authority has decided the matter relying on the judgment of Hon'ble Supreme Court in the case of Sabina Abraham reported as 2015 (322) ELT 372. In this judgment, the Hon'ble Supreme Court decided issue after making specific observation that "it cannot be said that individual proprietor who died through natural causes, maneuvered his death to evade Excise duty". Thus, the Hon'ble Supreme Court has laid specific emphasis on the fact that the death was through natural causes. Whereas, in the present case the proprietor concerned had committed suicide as mentioned in the impugned order. As the proprietor had not died through natural causes, the above judgment of the Hon'ble Supreme Court is not applicable and thus, the impugned order passed by the lower adjudicating authority is legally incorrect.
- (ii) The judgment of the Hon'ble Tribunal relied upon by the lower adjudicating authority is also based on the above judgment of Hon'ble Supreme Court and hence, same is not applicable in the facts and circumstances of the present case.

4. Kavitha Nair, wife of Vinod Nair vide letter dated 03.01.2017 informed that her husband was looking after the affairs of the respondent and was also managing the household needs. Since, she was housewife, she had no idea about the ups and down of the business of her husband and requested to drop the case sympathetically. Mrs. Kavitha Nair vide letter dated 17.10.2017 submitted the death certificate of the respondent and narrated her situation of managing the day to day life, education of her two daughters, hardship, earnings etc. after death of her husband.

4.1 Smt. Kavitha V. Nair appeared for personal hearing and stated that her husband died on 19.10.2014; that she submitted death certificate issued by Department of Health & Family welfare, Government of Gujarat; she claimed that once her husband died the case needs to be abated as has been held by the Hon'ble Supreme Court and CESTAT as the respondent was a proprietorship concern.



000018

FINDINGS:

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made by the respondent. The issue to be decided in the present case is as to whether the proceedings can continue against a proprietorship firm when the proprietor is dead due to suicide or the proceedings need to be abated.

6. I find that the lower adjudicating authority in the impugned order has held Shri Vinod Nair, Proprietor of M/s. Vinod Roadlines, Gandhidham, committed suicide on 19.10.2014 and his wife Mrs. Kavitha Nair submitted copy of death certificate issued by the proper authority. On this basis, the lower adjudicating authority abated the proceedings initiated vide Show Cause Notice dated 07.10.2014 and dropped all charges by relying on the Hon'ble Supreme Court judgement as there is no machinery provision in the law to continue proceedings against deceased proprietor.

7. I find that the one and only argument of the appellant department is that since the respondent has committed suicide and not died through natural causes, the judgment of the Hon'ble Supreme Court is not applicable in this case. The crux of the appeal filed by the appellant is on the findings recorded by the Hon'ble Supreme Court: "it cannot be said that individual proprietor who died through natural causes, maneuvered his death to evade excise duty." Section 73(1) of the Finance Act, 1994 and Section 11A (1) of the Central Excise Act, 1944, are identically worded insofar as "the person liable to pay tax/duty" is concerned. It is well established fact that Central Excise Act and the Finance Act make reference of "person liable to pay tax/duty" which makes it clear that demand can be raised against such person only and not in respect of any other person. I find that neither in the Finance Act, 1994 nor in the Service Tax Rules, 1994, there are any provisions for continuation of proceedings against a proprietorship concern when the proprietor, who died of natural causes or unnatural causes. Therefore, the attempt of the department to create distinction between natural death of proprietor and death due to suicide is unwarranted. I am of the view that the lower adjudicating authority has rightly relied upon the decision in the case of Shabina Abraham Vs. Collector of Central Excise and Customs reported as 2015 (322) ELT 372 (S.C.)

25. A reading of the ratio of the majority decision contained in Murarilal's case (supra) would lead to the conclusion that the necessary machinery provisions were already contained in the Bombay Sales Tax Act, 1953 which were good enough to bring into the tax net persons who wished to evade taxes by the expedient of dissolving a



partnership firm. The fact situation in the present case is entirely different. In the present case an individual proprietor has died through natural causes and it is nobody's case that he has maneuvered his own death in order to evade excise duty. Interestingly, in the written submissions filed by revenue, revenue has argued as follows :-

"It is pertinent to mention that in the present case, Shri George Varghese (predecessor in interest of the appellants herein) was doing business in the name of manufacturing unit namely M/s. Kerala Tyre & Rubber Company and after the death of Shri George Varghese, his legal representatives (appellants herein) might have been in possession of the plant, machinery, stock, etc., and continuing the same business, but might be in some other name in order to avoid the excise duty chargeable to the previous manufacturing unit."

26. 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's case (supra), 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 M/s. Murarilal's case (supra).

27. The argument that Section 11A 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 11A read with the definition of "assessee" earlier in this judgment.

28. Learned counsel for the revenue also relied upon the definition of a "person" under the General Clauses Act, 1897. Section 3(42) of the said Act defines "person" as under :-

"(42) "Person" shall include any company or association or body of individuals whether incorporated or not."

It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135 at pages 140, 141 para 18 : (1966) Suppl. SCR 419 at 429 A-B, C.A. Abraham v. The Income-Tax Officer, Kottayam & Another, AIR 1961 SC 609 at 612 para 6 : (1961) 2 SCR 765 at page 771, The State of Tamil Nadu v. M.K. Kandaswami & Others, AIR 1975 SC 1871 (para 26) : (1975) 4 SCC 745 (para 26), Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different - it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion."

7.1 In light of above legal position, when the proprietor of the proprietorship firm expired, it is impermissible to continue such proceedings. In definition of assessee in Section 65(7) of the Act as "means a person liable to pay the service tax and includes his agent". Use of present tense indicates that person referred to can only be living person and use of "means and includes" indicates that it was exhaustive, with no scope of reading anything into it.

Thus, in absence of machinery provisions for proceedings against dead person's legal heirs, tax do not become payable. In this case, situation is not similar to one where firm is dissolved as device to evade tax. Shri Vinod Gopinath Nair may have committed suicide but department failed to produce any evidence that he committed suicide to evade Service Tax payable to the department. Therefore, I am of the view that the proceedings against the respondent stand concluded on account of his death.

7.2 The above citation pertains to Central Excise matters involving provisions of Section 11A of the Central Excise Act, 1944, however, the same is *pari materia* to the provisions of Section 73 of the Finance Act, 1994. Therefore, the above case-law is applicable to the present case.

7.3 I also find that in a similar case of Service Tax, Hon'ble CESTAT, Chandigarh while dealing with a similar case of M. K. Enterprises Vs CCE, Chandigarh-I reported as 2016 (45) S.T.R. 141 (Tri. - Chan.) has held as below:

"6. Further, I find that the issue has already been settled in the Hon'ble Apex Court in the case of Shabina Abraham (supra) which has been followed by this Tribunal in the case of Sagar Engineering Works and Bharti Mulchand Cheeda (supra) wherein this Tribunal has observed as under :

6. We find that the learned Commissioner was aware of the fact while passing the impugned order that the proprietor of M/s. Canan Domestic Appliances had already expired (on 12-11-2003) whereas the impugned order was passed on 29-9-2006. In fact this case was remanded by the Tribunal vide its order dated 15-2-2005 setting aside the order of the Commissioner of Central Excise and remanding the matter for de novo adjudication. Even at that time the proprietor was no more, but in spite of this, the learned Commissioner passed the impugned order against the dead person who was the sole proprietor of M/s. Canan and Domestic Appliances, which is against the settled position of law as held by various decisions of the Tribunal cited above. We are of the considered opinion that once the factum of death of the sole proprietor has come to the knowledge of the learned commissioner, the learned commissioner should have dropped the proceedings rather than passing the impugned order, but he chose to pass the impugned order against the dead person, which is not sustainable in law.

7. Therefore, I hold that no proceedings are sustainable against the appellant in the light of the above judicial pronouncement. In these circumstances, the appeal filed by the appellant is disposed of with consequential relief, if any.

8. In view of the above facts and circumstances, I find that the demand against the dead proprietor can't continue and proceedings need to be abated, as has been correctly held by the lower adjudicating authority. I, accordingly, uphold the impugned order and reject the appeal.

९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the appellant is disposed of in above terms.

(कुमार संतोष)
 आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Vinod Roadlines, "Pournami", Plot No. 316, NU-4, Bhatnagar Society, Gandhidham (Kutch) C/o: Kavita V. Nair, House No. 197, Nandanvan Society, Nr: Abhilasha Chaar Rasta, New Sama Road, Vadodara-390024.	मे. विनोद रोडलाइंस, "पौरनामी", प्लॉट नं. 316, NU-4, भट्टनगर सोसायटी, गांधीधाम (कच्छ) C/O, कविता नायर, घर नंबर 197, नंदनवन सोसायटी, अभिलाषा चार रस्ता के बाजू मे, नया समा रोड, वडोदरा- 390024.
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Copy for information and necessary action to:

- 1) The Chief Commissioner, CGST & CX, Ahmedabad Zone, Ahmedabad for favour of kind information.
- 2) The Commissioner, CGST & CX, Gandhidham.
- 3) The Assistant Commissioner, CGST & CX, Division, Gandhidham.
- 4) The Superintendent, CGST & CX, Range, Gandhidham.
- 5) Guard File.