APHC010307672019

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

TUESDAY,THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 14318/2019

Between:

1. K.PRASAD BABU KALYANAM, S/O.LATE ANANTHA RAO KALYANAM, R/O.SHREE NILYAM , 54-15-4, TF-401 SETHAMMADHARA ROAD, SETHAMMADHARA VISAKHAPATNAM-530013

...PETITIONER

AND

1. UNION OF INDIA, REP. BY ITS SECRETARY , MINISTRY OF FINANCE, NEW DELHI.
2. COMMISSIONER OF CENTRAL TAX AND CUSTOMS, VISAKHAPATNAM CGST COMMISSIONERATE, GST BHAVAN, PORT AREA, VISAKHAPATANM-530035
3. THE ASSISTANT COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX, VIZIANAGARAM DIVISION, V ISAKHAPATANM CGST COMMISSIONERATE, NEAR DANDUMARAMMA TEMPLE, CANTONMENT AREA, VIZIANAGARAM -535003
4. THE SUPERINTENDANT OF CENTRAL TAX, SRIKAKULAM WEST CGST RANGE, D.NO.12-2-21 MAHALAKSHMI NAGAR, SRIKAKULAM -532001
5. THE DISTRICT REGISTAR, 2ND FLOOR, SYAMS ABODE, KOTHA ROAD JUNCTION PALAKONDA ROAD, SRIKAKULAM -5320001

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased toto issue a Writ of Mandamus , or any other appropriate writ, order or direction ,declaring the action of the 3rd Respondent in issuing notice of demand in C.No.IV/16/91/2011- Adjn/451119 dated 19.03.2019 seeking to attach the properties belonging to the petitioner as illegal , arbitrary, unconstitutional and contrary to the provisions of the Finance Act, 1994 and Central Excise Act,1994 and set-aside the same and direct the Respondents not to recover any Service Tax dues of the assessee i.e.Mr.Anantha Rao Kalyanam , from the Petitioner

<u>IA NO: 1 OF 2019</u>

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to refrain from taking any coercive steps against the recovery of Service Tax due of the late assessee i.e., Mr.Anantha Rao Kalyanam , from the Petitioner , pending disposal of the Writ Petition

<u>IA NO: 2 OF 2019</u>

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of Notice of Demand in C.No.IV/16/91/2011-Adjni451/19 dated 19.03.2019 , Pending disposal of the Writ Petition and pass such or other order as this Honble court may deem fit and proper in the circumstances of the case. pending disposal of the above writ petition

<u>IA NO: 1 OF 2025</u>

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to grant leave for filing rejoinder in the Writ Petition No. 14318 of 2019 and pass

<u>IA NO: 2 OF 2025</u>

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to order amendment of main prayer in WP No. 14318 OF 2019 as below: (a) declaring the action of the 3^*^ Respondent in issuing the notice of demand in C.No. IV/16/91/2011-Adjn/451/19 dated 19.03.2019 seeking to attach the properties belonging to the petitioner as illegal, arbitrary, unconstitutional and contrary to the provisions of Finance Act, 1994 and Central Excise Act, 1944 and set aside the same and direct the Respondents not to recover any Service Tax dues of the late assessee i.e., Mr. Anantha Rao Kalyanam, from the petitioner, and pass such order or orders as may be deemed fit and proper in the circumstances of the case, (b) declare the impugned Order of attachment of immovable property in Appendix-IIIC dated 27.03.2019 and Notice of attachment of immovable property in Appendix-IIIC dated 27.03.2019 issued by the Respondent No.3 as arbitrary, illegal, without jurisdiction, void, violative of the principles of natural justice and principles of Judicial discipline apart from being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India, and to consequently set aside the same and direct the Respondent No. 5 to remove the attachment and/or pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case. Instead of For the reasons, stated above, it is hereby prayed that this Hon'ble Court may pleased to issue any writ order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the declaring the action of the 3"^ Respondent in issuing the notice of demand in C.No. IV/16/91/2011-Adjn/451/19 dated 19.03.2019 seeking to attach the properties belonging to the petitioner as illegal, arbitrary, unconstitutional and contrary to the provisions of Finance Act, 1994 and Central Excise Act, 1944 and set aside the same and direct the Respondents not to recover any Service Tax dues of the late assessee i.e., Mr. Anantha Rao Kalyanam, from the petitioner, and pass such order or orders as may be deemed fit and proper in the circumstances of the And to pass

Counsel for the Petitioner:

1. M V J K KUMAR (SR SC FOR CEC SER TAX)
2. PASUPULETI VENKATA PRASAD

Counsel for the Respondent(S):

1. B V S CHALAPATI RAO
2. DEPUTY SOLICITOR GENERAL OF INDIA

The Court made the following Order:

(per Hon’ble Sri Justice R. Raghunandan Rao)

Heard Sri Pasupuleti Venkata Prasad, learned counsel for the petitioner and Sri B.V.S. Chalapati Rao, learned Standing Counsel appearing for the respondents.

2. The petitioner herein is the son of late Mr. Anantha Rao Kalyanam, who is said to have been a registered dealer, under the Finance Act, 1994, for service tax.

3. The father of the petitioner had been subjected to an order of assessment, dated 20.11.2009, raising a demand of Rs.1,17,74,627/- towards service tax dues. The father of the petitioner was served with another order, dated 05.03.2012, raising a demand of Rs.88,16,548/-. The father of the petitioner being aggrieved by these orders, filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (South Zone Bench), Hyderabad. The father of the petitioner died during the pendency of the appeal, on 22.06.2014.

4. Thereafter, the petitioner was served with a notice of demand, dated 19.03.2019, calling upon the petitioner to pay the aforesaid dues of his father. Apart from initiating recovery proceedings, by virtue of the show-cause notice, dated 19.03.2019, the authorities had also attached the property of the petitioner by way of an order of attachment, dated 27.03.2019.

5. The petitioner has approached this Court, by way of the present writ petition, challenging order of notice, dated 19.03.2019, and had subsequently sought an order to grant amendment of prayer to include the order of attachment, dated 27.03.2019.

6. The case of the petitioner is that the petitioner cannot be made liable for the tax dues of his father, as there is no provision available in the Central Excise Act, 1944.

7. Sri B.V.S. Chalapati Rao, learned Standing Counsel, would contend that the provisions of the G.S.T. Act can be applied for recovery of the dues from the father of the petitioner and consequently, the petitioner. He submits that the recovery procedure, set out earlier under the Central Excise Act for the recovery of service tax dues, has now been superseded by the G.S.T. Act.

8. Sri Pasupuleti Venkata Prasad, learned counsel appearing for the petitioner would dispute these submissions by placing reliance upon the judgment of the Hon'ble Supreme Court in ***Shabina Abraham vs. Collector of Central Excise and Customs***[1] , the judgment of the Hon'ble High Court of Delhi in ***Amandeep Singh Sehgal vs. Commissioner of Customs (Preventive),***[2] the judgment of the Hon'ble High Court of Judicature at Madras in ***S. Hidayathullah @ Mannady Bharakath (Died) vs. Commissioner of Customs, Chennai-II***[3], the judgment of this Court in ***Ravidra Muthavarapu***

[1] 2015 (322) E.L.T.372(SC)
[2] 2019 (368) E.L.T.560(Del.)
[3] (2025) 31 Centax 439 (Madras)

vs. Superintendent of Central Tax, Vijayawada [4] and the judgment of the Hon'ble High Court of Delhi ***in Sanjiv Kumar Mittal vs. Deputy Commissioner (TRC), CSGT, Delhi South*** [5].

9. This Court in *Ravidra Muthavarapu vs. Superintendent of Central Tax, Vijayawada,* held that tax dues, arising under the Central Excise Act, cannot be recovered by invoking the provisions of the GST Act and that the provisions of the Central Excise Act alone can be utilized for such recovery. In view of the aforesaid judgment, it has to be examined whether the service tax dues of the deceased assessee can be recovered from the legal heirs of the deceased assessee.

10. The Hon'ble Supreme Court in *Shabina Abraham vs. Collector of Central Excise and Customs* considered the question of whether assessment proceedings, initiated against the assessee who died during the course of such proceedings, could be continued against his legal representatives. The Hon'ble Supreme Court, after considering the law on this issue, had held that the assessment proceedings, pending against a deceased assessee, cannot be continued against his/her legal representatives. However, the Supreme Court did not go into the question as to whether the recovery proceedings, in terms of a completed assessment, can be continued against the legal representatives of the deceased assessee .

11. The aforesaid issue came to be considered by the Hon'ble High Court of Delhi in *Amandeep Singh Sehgal vs. Commissioner of Customs*

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[4] (2025) 30 Centax 206 (A.P.)
[5] 2021 (44) G.S.T.L. 14 (Delhi).

(Preventive) as well as Hon'ble High Court at Madras in the case of *S. Hidayathullah @ Mannady Bharakath (Died) vs. Commissioner of Customs, Chennai-II*. The Hon'ble High Court of Delhi, in the aforesaid case held that, in the case of Customs Act, 1962, there was no machinery provision in the Customs Act under which the dues of the deceased assessee could be recovered from the legal representatives of such assessee and or even partner of such assessee. In the case of *Hidayathullah @ Mannady Bharakath (Died) vs. Commissioner of Customs, Chennai-II*, the Hon'ble High Court at Madras considered the question of whether such recovery is permissible under the Customs Act, 1962 and held that the recovery of the dues of the deceased assessee cannot be continued against the legal representatives of such deceased assessee. The above view of both the High Courts arises on the ground that there is no provision under the Customs Act, 1962 for continuation of recovery proceedings against the legal heirs of the deceased assessee.

12. A perusal of the Central Excise Act, 1944 would show that there is no such provision available under Central Excise Act also. In view of the absence of such provision, the principles laid down by the High Court of Delhi as well as the High Court at Madras, in relation to the Customs Act, would apply to provisions of the Central Excise Act also.

13. We are in respectful agreement with the aforesaid views of the High Court of Delhi and High Court at Madras. In the circumstances, the writ petition is allowed, setting aside the notice, dated 19.03.2019 and order of attachment, dated 27.03.2019, with a further direction to the respondents not

to initiate any recovery proceedings including coercive steps for recovery of the dues of the deceased father of the petitioner. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R RAGHUNANDAN RAO, J

T.C.D.SEKHAR, J

Date:17.02.2026.

JLSR