

Mrs. Matai Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-19-2000

Reported in : (2001)(96)LC783Tri(Mum.)bai

Judge : S Kang, S T S.S.

Appellant : Mrs. Matai

Respondent : Cce

Judgement :

1. The appellant filed this appeal against the order-in-original dated 26.6.1992 passed by the Collector of Central Excise whereby the duty is demanded from M/s. Poonam Industries and penalty is also imposed under Rule 173Q of the Central Excise Rules.

2. Ld. Counsel, appearing on behalf of the appellant submits that a show cause notice dated 27.10.1986 was issued to M/s. Poonam Industries and to the appellant as legal heir of proprietor Mr. G.S. Matai. Ld.

Counsel submits that the present show cause notice issued to M/s.

Poonam Industries and to the legal heir, Mrs. G.S. Matai, is not sustainable as Sh. G.S. Matai, sole proprietor of M/s. Poonam Industries has expired on 7.5.1984. This fact that Sh. G.S. Matai expired on 7.5.1984, was duly conveyed to the revenue department. Ld.

Counsel submits that as the proprietary concern ceased to exist after the death of sole proprietor, Sh. G.S. Matai on 7.5.1984, no show cause notice demanding duty can be served on the appellant as there is no provision under the Central Excise Act or under the Rules for demanding the duty from the legal heir under Section 11A of the Central Excise Act read with Section 37C of the Central Excise Act. Ld. Counsel relies-upon the decision of the Hon'ble Supreme Court in the case of the State of Punjab v. Jullundur Vegetables Syndicate reported in 1966 Vol. XVII Sales Tax Cases. She submits that the Hon'ble Supreme Court, after examining the provisions of Punjab Sales Tax held that assessment of a dissolved firm, where the proceedings were initiated before or after the firm was dissolved, cannot sustain until there is a provision under the Act. She also relies upon the provisions of Income-tax Act wherein there are specific provisions under Section 159 for liabilities of the legal heirs. She submits that there is no such provision in the Central Excise Act, therefore, the show cause notice and proceedings, thereafter, are not sustainable.

3. Ld. SDR, appearing on behalf of the revenue, submits that in this case Sh. G.S. Matai was the sole proprietor of M/s. Poonam Industries and after his death, the present appellant, being legal heir of the proprietor, is liable to pay duty. He relies upon the decision of the Hon'ble Allahabad High Court in the case of Satya Prakash v. Union of India and Ors. and the decision of the Hon'ble Patna High Court in the case of Bhagwan Devi Banka and Ors. v.R.B. Sinha and Ors. and submits that in these cases High Courts held that recovery proceedings can be made from the property inherited by the LRs. He, therefore, submits that the appeals be dismissed.

5. In this case the duty is demanded from M/s. Poonam Industries and penalty is also imposed under Rule 173Q on M/s. Poonam Industries. M/s.

Poonam Industries was sole proprietary concern of Sh. G.S. Matai, who expired on 7.5.1984. The present appellant is the legal heir of Sh.

G.S. Matai. Show cause notice dt. 27.10.1986 was issued to M/s. Poonam Industries and to present appellant. The contention of the present appellant is that Sh. G.S. Matai expired on 7.5.1984, therefore, the sole proprietary concern, M/s.

Poonam Industries also ceased to exist on or after 7.5.1984. Therefore, no proceedings can be initiated against the said firm. The Hon'ble Supreme Court in the case of State of Punjab v. Jullundur Vegetables Syndicate (supra) held that in the absence of any provision under the Act or under the Rules, no proceedings of assessment can be commenced on the dissolved firm. The Hon'ble Supreme Court, further, held that even the proceedings initiated before the dissolution of the firm cannot sustain. In the present case, we find there is no such provision in the Central Excise Act or under the Rules. The revenue relied upon the decisions of the Hon'ble High Courts in the case of Satya Prakash v. Union of India and Ors. (supra) and Bhagwan Devi Banka and Ors. v. R.B. Sinha and Ors.

(supra). In both the cases, the assessment orders were passed during the life time of the proprietor. Therefore, the recovery proceedings were initiated after the death of proprietor and the Hon'ble High Courts held that recovery can be made from the LRs. In the present case, as the admitted position is that that show cause notice was issued on 27.10.1986 i.e. after the death of Sh. G.S. Matai, sole proprietor of M/s. Poonam Industries, therefore, in view of the decision of the Hon'ble Supreme Court in the case of State of Punjab v. Jullundur Vegetable Syndicate (supra), we find merit in the arguments of the appellant. We, therefore, set aside the impugned order and allow the appeal.

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