

IN THE HIGH COURT OF DELHI

**WP (C) 3523/2018
CM Appl. 14983/2018**

AMANDEEP SINGH SEHGAL

Vs

COMMISSIONER OF CUSTOMS

S Muralidhar & Talwant Singh, JJ

Dated: July 30, 2019

Appellant Rep by: Ms Anjali Gupta, Adv.

Respondent Rep by: Mr Harpreet Singh, Sr. Standing Counsel, Ms Suhani Mathur, Advs.

Cus - The Petitioner is a Director of a private limited company by the name of M/s. Gardiner Exim Pvt. Ltd. - The liabilities owed by five firms of Petitioner's deceased father have not been shown to be transferred to M/s. Gardiner Exim Pvt. Ltd. - There has to be some basic exercise undertaken by Department before issuing summons to Petitioner in his individual capacity asking him to provide evidence/documents relating to Petitioner's company which has no relation with five firms associated with his deceased father from whom such government dues were actually to be recovered - No machinery provision in Customs Act, 1962 has been brought to the notice of this Court which enables the Customs Department to proceed against the legal heirs of a deceased notice/assessee against whom there may be proceedings for recovery of customs duty - There is no machinery provision in the Customs Act whereby the dues owed by a proprietary concern or a partnership firm can be sought to be recovered from the legal heirs of the proprietor/partner of such concern/firm - The impugned summons issued to the Petitioner is quashed:
HC

Petition allowed

Case law cited:

***Shabina Abraham v. Collector of Central Excise and Customs -
2015-TIOL-159-SC-CX... Para 4***

JUDGEMENT

1. The summons dated which have been assailed in the present petition were issued on 13th March 2018 on the basis of a letter dated 5th September 2017 written by the Joint Commissioner (Customs) at Sahar, Mumbai to the Additional Commissioner Customs (Preventive), New Delhi regarding

realization of government dues owed by five concerns/firms of which the Petitioner's deceased father was either a proprietor or a partner.

2. As far as the Petitioner herein is concerned, he is a Director of a private limited company by the name of M/s. Gardiner Exim Pvt. Ltd. The liabilities owed by the aforementioned five firms of the Petitioner's deceased father have not been shown to be transferred to M/s. Gardiner Exim Pvt. Ltd. There has to be some basic exercise undertaken by the Department before issuing summons to the Petitioner in his individual capacity asking him to provide evidence/documents relating to the Petitioner's company which has no relation with the five firms associated with his deceased father from whom such government dues were actually to be recovered.

3. The impugned summons dated 13th March, 2018 proceeds on the basis that there are government dues owed by the Petitioner which admittedly is not the case.

4. The issue in *Shabina Abraham v. Collector of Central Excise and Customs 2015 332 ELT 372 (SC) = 2015-TIOL-159-SC-CX* was whether a show-cause notice under the Central Excise and Salt Tax Act, 1944 ('CE Act') could be issued to the legal heirs of a sole proprietor after his death, against whom a show-cause notice had been issued raising a demand of excise duty. The Supreme Court agreed with the Appellant in the abovementioned case that there was no machinery provision under the CE Act which enabled the continuation of such proceedings against the legal heirs of a deceased Assessee.

5. In the present case also, no machinery provision in the Customs Act, 1962 has been brought to the notice of this Court which enables the Customs Department to proceed against the legal heirs of a deceased notice/assessee against whom there may be proceedings for recovery of customs duty.

6. Mr. Harpreet Singh, learned counsel for the Customs, submitted that unlike in the decision in *Shabina Abraham (supra)*, in the present case a show-cause notice (SCN) had already been issued to the Petitioner's deceased father and the same was pending adjudication at the time of his death.

7. The above facts make no difference to the position that there is no machinery provision in the Customs Act whereby the dues owed by a proprietary concern or a partnership firm can be sought to be recovered from the legal heirs of the proprietor/partner of such concern/firm.

8. In that view of the matter, the impugned summons dated 13th March 2018 issued to the Petitioner is quashed.

9. The petition is allowed in the above terms. The application is disposed of.