



::प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा करजौर केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



सत्यमेव जयते

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

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रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइलसंख्या/
Appeal / File No.

V2/47/BVR/2018-19

मूल आदेश सं /
O.I.O. No.

08/AC/CGST/BVR-3/DIV/2017-18

दिनांक/
Date:

27/2/2018

ख अपीलआदेशसंख्या (Order-In-Appeal No.):

ET 70 6991682 IN

BHV-EXCUS-000-APP-118-2019

आदेश का दिनांक /
Date of Order:

15.05.2019

जारी करने की तारीख /
Date of issue:

16.05.2019

श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-

M/s Jinabhai Mansurbhai Lakhnotra, Near Ultratech Cement Ltd, Near Hanuman Temple, Village- Kovaya, Tal- Rajula, Distt: Amreli-365541.

इस आदेश (अपील) में ब्याथत कोई ब्याथत निम्नलिखित तरीक में 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 अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत 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) वर्गीकरण मूल्यों के संबंधित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर.के. पुरम, नई दिल्ली, को जाना 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 बताया गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बेहुमाली भवन असावा अहमदाबाद- 380016 को जाना 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) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग 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 क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय 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) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग 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 क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय 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 नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनबेट जमा की ली गई गलत राशि
(iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी 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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर मन्त्रि, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद मार्ग, 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 माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल 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 माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिवेट) 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 माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इन अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत त्रिनिटिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व 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 साक्ष्य के तौर पर TR-6 को 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 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित 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 समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय 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, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled 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 स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट 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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर 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 प्रावधानों के लिए, अपीलार्थी 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 ::

M/s Jinabhai Mansurbhai Lakhnotra, Village-Kovaya, Taluka Rajula, District Amreli (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/47/BVR/2018-19 against Order-in-Original No. 8/AC/CGST/BVR-3/DIV/2017-18 dated 27.2.2018 (*hereinafter referred to as 'impugned order'*) passed by the Asst. Commissioner, Central Goods & Service Tax Division, Bhavnagar-III, Bhavnagar Commissionerate (*hereinafter referred to as 'lower adjudicating authority'*).

2. The brief facts of the case are that the Appellant (holding Service Tax Registration No. AAYPL8720AST001) was engaged in providing 'Supply of Tangible Goods Service' and 'Manpower Recruitment or Supply Agency Service' to M/s Ultratech Cement Ltd. Investigation carried out against the Appellant revealed that they had rendered taxable services to M/s Ultratech Cement Ltd during the period from April, 2012 to March, 2017; that the Appellant had collected Service Tax from their client M/s Ultratech Cement Ltd but did not pay service tax of Rs. 13,44,071/- and also failed to file ST-3 Returns during the said period.

2.1 Show Cause Notice No. V.ADJ-13/CGST/BVR-3/1/17-18 dated 26.9.2017 was issued to the Appellant calling them to show cause as to why Service Tax of Rs. 13,44,071/- should not be recovered from them under Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as 'Act'*) along with interest under Section 75 and also proposing imposition of penalty under Sections 77(1)(b), 77(1)(c), 77(2) and 78 of the Act.

2.2 The Show Cause Notice was adjudicated vide the impugned order which confirmed demand of Service Tax of Rs. 13,44,071/- under Section 73(1) and ordered for its recovery along with interest under Section 75 of the Act and imposed penalty of Rs. 13,44,071/- under Section 78 of the Act and Rs. 10,000/- each under Sections 77(1)(b), 77(1)(c) and 77(2) of the Act.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal, *inter-alia*, on the following grounds:-

(i) The adjudicating authority has erred in law and facts while passing the impugned order demanding service tax and imposing penalty.

(ii) The adjudicating authority has wrongly calculated turnover of the Appellant for the years 2015-16 and 2016-17 which is 1.5 times actual turnover and worked out incorrect service tax liability.



(iii) The Adjudicating authority has failed to consider that recipient of service is liable to pay service tax in respect of Manpower Recruitment or Supply Agency Service w.e.f. 1.4.2015. Hence, service recipient was liable to pay service tax and service tax has been wrongly demanded from the Appellant.

3.1 Personal Hearing was fixed on 18.3.2019 and communicated to the Appellant vide PH notice dated 11.3.2019. In reply, Shri Mahesh Ladumor, TRP and authorized representative of the Appellant vide email dated 23.3.2019 submitted that the Appellant Shri Jinabhai Mansurbhai Lakhnotra has expired on 12.10.2018 and submitted copy of death certificate dated 16.10.2018; that being a proprietorship firm, there is no responsible person who is aware about the matter and requested to decide the appeal accordingly.

Findings:-

4. I have carefully gone through the facts of the case, the impugned order and the appeal memorandum. The issue to be decided in the present appeal is that whether Shri Jinabhai Lakhnotra has expired on 12.10.2018 and if expired, then to decide when the Appellant being a proprietorship firm expires, whether appeal proceedings need to be abated or not.

5. I find that the authorized representative of the Appellant vide email dated 23.3.2019 informed that the Appellant, Shri Jinabhai Mansurbhai Lakhnotra has expired on 12.10.2018 and also submitted copy of death certificate dated 16.10.2018. The Superintendent, Central GST Range, Rajula vide letter F.No. CGST/BVN-3/Rajula/SCN/2017-18 dated 13.5.2019 replying this office letter of even no. dated 30.3.2019 submitted letter dated 10.5.2019 of Talati-cum-Mantri, Kovaya Gram Panchayat, who confirmed that death certificate dated 16.10.2018 in respect of Shri Jinabhai Mansurbhai Lakhnotra was issued by his office under Government of Gujarat and it is correct and genuine.

6. As per Section 65(7) of the Act, 'assessee' means "a person liable to pay the service tax and includes his agent". I find that there is no machinery provisions for proceedings against dead proprietor of a proprietorship firm in the Act or Rules made thereunder and this situation is not similar to a case where a company is dissolved. I am, therefore, of the opinion that when proprietor of a proprietorship firm expires, it is not permissible to continue with recovery proceedings. I rely on the judgement passed by the Hon'ble Supreme Court in the case of Shabina Abraham reported as 2015 (322) ELT 372 (S.C.), wherein it has been held that,

"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."

(Emphasis supplied)



6.1 Though the above judgement pertains to Central Excise matters involving provisions of Section 11A of the Central Excise Act, 1944, the same is *pari materia* to the provisions of Section 73 of the Finance Act, 1994 and hence, applicable to the facts of the present case.

7. I also find that in a similar case involving Service Tax matter, the Hon'ble CESTAT, Chandigarh in the case of M. K. Enterprises reported as 2016 (45) S.T.R. 141 (Tri. - Chan.), has held as detailed 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.”

(Emphasis supplied)

8. By respectfully following the above said case laws, I hold that proceedings against the appellant stand abated on account of death of late Shri Jinabhai Mansurbhai Lakhnotra, the Appellant. I, accordingly, allow the appeal and set aside the impugned order.

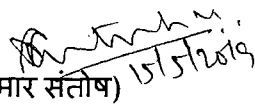
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

9. The appeal filed by the Appellant is disposed off as above.

सत्यापित ,



विपुल शाह
अधीक्षक (अपील्स)


(कुमार संतोष) 15/5/2019

प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To, M/s Jinabhai Mansurbhai Lakhnotra, Village Kovaya, Taluka Rajula, District Amreli.	सेवा में, मे. जीणाभाई मनसूरभाई लखनोतरा कोवाया, तालुका राजुला, जिल्ला अमरेली ।
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प्रति:-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-3 मण्डल, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- ✓ 4) गार्ड फ़ाइल।