

Property of Wife cannot be encumbered for the Excise Duty Liability of Husband unless the same is inherited from Husband

2021 (3) TMI 168 - CESTAT Ahmedabad in Mrs Meena Krishna Agarwal Vs C.C.E & S.T, Vadodara

Facts of Case

1. Government dues which were confirmed by order-in-original dated 21.12.2005 against two proprietary firms – Gujchem International and Gujarat Impex of the appellant's late husband Mr. Krishna Agarwal and which order-in-original is upheld by the Tribunal by order dated 02.07.2009
2. The department has created encumbrance on four flats owned by the appellant for recovery of Central Excise dues of units belonged to her late husband Shri Krishna Agarwal on the contention that these four flats were purchased by the appellant not from her own source of income but from the income of her late husband Shri Krishna Agrawal.
3. The department has heavily relied upon the fact that initially the purchase of these four flats were initiated by making payment to the builder by Zenith Chemicals Pvt. Limited and Ms. Shivangi Agarwal, daughter of the appellant
4. It is also not disputed that though initially a part payment was made by Zenith Chemicals Pvt. Limited and Ms. Shivangi Agarwal but that payment has been returned back to the same person and no sale or purchase was fructified
5. No sale or purchase deed was registered between Zenith Chemicals Pvt. Limited and Ms. Shivangi Agarwal with the builder
6. Subsequently, in the fresh deal, the appellant has made payment from her own source which was received as gift from her mother-in-law and father-in-law and the sale deed for purchase of four flats with the builder was registered
7. Chartered Accountant's Certificate dated 08.06.2013 which certified that the Appellant had purchased the said Four Flats out of her own source of income viz, the monies received as gift by her from her mother-in-law

8. Krishna Agarwal was no longer a Director in Zenith Chemicals Pvt. Limited since 2005-06
9. Any financial transactions between Zenith Chemicals Pvt. Limited and the appellant in the year 2007, 2008 and 2009 when the appellant was the Director in Zenith Chemicals Pvt. Limited, were between the Company and the appellant as its Director with which Krishna Agarwal had no relation.

Held

1. It is absolutely clear that the appellant have received gift from her father-in-law and mother-in-law. Accordingly, it is legally earned income by the appellant from which the entire payment of cost of flats was made.
2. As observed above, since the four flats were purchased by the appellant from her own source of income, question of inheritance from her late husband Shri Krishna Agarwal does not arise.
3. As observed above, since the four flats were purchased by the appellant from her own source of income, question of inheritance from her late husband Shri Krishna Agarwal does not arise.
4. The department's sole basis that initially the payment was made by Zenith Chemicals Pvt. Limited and Ms. Shivangi Agarwal were towards the purchase of said four flats by the appellant is far-fetching and has no bearing on the ownership of four flats by the appellant.