

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

**Customs Miscellaneous Application (EH) No. 40700 of 2025
and
Customs Miscellaneous Application (Stay) No. 40701 of 2025
and
Customs Appeal No. 40796 of 2023**

(Arising out of Order in Original No. 101557 & 101558/2023 dated 30.03.2023
passed by the Principal Commissioner of Customs (General), Chennai)

Commissioner of Customs

Chennai – II Commissionerate
Custom House,
60, Rajaji Salai, Chennai – 600 001.

Appellant

Vs.

Unik Traders

No. 140, Old Tharagupet
Bangalore – 560 053.

Respondent

APPEARANCE:

Shri Anoop Singh, Authorized Representative for the Appellant
None for the Respondent

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40775/2025

Date of Hearing: 21.07.2025

Date of Decision: 21.07.2025

Per M. Ajit Kumar,

*"Human beings, as assesseees, are not generally known to court death
to evade taxes."*

*~ Murarilal Mahabir Prasad & Ors vs Shri B. R. Vad & Ors - AIR
1976 SUPREME COURT 313.*

Revenue has filed the present appeal against Order in Original
No. 101557 & 101558/2023 dated 30.03.2023 passed by the Principal
Commissioner of Customs (General), Chennai (impugned order) along
with miscellaneous applications for stay of operation of the impugned
order and early hearing application for early disposal of the appeal.

2. Brief facts of the case are that DRI alleged that the respondent imported areca nuts and black pepper by falsely declaring Sri Lanka as the country of origin, when the goods were only transshipped through Sri Lanka to claim ineligible duty benefits under ISFTA/SAFTA. Consequent to the investigation. Show Cause Notices (**SCN**) dated 05.05.2019, supplementary SCN dated 04.02.2020 and SCN dated 13.08.2020 were issued to the respondent to deny the duty exemption benefits based on the Country-of-Origin certificate. After following due process, the Principal Commissioner dropped the demand in both notices. The noticees were hence discharged from liability. Hence the department has filed the present appeal and has sought an out-of-turn hearing and stay of the order, by filing this Miscellaneous application.

3. The learned Authorized Representative, Shri Anoop Singh, appeared on behalf of the appellant department, while there was no representation for the respondent. However, the registry received an email dated 03.07.2025 from the legal heirs of the respondent, enclosing a letter and the death certificate of the late Hanif Thara, sole proprietor of the respondent company, recording his date of death as 21.06.2025, with a request for abatement of proceedings in accordance with the CESTAT Procedure Rules. The Ld. AR requested additional time to verify the authenticity of the death certificate, which was granted.

4. When the matter came up for public hearing on 21.07.2025, the Ld. A.R. Shri Anoop Singh stated that as per e-mail dated 17.07.2025 received from the Chennai II, Customs Commissionerate, the death certificate was confirmed as genuine. However, the Ld. AR stated that the SCN was issued to both the firm and Sh. Asif Thars, who, in a

voluntary statement under Section 108 of the Customs Act, claimed to be the Power of Attorney holder and sole beneficiary of Unik Traders. He stated that Unik Traders remains active, filing Bills of Entry in June–July 2025 at Chennai Sea Port. This collaborates the fact that Asif Thars is the 'beneficial owner' as defined in Section 2(3A) of the Customs Act, 1962. The Hon'ble Karnataka High Court in **New Sharada Industries - 2019 (370) E.L.T. 162 (Kar.)**, held that an appeal shouldn't be dismissed solely due to the sole proprietor's death; proceedings must continue against legal representatives. Section 11 of the Central Excise Act, 1944, and similar provisions under the Customs Act, allow recovery from the deceased's estate. The Supreme Court judgment in **SHABINA ABRAHAM Vs COLLECTOR OF CENTRAL EXCISE AND CUSTOMS** [2015 (322) E.L.T. 372 (S.C.)], relates to personal penalties and is not applicable here, where duty evasion and statutory penalties are adjudged against the business entity. He hence stated that appeal proceedings may be allowed to continue with the power of attorney holder stepping into the shoes of the deceased Proprietor.

5. In the circumstances of the case we take up the appeal itself for final hearing and disposal. Two issues have been raised by revenue:

A) Power of Attorney Holder is the beneficial owner so he should be treated as the respondent.

B) Liability of M/s Unik Traders remains even after the death of its proprietor

We shall examine them below.

Power of Attorney Holder is the beneficial owner.

6. We find that the averment of the A.R. that it was Shri Asif Thara, 'Power of Attorney Holder' who looked after the entire business

activities of M/s Unik Traders and hence he is the 'beneficial owner' on whose behalf the goods were imported as per section 2(3A) of the Customs Act 1962, does not emanate from the SCN. Further the allegation that the importer M/s. Unik Traders (IEC 0791011917) is active and has filed Bills of entry during the month of June & July 2025 at Chennai Sea Port, is proximate to the proprietors death on 21.06.2025. We find that questions of law and fact that are now sought to be raised by Ld. A.R., are outside the averments in the Memorandum of Appeal. Submissions made during the public hearing or in the written submissions cannot improve upon the allegations in the SCN, [See: **COMMISSIONER OF CUSTOMS, MUMBAI Vs TOYO ENGINEERING INDIA LIMITED** [2006 (8) TMI 184 - Supreme Court / 2006 (201) E.L.T. 513 (SC)] or the Memorandum of Appeal.

7. A power of attorney is an instrument by which a person is authorised to act as an agent of the person granting it. As per the judgment of the Hon'ble Supreme Court in **State Of Rajasthan & Ors vs Basant Nahata** [AIR 2005 SUPREME COURT 3401, (2005) 7 SCALE 164], the power of attorney is a document of convenience. It is executed by the principal in favour of the agent. It held;

POWER OF ATTORNEY :

13. A grant of power of attorney is essentially governed by **Chapter X of the Indian Contract Act**. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well-known, a document of convenience. Besides the Indian Contract Act, the Power of Attorney Act, 1882 deals with the subject. Section 1A of the **Power of Attorney Act** defines power of attorney to include any instruments empowering a specified person to act for and in the name of the person executing it. Section 2 of the said Act reads, thus:

"Execution under power-of-attorney - The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof. This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force." Execution of a deed of power of attorney, therefore, is valid in law and subject to the provisions of the Act is not compulsorily registerable.

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52. Execution of a power of attorney in terms of the provisions of the Indian Contract Act as also the Power of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee. (emphasis added)

7.1 In the light of the above judgment it is clear that the power of attorney (donee) in exercise of his power under such power of attorney only acts in place of the principal (donor) subject of course to the powers granted to him by reason thereof. Any act of infidelity or breach of trust is a matter between the donor and the donee. In this case however the donor i.e. Hanif Thara, sole proprietor of **M/s Unik Traders** himself, has been absolved of any wrongdoing. Hence reviving the case on the power of attorney (donee) after the donors death, will not be legal and proper, especially when there are no adjudged dues.

7.2 Further **section 201 of The Indian Contract Act, 1872**, states as under:

201. Termination of agency.—

An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency;

or by the business of the agency being completed; **or by either the principal or agent dying** or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. (emphasis added)

Hence a general power of attorney, in the normal course, gets terminated by death of the principal even by application of law.

8. As per **section 12** of the Customs Act 1962, the charge of customs duty is on the goods imported or exported. A bill of entry for home consumption has to be filed under **section 46** by the importer of goods. The expression "importer" is defined in **section 2(26)** in relation to any goods at any time between their importation and the time when they are cleared for home consumption. As per **section 47** it is the importer who shall pay the import duty. It therefore does not matter if the importer or exporter entrusts this responsibility to somebody else, the liability in law rests with the importer or exporter.

Hence duty can be demanded only from a person liable to pay the duty as per law. As per the settled legal position, the question of demanding duty jointly or severally does not arise unless it can be shown that the goods have been imported jointly.

9. We find that this is a case where revenue has come on appeal and that no adjudged dues are pending from the appellant at the time of the proprietor's demise. What is being sought to be done by revenue at the public hearing stage, is to revive a charge against a dead person through the power of attorney holder. In principle, what cannot be done directly, is not permissible to be done obliquely/ indirectly. [See: **State of Tamil Nadu and Others Vs K. Shyam Sunder and Others** [(2011) 8 SCC 737]. We however find that while the OIO was issued to (1) M/s Unik Traders (IEC 0791011917) and (2) Shri Asif Thara,

Power of Attorney Holder, only M/s Unik Traders have been made respondent to the appeal as seen from Sl. No. 4 of Form No. C.A. – 5. Hence the power of attorney holder has not been made to answer on behalf of a proprietorship firm, even as per the departments own Appeal Memorandum and it cannot now be done by way of submissions during the hearing.

10. The plea of revenue on this issue hence fails on six counts:

- i) Submissions made during the public hearing or in the written submissions cannot improve upon the allegations in the SCN or the Memorandum of Appeal.
- ii) The (donee) in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. Any act of infidelity or breach of trust is a matter between the donor and the donee.
- iii) A general power of attorney, in the normal course, gets terminated by death of the principal by coming into application of section 201 of The Indian Contract Act, 1872.
- iv) It does not matter if the importer or exporter entrusts this responsibility of paying duty to somebody else, the liability in law rests with the importer or exporter.
- v) Revenue attempts to revive a charge against a dead person through the power of attorney holder, especially when there are no adjudged dues. In principle, what cannot be done directly, is not permissible to be done obliquely/ indirectly.
- vi) The power of attorney holder has not been made a respondent to the appeal and has not been called upon to answer on behalf of the

proprietorship firm, even as per the departments own Appeal Memorandum.

Liability of M/s Unik Traders after the death of its proprietor

11. As per **rule 22** of the **CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE) RULES, 1982**, where in any proceedings the appellant or applicant or a respondent dies among other things, the appeal or application shall abate. Revenue has however drawn attention to the Hon'ble High Court of Karnataka's judgment in the case of **New Sharada Industries** (supra), to state that an appeal cannot be dismissed solely on account of the death of the sole proprietor and that the appeal must be decided on merits after bringing on record the legal representative(s) of the deceased proprietor. We find that the judgment of the Hon'ble Supreme Court in the case of **Shabina Abraham** (supra), was not brought to the notice of the Hon'ble High Court.

11.1 The Ld. A.R. had stated that the Hon'ble Supreme Court's judgment in **Shabina Abraham**, relates to personal penalties and is not applicable here. The averment does not appear to be correct. The facts of the case are that one Shri George Varghese was the sole proprietor of Kerala Tyre and Rubber Company Limited. It was alleged that the assessee had manufactured and cleared tread rubber from the factory with an intent to evade payment of excise duty. The provisions of Section 11A, as they then stood, of the Central Excises and Salt Act were invoked and duty amounting to ₹ 74,35,242 /- was sought to be recovered from the assessee together with imposition of penalty for clandestine removal. Shri George Varghese died. As a result of his death, a second show cause notice was issued on to his wife and four

daughters asking them to make submissions with regard to the demand of duty made in the show cause notice. The Hon'ble Court held;

"8. On a reading of the aforesaid provisions, it is clear that Shri Rajshekhar Rao, learned counsel appearing on behalf of the appellants is correct - there is in fact no separate machinery provided by the Central Excises and Salt Act to proceed against a dead person when it comes to assessing him to tax under the Act.

9. The position under the Income Tax Act, 1922 was also the same until Section 24B was introduced by the Income Tax (Second Amendment) Act of 1933. Prior to the introduction of the aforesaid Section, the Bombay High Court had occasion to deal with a similar question in *Commissioner of Income Tax, Bombay v. Ellis C. Reid*, AIR 1931 Bombay 333. A Division Bench of the Bombay High Court noticed the definition of "assessee" contained in Section 2(2) of the 1922 Act which definition stated that "assessee" means a person by whom income tax is payable". The Division Bench went on to say that the words "or by whose estate" are conspicuous by their absence in the said definition. The Division Bench then went on to say that there appears to be nothing in the charging section to suggest that a man who has once become liable to tax can avoid payment of tax by dying before such tax has been assessed or paid. However, the Act has to contain appropriate provisions for continuing an assessment and collecting tax from the estate of a deceased person which was found to be absent in the 1922 Act before it was amended by insertion of Section 24B.

17. It will be seen that the definition of "assessee" contained in Section 4(3)(a) of the Central Excises and Salt Act is similar to the definition of assessee contained in the Income Tax Act, 1922. Under that Act, as we have already seen, an assessee means "a person by whom income tax is payable." Under the Central Excises and Salt Act, an assessee means "the person who is liable to pay the duty of excise under this Act". The present tense being used, it is clear that the person referred to can only be a living person as was held in *Ellis C. Reid* (supra). Further, the only extension of the definition of "assessee" under the Central Excises and Salt Act is that it would also include an assessee's agent, which has nothing to do with the facts of the present case. It is well settled that a "means and includes" definition is exhaustive in nature and that there is no scope to read anything further into the said definition.

18. As has been correctly pointed out by learned counsel for the appellants, the notice that is served under Section 11A is only on the person chargeable with excise duty, which takes us back to "assessee" as defined.

19. Learned counsel for the revenue relied upon Section 11 of the Act, which, according to him, indicates that an attachment and sale of excisable goods can belong to a dead person and such attachment and sale can continue notwithstanding the death of such person.

Apart from the fact that there is nothing about dead persons in Section 11, Section 11 is limited only to recovery of sums that are due to the Government. The very opening words in Section 11 show that duty and other sums must first be payable to the Central Government under the Act or the rules. If such sums are not “payable” then the provisions of the Section do not get attracted at all. We have seen that the Act contains no machinery provisions for proceeding against a dead person’s legal heirs, such as are contained in the Income Tax Act. Obviously, therefore, duty and other sums do not become “payable” without such machinery provisions. Further, Section 11 deals with modes of recovery of tax payable and does not deal with the subject matter at hand - namely machinery provisions for assessment in the hands of the estate of a dead person and, therefore, does not have much bearing on the matter in issue in the present case. The argument, therefore, as to the insertion of the proviso to Section 11 by an Amendment Act of 2004 so as to provide that if a person from whom some recoveries are due transfers his business to another person, then the excisable goods in the possession of the transferee can also be attached and sold again leads us nowhere. In fact learned counsel for the appellants also relied on this proviso to argue that the Legislature’s need to add the proviso shows that nothing can be read into the Central Excises and Salt Act by implication. As has been stated above, Section 11 deals with an entirely different situation and the addition of the proviso therein is not of much significance as far as the question we have to answer is concerned.” (emphasis added)

11.2. We find that section 142 of the Customs Act 1962 is similarly worded. It states:

“142. **Recovery of sums due to Government.**—(1) ⁵[Where any sum payable by any person] under this Act ⁶[including the amount required to be paid to the credit of the Central Government under section 28B] is not paid,—

. “

5. Subs. by Act 22 of 1995, s. 66, for certain words (w.e.f. 26-5-1995).

6. Ins. by Act 10 of 2000, s. 88 (w.e.f. 12-5-2000)

12. Further the matter was examined by the Hon’ble Madras High Court in a Customs case of **S. Hidayathullah @ Mannady Bharakath (Died) and Ors Vs The Commissioner of Customs, Airport Customs House, Chennai** [2025 (5) TMI 590 - MADRAS HIGH COURT / 2025:MHC:1144], the Hon’ble Court referred to the judgment in the case of **Shabina Abraham** (supra) and held;

43. To put it alternatively, and as the Supreme Court has held in **Shabina Abraham’s** case, the scheme of the Customs Act has consciously kept legal heirs away from the rigour of answering to liabilities under that Act. With this, the position stands settled that a

demand under a fiscal statute, be it of tax, duty, interest or penalty, cannot be pursued by the concerned Revenue Department, except if the relevant Statute enables such pursuit.

44. The assessments in the present case have been framed as early as on 24.10.2002 when there was no enabling provision under the Customs Act stipulating that the demands under those orders could be enforced as a first charge. In such circumstances, and on the facts of the present case, Section 142A of the Act also cannot come to the aid of the Department.

45. For the aforesaid reasons, we are of the considered view that the appeals abate. In the absence of a mechanism under the Act prior to 2011 for enforcement of the demand of duty, penalty, interest or any other sum payable by an assessee or a person under Customs Act, 1962, the demands raised under orders dated 24.10.2002 lapse. If at all, the department could only have pursued the demand by way of civil suit, which is not possible at this distance of time.

(emphasis added)

13. A Co-ordinate Bench of this Tribunal had examined a similar matter in the case of **Shri S. Kanappan Vs Commissioner of Customs (Imports)**, Final order No. 41525/2024 dated 26.11.2024, in which one of us was a part of the Bench, (Member (T), Shri M. Ajit Kumar). The Order held:

4. On the death of the appellant, the appeal stands abated in terms of provisions of Rule 22 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982. Rule 22 of the CESTAT (Procedure) Rules reads as under:-

“Rule 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application. - Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be:

Provided that every such application shall be made within a period of sixty days of the occurrence of the event:

Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit.”

5. We find that in terms of Rule 22 of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982, on the death of the appellant, the proceedings will be abated unless an application is

made for continuance of such proceedings. In this case, no such application is made.

6. We find that in view of the judgement of the Hon'ble Supreme Court in the case of Shabina Abraham & Ors. Vs. Collector of Central Excise & Customs [2015 (322) E.L.T. 372 (SC)], wherein it has been held that no proceedings can be initiated or continued against a dead person as it amounts to violation of natural justice in as much as the dead person, who is proceeded against is not alive to defend himself. It is apt to quote from the case of Shabina Abraham & Ors. Vs. CCE,

“1. “Nothing is certain except death and taxes. Thus spake Benjamin Franklin in his letter of November 13, 1789 to Jean Baptiste Leroy. To tax the dead is a contradiction interms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person's property. This appeal raises questions as to whether the dead person's property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute. The precise question that arises in the present case is whether as assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacture after he is dead.”

7. In view of the above, we hold that on the death of the appellant, the appeal stands abated. The appeal is accordingly disposed of.”

14. Judicial discipline requires that we follow the judgment of the Hon'ble Supreme Court and the jurisdictional High Court on legal issue involved in this lis and also of the Co-ordinate Bench of this Tribunal. We accordingly hold that the proceedings against the deceased person/respondent proprietary firm abates as per rule 22 of the CESTAT (PROCEDURE) RULES, 1982. The appeal is disposed of accordingly. Both the miscellaneous applications are also disposed.

(Operative portion of the order was pronounced in open court on completion of the hearing)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)