Compendium of Judgments

Proceedings Against a Deceased Taxpayer
Notices, Orders and Liability of Legal Heirs

Notice or order in a dead person's name, and pending proceedings on a proprietor's death - seventeen judgments of the Supreme Court, High Courts and Tribunals, with relevant paragraphs highlighted

GST	Customs	Central Excise	Service Tax	Income Tax

BASED ON SUPREME COURT, HIGH COURT AND TRIBUNAL DECISIONS OF 2015 TO 2026

Supreme Court, the High Courts of Delhi, Madras, Kerala, Gujarat, Calcutta, Orissa and Andhra Pradesh, GSTAT and CESTAT

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Proceedings Against a Deceased Taxpayer: Notices, Orders and the Liability of Legal Heirs

GST, Customs, Central Excise, Service Tax and Income Tax · Supreme Court, High Court and Tribunal decisions, 2015 to 2026 · 17 judgments, with relevant paragraphs highlighted in light blue

About this compendium

This compendium brings together 17 judgments and orders of the Supreme Court, the High Courts of Delhi, Madras, Kerala, Gujarat, Calcutta, Orissa and Andhra Pradesh, and the GST Appellate Tribunal and CESTAT, on what happens when a show cause notice, an order or a recovery notice is issued against a taxpayer who has died, or when the proprietor dies while the case is pending. It shows whether such a notice or order can stand, whether the legal heirs can be proceeded against afresh, and how far their liability goes. For a taxpayer or a legal heir, it helps to judge whether a notice or order received in the dead person's name can be challenged, and what relief the courts have given; for a tax consultant, it supplies full copies of the authorities, with the operative paragraphs highlighted, for drafting a reply, an appeal or a writ petition. It rests on Section 93 of the CGST Act, 2017, the corresponding provisions of the other Acts, and the judgments themselves. It is a companion to Research Note No. 02 (GST Notice Pending on Death of Proprietor).

What the decisions establish

- **A notice or order in a dead person's name does not stand.** GST: *Geetha K.K.* (para 4), *Harsh Goel* (paras 7 and 8), *Sirajudeen* (para 9), *J.S. Enterprisers* (paras 7.9 and 8), *Ushaben Patni* (para 7), *Gita Rani Pan* (paras 19 to 23), *Gotru Lakshmi Devi* (paras 7 to 9), *Ben Medicals* (para 14). Customs: *Sangeeta Goyal* (paras 14 to 17). Service Tax: *Shaista Parween* (paras 7.23 and 8). Income Tax: *Gowthaman* (para 8).
- **Under GST the legal heirs can be proceeded against afresh.** Section 93 makes the heir liable (in full where the business is continued; out of the estate only where it is discontinued). Most of the decisions quash the notice or order in the dead person's name and leave the Department free to issue notice to the heirs (*Geetha*, *Harsh Goel*, *J.S. Enterprisers*, *Ushaben*, *Gita Rani Pan*, *Gotru*). *Damayanti* (paras 4.7 and 4.10) and *Jaiwanti* (paras 22 and 43) hold that Section 93 permits proceedings to be started against the heirs after death, even where nothing was begun in the lifetime. Where the Department gave no notice to the heir and made no inquiry into the estate, the proceedings were held void (*Ben Medicals*, paras 10, 12 and 14).
- **Customs, Central Excise and Service Tax: no machinery, so abatement.** *Shabina Abraham* (Supreme Court) held that the Central Excise Act has no machinery to proceed against a dead person's estate, and the Customs and Service Tax decisions apply it (*Sangeeta Goyal*, para 16; *Shaista Parween*, paras 7.18 and 8; *MEC Engineers*, para 5). Appeals before CESTAT abate under Rule 22 if no application for continuance is made within sixty days (*K.V. Paints*, *MEC Engineers*, *Evergreen Engineering*). *Jaiwanti* (para 27) notes that *Shabina Abraham* does not establish abatement where the statute itself provides for determination after death.
- **Limitation and estate.** Where fresh proceedings were allowed, limitation was expressly excluded in *Gita Rani Pan* (para 28) and *Gotru* (para 12); *Jaiwanti* (para 43) gives no exemption from limitation. Where the business was discontinued, recovery is confined to the estate (*Harsh Goel*, para 9; *Damayanti*, para 4.10; *Gita Rani Pan*, para 26; *Ben Medicals*, para 10).
- **Open and to be checked.** No decision in this set deals with a notice that was validly issued in the lifetime and was pending at death (*Damayanti* and *Jaiwanti* concern proceedings begun after death). The Income Tax decision (*Gowthaman*) turns on Section 159, which has an express deeming provision absent in the CGST Act, and is an analogy only. Later history of the 2026 decisions has not been checked.

How the compendium is arranged

- Cases are grouped by Act in this order: GST, Customs, Central Excise, Service Tax and Income Tax, and by date of decision within each group. A separator page before each judgment gives its details, a short holding and the paragraphs highlighted.
- The judgments are reproduced as supplied in the folder, with paragraph numbers as printed. The only additions are the light blue highlights (the compiler's selection of relevant passages), the separator pages and the compendium page number at the foot of each page. Two decisions in the folder were left out: *P.B. Sethi Plastics* (Allahabad), which does not concern a deceased taxpayer, and the Single Judge order in *Gowthaman* (Madras, 27.10.2025), which the Division Bench set aside.
- Citations, benches and dates have been checked against the copies reproduced here. This is a research aid and not legal advice.

INDEX OF CASE LAWS

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9	**Gotru Lakshmi Devi v. Assistant Commissioner, Autonagar Circle, Vijayawada & Ors.** *High Court of Andhra Pradesh at Amaravati — Ninala Jayasurya and T.C.D. Sekhar, JJ.* *Paras 7, 8 (extract from W.P. No. 6029 of 2025), 9, 10 and 12*	25.09.2026	Writ Petition No. 27669 of 2026	[p. 103]
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Geetha K.K. v. Assistant Commissioner, Kozhikode Urban Division & Ors.

Court	High Court of Kerala
Bench	Ziyad Rahman A.A., J.
Date	09.06.2025
Case no. / citation	2025:KER:40106; WP(C) 9318/2025

Holding in brief

Show cause notice of 02.08.2024 and the DRC-07 summary order were issued in the name of the dealer, who had died on 21.01.2024; the widow had replied intimating the death. Liability of the legal representative may continue under Section 93, but it can be finalised only after notice to the legal representatives. The notice and order against a dead person are not legally sustainable; they are set aside and the officer is directed to complete the proceedings after issuing notice to the petitioner and other legal representatives.

Paragraphs highlighted

Paras 2 and 4

Status

Final disposal of the writ petition by a Single Judge; fresh proceedings against the legal representatives permitted.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 5.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 9TH DAY OF JUNE 2025 / 19TH JYAISHTA, 1947

WP(C) NO.9318 OF 2025

PETITIONER:

GEETHA K.K,
AGED 45 YEARS,
WIFE AND LEGAL HEIR OF LATE HAREESH KUMAR N.K,
SREEHARI, KULAPPURATH (H), KINALUR, THAMARASSERY,
KOZHIKODE, PIN - 673 612.

BY ADVS.
SMT.AMMU CHARLES
SRI.K.SRIKUMAR (SR.)
SRI.K.MANOJ CHANDRAN

RESPONDENTS:

1 ASSISTANT COMMISSIONER,
KOZHIKODE URBAN DIVISION, TAX PAYER SERVICE,
NADAKKAVU, KOZHIKODE, KERALA, PIN - 673 006.

2 ADDITIONAL COMMISSIONER,
TAX PAYER SERVICE, NADAKKAVU,
KOZHIKODE, KERALA, PIN - 673 006.

3 ADDITIONAL COMMISSIONER,
OFFICE OF COMMISSIONER OF GST & CENTRAL EXCISE,

CHENNAI SOUTH COMMISSIONERATE, MHU COMPLEX, NO. 692, 5TH FLOOR, ANNA SALAI, NANDANAM, CHENNAI, PIN – 600 035.

SMT.JASMIN M.M, G.P,
SHRI.V.GIRISHKUMAR, STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is the wife of one Mr.Hareesh Kumar who was a dealer registered under the provisions of the Central Goods and Services Tax Act-2017 holding GST registration – GSTN:32ALOPH9147A1ZA for the proprietorship concern by name "Ruby Steels". The said Hareesh Kumar passed away on 21.01.2024 and consequently the business was closed down.

2. After the death of the said Hareesh Kumar, a show-cause notice dated 02.08.2024 was served in the name of Sri Hareesh Kumar, to which Ext.P2 reply was sent by the petitioner to the 3rd respondent, intimating about his death and also that of the closing down of the business with effect from April, 2023. However, as per Ext.P3, the 3rd respondent completed the proceedings based on the said show-cause notice issued in the name of the deceased person. Ext.P5 is the GST DRC-07 summary order issued in the name of deceased Hareesh Kumar pursuant to Ext.P2. This writ petition is submitted by the

petitioner in such circumstances, challenging Exts.P3 and P5 orders on the ground that, as the proceedings of assessment were commenced and completed against a dead person, the same needs to be interfered with.

3. The learned Government Pleader on the other hand pointed out that, in the light of the statutory stipulations contained in Section 93 of the CGST Act, it is lawful to continue the proceedings and the legal representative of the deceased person would be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the, interest or penalty due from such person under the Act.

4. After considering all the relevant aspects, I am of the view that even though liability of the legal representative of the deceased taxable person may continue by virtue of Section 93, the same can be finalized only after issuing notice to such legal representatives. Here the impugned notice and the order of

assessment are against a dead person, which cannot be treated as legally sustainable.

In such circumstances, as evidently Exts.P3 and P5 are addressed and issued in the name of a dead person, it requires reconsideration. Accordingly, this writ petition is disposed of setting aside Exts.P3 and P5, with a direction to the 3rd respondent to complete the proceedings after issuing notice to the petitioner and other legal representatives, if any.

Sd/-

ZIYAD RAHMAN A.A.

JUDGE

DG/9.6.25

APPENDIX OF WP(C) 9318/2025

PETITIONER EXHIBITS

Exhibit P1	*TRUE COPY OF THE DEATH CERTIFICATE DATED 02-02-2024 ISSUED BY THE PANANGAD GRAMA PANCHAYATH*
Exhibit P2	*TRUE COPY OF THE LETTER DATED 14.11.2024 SENT BY THE PETITIONER TO THE 3RD RESPONDENT*
Exhibit P3	*TRUE COPY OF THE ORDER DATED 29.11.2024 ISSUED BY THE 3RD RESPONDENT*
Exhibit P4	*TRUE COPY OF THE SUMMARY OF ORDER 30.01.2025 ISSUED BY THE 2ND RESPONDENT*
Exhibit P5	*TRUE COPY OF THE SUMMARY OF ORDER 05.02.2025 ISSUED BY THE 1ST RESPONDENT*
Exhibit P6	*TRUE COPY OF THE JUDGMENT BENOY ABRAHAM V. STATE TAX OFFICER [2024] 165 TAXMANN.COM 533 (KERALA) DATED 09.07.2024*

Harsh Goel (Legal Heir of Late Pushkar Goel) v. GST Officer, Ward 63, Zone 6 & Anr.

Court	High Court of Delhi
Bench	Prathiba M. Singh and Shail Jain, JJ.
Date	17.11.2025
Case no. / citation	W.P.(C) 1087/2025

Holding in brief

Show cause notice of 02.12.2023 and order of 19.04.2024 were issued after the proprietor's death on 21.04.2021; the Department did not dispute this. Settled position that no show cause notice can be issued to a person who has passed away (following Pawan Kumar (Deceased), order of 13.11.2025). Notice and order quashed; the Department may proceed against the estate of the deceased, if permissible in law, under Section 93(1)(b).

Paragraphs highlighted

Paras 4, 7 (including the extract from Pawan Kumar), 8 and 9

Status

Final disposal of the writ petition (order).

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 12.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 1087/2025&CM APPL. 5357/2025**

HARSH GOEL (LEGAL HEIR OF LT. SH. PUSHKAR GOEL PROPRIETOR OF M/S. NAND PLASTICS INDUSTRIES) .....Petitioner

Through: Mr. Puneet Rai and Ms. Srishti Sharma, Advs.

versus

GST OFFICER /AVATO, WARD 63, ZONE 6, DELHI & ANR. .....Respondents

Through: Mr. K.G. Gopalakrishnan, Mr. Girish Kaul and Ms. Aishwarya Singh Rana, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 17.11.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed, *inter alia*, challenging the impugned Order dated 19th April, 2024 whereby a demand of Rs. 10,83,044/- has been confirmed against one Mr. Pushkar Goel, who was the proprietor of M/s. Nand Plastics Industries (GSTIN 07AEGPG1991N1Z4).

3. This petition has been filed by Mr. Harsh Goel, son of Mr. Pushkar Goel who is stated to have passed away on 21st April, 2021.

4. The Petitioner is aggrieved by the fact that the Show Cause Notice has been issued on 2nd December, 2023 (hereinafter "*impugned* SCN") *i.e.*, after the death of Mr. Pushkar Goel. Thereafter, the impugned order has also been passed

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 07/11/2026 at 17:47:45

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on 19th April, 2024.

5. On behalf of the Petitioner it is submitted that the impugned SCN could not have been served upon a person who has already passed away as on the date of the SCN. On this sole ground, the quashing of the same is sought.

6. The ld. Counsel for the Department does not dispute the fact that the impugned order was passed after the death of Mr. Pushkar Goel.

7. Heard. It is the settled position in law that no SCN can be issued to a person who has passed away. This Court, recently, in ***W.P.(C) 1772/202*** titled ***Pawan Kumar (Deceased) vs. Commissioner Of Dgst & Anr.*** with similar facts, has quashed the show cause notice and order challenged therein on the ground that the same was issued upon a deceased person. The relevant portion of the order dated 13th November, 2025 in the said case reads as under:

> *"3. The Petitioner - Mr. Pawan Kumar who is stated to have passed away on 9th November, 2020, is represented before the Court through his son as the Legal Representative. The case of the Petitioner is that the Show Cause Notice was issued on 02nd September, 2021. However, the Petitioner who was the proprietor of the concerned firm had passed away prior to issuance of the same. Thereafter, the impugned order dated 27th December, 2021 was passed retrospectively cancelling the GST registration from 28th December, 2018.*
>
> *4. In the opinion of the Court, since the Show Cause Notice is itself dated subsequent to the date of the demise of the Petitioner and was issued in the name of the deceased Petitioner, the Show Cause Notice itself would not be tenable in law on this ground alone."*

8. Accordingly, the impugned order and impugned SCN are quashed.

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9. However, the Department may, after taking into consideration the demands, proceed against the estate of the deceased proprietor *i.e.*, Mr. Pushkar Goel, if so permissible in law as per Section 93(1)(b) and other provisions of the Central Goods and Services Tax Act, 2017.

10. The present petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

NOVEMBER 17, 2025*/kp/msh*

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A. Sirajudeen v. State Tax Officer (FAC), Tenkasi Assessment Circle

Court	High Court of Madras (Madurai Bench)
Bench	Krishnan Ramasamy, J.
Date	17.02.2026
Case no. / citation	W.P.(MD) Nos. 4477 and 4478 of 2026

Holding in brief

Proprietor died on 29.11.2023; show cause notices (2025) and assessment orders (27.11.2025 and 18.12.2025) were issued in his name, as the Government Pleader admitted. An order passed against a dead person is non-est in law. Orders set aside and the matters remanded; one legal heir to file reply for all heirs within six weeks, followed by 14 days' notice of personal hearing.

Paragraphs highlighted

Paras 8, 9 (including the directions)

Status

Final disposal by consent at the admission stage; remand for fresh consideration.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 16.

A.Sirajudeen vs The State Tax Officer (Fac) on 17 February, 2026

Author: Krishnan Ramasamy

Bench: Krishnan Ramasamy

W.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2026

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD)Nos.4477 & 4478 of 2026
& W.M.P(MD)Nos.3745 & 3747 of 2026

A.Sirajudeen ... Pe

Vs.

The State Tax Officer (FAC)
Tenkasi Assessment Circle
SBI Bank, 3rd Floor,
Near Yanai Palam
C T Buildings, Tenkasi ... Re

Common Prayer: Writ Petitions filed under Article 226 of the Con
of India praying to issue a Writs of Certiorari,
to call for the records on the file of the respondent
33ACLPA2774L1ZJ/2021-22, dated 27.11.2025 for the assessment yea
2021-22 passed by the respondent and quash the above is illegal,
on dead person, wholly without jurisdiction and direct the respo
to proceed further to recover the demand pursuant to the said im
assessment orders dated 27/11/2025;
to call for the records on the file of the respondent
33ACLPA2774L1ZJ /2021-22, dated 18.12.2025 for the assessment ye
2021-22 passed by the respondent and quash the above is illegal,

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on dead person , wholly without jurisdiction and direct the resp
not to proceed further to recover the demand pursuant to the sai

impugned assessment orders dated 18/12/2025.

For Petitioner
in both petitions : Mr.Sudalai Muthu N
For Respondent
in both petitions : Mr.R.Suresh Kumar, AGP

COMMON ORDER

These writ petitions have been filed challenging the impugned orders dated 27.11.2025 & 18.12.2025 passed by the respondent.

2. Mr.R.Suresh Kumar, learned Additional Government Pleader, takes notice on behalf of the respondent.

3. By consent of the parties, the main petitions are taken up for disposal at the stage of admission itself.

4. The learned counsel for the petitioner would submit that in these cases, the petitioner's father, one Abdul Rasheed, passed away on 29.11.2023. However, without considering the same, the show cause notices dated 14.07.2025 & 24.09.2025 were issued for AYs 2021-22 https://www.mhc.tn.gov.in/judis (Uploaded on: 19/02/2026 03:26:31 pm) W.P.(MD)Nos.4477 & 4478 of 2026 and subsequently, the impugned orders dated 27.11.2025 & 18.12.2025 have also been passed against the petitioner's father, who is a dead person. Hence, he would contend that the said impugned order, which was passed against a dead person, is non-est in law and the same is liable to be set aside.

5. Further, he would submit that now, the petitioner, who is one of the legal heirs of the deceased Proprietor, is willing to file reply to the show cause notices dated 14.07.2025 & 24.09.2025 issued by the respondent. Hence, he requests this Court to pass appropriate orders

6. In reply, the learned Additional Government Pleader appearing for the respondent confirmed the submissions made by the petitioner and they had fairly admitted that the impugned orders were passed against the petitioner's father, who is a dead person. Hence, he requests this Court to pass appropriate orders.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and also perused the materials available on record.

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/02/2026 03:26:31 pm) W.P.(MD)Nos.4477 & 4478 of 2026

8. In the case on hand, the petitioner's father died as early as on 29.11.2023. Thereafter, the show cause notices 14.07.2025 & 24.09.2025 were issued for the AYs 2021-2022 and the impugned orders dated 27.11.2025 and 18.12.2025 respectively were passed by the respondent against the petitioner's father, who is a dead person.

9. As rightly contended by the petitioner, an order, which was passed against a dead person, is non-est in law and the same is liable to be set aside. Now, the petitioner, who is one of the Legal Heirs of the deceased Proprietor, undertakes to file a reply to the show cause notice on behalf of all the legal heirs. Therefore, this Court is inclined to set aside the impugned orders and remand the matters back to the respondent. Accordingly, this Court passes the following order:

(i) The impugned orders dated 27.11.2025 & 18.12.2025 are set aside and the matters are remanded to the respondent for fresh consideration.

(ii) The petitioner, in his capacity as a legal heir of the deceased, shall file their reply/objection along with the required documents for and on behalf of the other legal heirs also, if any, for the show cause notices dated 14.07.2025 & 24.09.2025, within a period of six https://www.mhc.tn.gov.in/judis (Uploaded on: 19/02/2026 03:26:31 pm) W.P.(MD)Nos.4477 & 4478 of 2026 weeks from the date of receipt of copy of this order.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice, by fixing the date of personal hearing, to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

10. With the above directions, these writ petitions are disposed of.

No costs. Consequently, the connected miscellaneous petitions are also closed.

17.02.2026 Index : Yes / No Neutral Citation : Yes / No RR To The State Tax Officer (FAC) Tenkasi Assessment Circle SBI Bank, 3rd Floor, Near Yanai Palam C T Buildings, Tenkasi https://www.mhc.tn.gov.in/judis (Uploaded on: 19/02/2026 03:26:31 pm) W.P.(MD)Nos.4477 & 4478 of 2026 KRISHNAN RAMASAMY.J., RR W.P.(MD)Nos.4477 & 4478 of 2026 & W.M.P(MD)Nos.3745 and 3747 of 2026 17.02.2026 https://www.mhc.tn.gov.in/judis (Uploaded on: 19/02/2026 03:26:31 pm)

V. Damayanti (W/o Late V. Vasudevan, Proprietor, M/s Vasu Chemicals) v. Superintendent of GST and Central Excise, Kariapatti Range, Madurai

Court	High Court of Madras (Madurai Bench)
Bench	D. Bharatha Chakravarthy, J.
Date	16.06.2026
Case no. / citation	W.P.(MD) No. 10000 of 2026

Holding in brief

Question: whether proceedings can be started against the legal heirs after death where the business was discontinued and nothing had been initiated in the taxable person's lifetime. Held that fresh proceedings may be initiated against the legal heir under Section 73, 74 or 74A in view of Section 93; 'determined after his death' covers notices and all steps up to the order, and 'person chargeable with tax' is wider than 'taxable person'. In a discontinued business the heir's liability is limited to the estate inherited. Writ petition dismissed. Here the notice was addressed to the widow, not to the deceased.

Paragraphs highlighted

Paras 1 (question), 4.4, 4.6, 4.7, 4.10 and 5

Status

Final judgment of a Single Judge. This is the principal authority on the question; Jaiwanti (Delhi) is to the same effect. Later history not checked.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 20.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
08.06.2026	16.06.2026

CORAM :

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD)No.10000 of 2026
and
W.M.P.(MD)Nos.7859 and 7860 of 2026

V.Damayanti,
W/o.Late V.Vasudevan (Proprietor, M/s.Vasu Chemicals) ... Petitioner

Vs.

The Superintendent of GST and Central Excise,
Kariapatti Range,
III Floor, Division Office Buildings,
Bibikulam, Madurai 625 002. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the DRC 07 Order in Original No.06/2025-GST-(SUPDT.) dated 11.12.2025 bearing DIN 20251259XO0000521570 passed by the respondent under Section 74 of the CGST Act 2017 for the financial year 2018-19 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.R.Gowri Shankar
Senior Standing Counsel

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ORDER

A. The Question:

This Writ Petition raises the question as to whether assessment proceedings can be initiated from the start against the legal heirs of a deceased taxable person where the business is discontinued and when no part of the proceedings whatsoever had been initiated during the lifetime of such taxable person.

B. Facts in Brief:

2. The Writ Petition has been filed challenging the order dated 11.12.2025 passed under Section 74 of the Central Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act"].

2.1. The case of the petitioner is that her husband, V.Vasudevan, was the proprietor of M/s.Vasu Chemicals. He was engaged in supplying industrial soaps and polishes and was registered under GSTIN: 33ABRPV4709K1Z1. He died on 05.03.2019. Following his demise, the business was discontinued and closed. The registration was cancelled with effect from 31.12.2019.

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2.2. Thereafter, the petitioner received a communication dated 10.03.2025, followed by a notice in Form DRC-01A dated 20.05.2025, alleging that M/s.Vasu Chemicals had failed to file returns for certain e-way bills generated during the financial year 2018-2019. The petitioner submitted a reply stating that, after the death of her husband on 05.03.2019, the business had been discontinued and closed, and that she was neither involved in nor aware of the business dealings. Subsequently, a show cause notice in Form DRC-01 was issued on 26.06.2025. The petitioner again submitted a reply on 24.10.2025, reiterating her earlier stand. Rejecting the petitioner's explanation, the respondent passed the impugned order dated 11.12.2025, determining a tax liability of Rs.3,42,355/- and levying interest and penalty. Aggrieved thereby, the present Writ Petition has been filed.

C. The Arguments:

3. The primary contention of the learned counsel for the petitioner is that, although Section 93 of the CGST Act enables the authorities to proceed against the legal heirs of a deceased taxable person, the provision must be read harmoniously with Sections 73 and 74 of the CGST Act, as the case may be. According to the learned counsel, Section 74 mandates that a notice be issued to the person chargeable with tax before any determination of liability is made. In

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the present case, admittedly, no notice was issued, and no proceedings whatsoever were initiated during the petitioner's husband's lifetime. Therefore, the expression occurring in Section 93 permitting determination of liability after the death of the taxable person must be understood as applying only to cases where proceedings had already been initiated during the lifetime of the taxable person but remained pending determination at the time of his death. It is contended that Section 93 cannot be construed as authorising the initiation of fresh proceedings against the legal heirs after the death of the taxable person in cases where the business is discontinued. Since no proceedings had been initiated during the lifetime of the petitioner's husband, the respondent cannot be permitted to proceed against the petitioner.

3.1. The learned counsel further submits that the expression "person chargeable with tax" in Section 74 refers only to the person upon whom the incidence of the levy falls. According to him, in taxing statutes, the concepts of charge, levy, assessment, collection and recovery have distinct legal connotations and cannot be conflated.

3.2. In support of the said submission, reliance is placed on the decision of the Hon'ble Supreme Court in **Peekay Re-Rolling Mills (P) Ltd.** v. **Assistant**

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Commissioner and another[1], particularly Paragraphs 40 to 45. It is submitted that, in that decision, the distinction between levy and collection was explained by reference to the earlier judgment in **Associated Cement Companies Ltd.** v. **State of Bihar**[2].

3.3. The learned counsel also relies on the decision of the Hon'ble Supreme Court in **Laghu Udyog Bharati and another** v. **Union of India and another**[3], particularly Paragraphs 8, 10 and 12, wherein the Hon'ble Supreme Court interpreted the expression "persons responsible for collecting service tax" and held that liability could be imposed only on the person on whom the statute casts such obligation, not merely on the recipient of the services.

3.4. Referring to Section 9 of the CGST Act, the learned counsel contends that the levy of tax applies only to the persons specified therein and that only such persons can be regarded as "persons chargeable with tax" within the meaning of Section 74. According to him, liability to tax arises upon the occurrence of a taxable supply and, therefore, the levy cannot fall upon a legal heir. Reliance is also placed upon the definition of "taxable person" under

1 (2007) 4 SCC 30

2 (2004) 7 SCC 642

3 (1999) 6 SCC 418

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Section 2(107) of the CGST Act, which brings a legal heir within its fold only if he continues the deceased's business. In the present case, the petitioner did not continue the business after her husband's death. In support of this proposition, reliance is placed upon the decision of the High Court of Jharkhand in **Rishi Shangari** v. **Union of India**[4], particularly Paragraphs 7 and 9 thereof.

3.5. The learned counsel further submits that, while considering a similar provision in Section 159 of the Income Tax Act, 1961 the Hon'ble Division Bench of this Court, in **S.Gowthaman** v. **The Income Tax Officer and another**[5], held that assessment proceedings cannot be continued against legal heirs unless proceedings had been initiated against the assessee during his lifetime. Drawing an analogy therefrom, it is contended that, where the business has been discontinued, and no notice had been issued to the taxable person during his lifetime, the words "determined after his death" in Section 93 of the CGST Act cannot be construed as authorising the initiation of fresh proceedings against the legal heirs.

3.6. The learned counsel also submits that, although this Court has, in several cases, set aside proceedings initiated against deceased persons while

4 2025:JHHC:11331-DB

5 W.A.No.529 of 2026, dated 23.03.2026

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reserving liberty to the Revenue to proceed against the legal heirs, the specific issue that arises in the present case was neither raised nor considered in those decisions. It is, therefore, prayed that the question be answered in favour of the petitioner and the impugned proceedings be quashed.

3.7. Per contra, the learned Senior Standing Counsel appearing for the respondent submits that the principles governing proceedings under the Income Tax Act, 1961, cannot be mechanically imported into the CGST Act. According to him, the CGST Act contains specific provisions dealing with liability to pay tax, interest and penalty in certain contingencies, including the death of a taxable person. Section 93 of the CGST Act expressly provides for the liability of legal heirs. Under Section 93(1)(a), where the business is continued after the death of the taxable person, the person continuing the business is liable to pay the tax, interest and penalty due from the deceased. Under Section 93(1)(b), where the business is discontinued after the death of the taxable person, the tax, interest and penalty due from such person may be recovered from the legal representative to the extent that the estate inherited by him is capable of meeting the liability.

3.8. The learned Senior Standing Counsel further submits that Section 93 expressly contemplates both situations, namely, where the tax, interest or penalty

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had been determined before the taxable person's death and remained unpaid, and where such liability is determined after his death. Therefore, unlike certain other enactments, the CGST Act specifically authorises the authorities to determine and recover tax liabilities even after the taxable person's death. In the absence of any challenge to the validity of Section 93, the impugned order, according to the respondent, is fully in accordance with the statutory scheme.

D. The Discussion & Answer:

4. I have carefully considered the rival submissions from both sides and perused the materials on record. Section 93(1) of the CGST Act, which provides for the liability of legal heirs in cases where the business of the deceased taxable person is either continued or discontinued, is extracted hereunder for ready reference:

> ***"93. Special provisions regarding liability to pay tax, interest or penalty in certain cases***.- *(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a person, liable to pay tax, interest or penalty under this Act, dies, then-*
>
> *(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and*
>
> *(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable*

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to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death."

(Emphasis supplied)

Thus, it is evident that even where the tax, interest or penalty that is determined after the death of the taxable person is also the statute that contemplates recovery of the same from the legal heirs in the manner provided under Section 93 of the CGST Act.

4.1. The petitioner's primary contention, however, is that, notwithstanding such an enabling provision, Section 93 must be read harmoniously with Section 74 of the CGST Act, which mandates the issuance of a notice to the “person chargeable with tax” before any determination of liability. According to the learned counsel for the petitioner, the expression “person chargeable with tax” refers to the person upon whom the incidence of the levy falls. Therefore, where no notice had been issued to such a person during his lifetime, the initiation of assessment proceedings after his death would be impermissible.

4.2. In this context, the learned counsel places reliance upon Section 9(1) of the CGST Act, which is extracted hereunder for ready reference:

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*"**9. Levy and collection.**- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."*

4.3. The expression "taxable person" is defined under Section 2(107) of the CGST Act. The said provision is extracted below for ready reference:

"2(107). "taxable person" means a person who is registered or liable to be registered under Section 22 or Section 24;"

4.4. Section 74 of the CGST Act does not employ the expression "taxable person" but uses the wider expression "person chargeable with tax". The said expression cannot be confined only to a taxable person as defined under Section 2(107) of the CGST Act. It would encompass not only registered taxable persons and persons liable for registration, but also the legal heirs from whom the tax is recoverable, and persons such as recipients liable to pay tax under the reverse charge mechanism, electronic commerce operators, etc., in cases where the

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statute fastens the liability upon them. While the expression may not extend to every person connected with a transaction, it would certainly include every person upon whom the Act imposes the liability to pay tax, interest, penalty, or any other statutory dues.

4.5. The Legislature has consciously employed the expression "person chargeable with tax" in Section 74 instead of the narrower expression "taxable person". A careful reading of Section 9(1) of the CGST Act indicates that the levy is on the supply of goods or services or both, while the liability to pay the tax is fastened upon the taxable person or such other person as may be provided under the Act. Therefore, the expression "person chargeable with tax" must be understood as referring to any person upon whom the statute imposes the obligation to discharge the tax liability.

4.6. In this context, Section 93 of the CGST Act expressly creates a statutory liability upon the legal heirs. In cases where the business is continued, the legal heir becomes liable to discharge the tax, interest and penalty due from the deceased. Even in cases where the business is discontinued, the statute authorises recovery from the legal heir to the extent that the estate inherited by him is capable of meeting the liability. Significantly, Section 93 expressly

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contemplates a situation where the tax, interest or penalty is determined after the death of the taxable person.

4.7. Once the statute authorises determination of liability after the death of the taxable person, the expression "determined after his death" must necessarily include the entire adjudicatory process contemplated under Sections 73, 74 or 74A of the CGST Act, as the case may be. Such process would include not merely the passing of the final order, but also the issuance of notices and all other procedural steps preceding determination. Any other interpretation would have the effect of altering the plain, simple and clear meaning of the express words employed in Section 93 of the CGST Act.

4.8. I am unable to accept the contention that the expression "person chargeable with tax" occurring in Section 74 must either be equated with the concept of levy or be confined to the definition of "taxable person" contained in Section 2(107) of the CGST Act. Consequently, the decisions relied upon by the learned counsel for the petitioner, particularly **Peekay Re-Rolling Mills (P) Ltd**. (cited *supra),* do not advance the petitioner's case. Those decisions deal with the distinction between the levy and the collection of tax, whereas the issue in the present case concerns the statutory liability to pay and the Revenue's authority to

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determine and recover such liability under the scheme of the CGST Act. I am, therefore, unable to read Section 93 in the restrictive manner suggested by the learned counsel for the petitioner. A taxing statute creating a liability must ordinarily be construed in accordance with its plain language, and the Court cannot read into the provision limitations which the Legislature has consciously omitted.

4.9. Reference in this regard has to be the judgment of the Hon'ble Supreme Court in **Chief Commissioner of CGST** v. **Safari Retreats Pvt. Ltd.**[6], wherein the Hon'ble Supreme Court reiterated the settled principles governing the interpretation of taxing statutes and held that the statute must be construed as it stands, without adding to or subtracting from its language on considerations of legislative intent or equity. While considering Section 9 of the CGST Act, the Hon'ble Supreme Court also observed that, although the levy is on the supply of goods or services, the liability to pay may, in certain situations, such as reverse charge, be fastened upon a person other than the supplier. The expression "person chargeable with tax", therefore, has to be understood with reference to the statutory liability created under the Act and cannot be either restricted or expanded on equitable considerations.

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6 2024 INSC 756

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4.10. In view of the above discussion, I answer the question by holding that, even in a case where the business of the deceased taxable person has been discontinued and no show cause notice or assessment proceedings had been initiated during his lifetime, fresh proceedings may nevertheless be initiated against the legal heir under Section 73, 74 or 74-A of the CGST Act, 2017 in view of section 93 of the CGST Act. However, in cases of discontinued businesses, the liability of the legal heir shall be limited to the extent to which the estate inherited by him is capable of meeting the charge.

E. The Result:

5. In the result, the Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions shall stand closed.

NCC : Yes **16.06.2026**
smn2

To

The Superintendent of GST and Central Excise,
Kariapatti Range,
III Floor, Division Office Buildings,
Bibikulam, Madurai 625 002.

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D.BHARATHA CHAKRAVARTHY, J.

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Pre-deliery order in

W.P.(MD)No.10000 of 2026

16.06.2026

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M/s J.S. Enterprisers (through legal heir Jyoti Ranjan Mohapatra) v. Superintendent, CGST and Central Excise Division, Cuttack-I & Ors.

Court	High Court of Orissa at Cuttack
Bench	Harish Tandon, C.J. and Murahari Sri Raman, J.
Date	22.07.2026
Case no. / citation	W.P.(C) 13452/2026

Holding in brief

Show cause notices of 25/26.09.2025 and Order-in-Original of 29.12.2025 under Section 73 were issued in the name of the proprietor, who died on 24.11.2022, though the Department knew of the death. Section 93 imposes liability on the legal representative but does not authorise determination against a dead person; the notice and order are non-est and quashed. Appearance of an accountant at the hearing did not cure the defect. Liberty to issue notice to the petitioner as representative of the other heirs; the heir had continued the business under the same GSTIN, so Section 93 remains available to the Department.

Paragraphs highlighted

Paras 3, 7.4, 7.6, 7.9, 8, 8.2 and 9

Status

Final disposal of the writ petition by a Division Bench; fresh notice permitted.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 36.

ORISSA HIGH COURT : CUTTACK

AFR

W.P.(C) No.13452 of 2026

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

***

M/s. J.S. Enterprisers
Represented by
Sri Jyoti Ranjan Mohapatra
Aged about 32 years
Legal heir of
Late Manoranjan Mohapatra
Adaspur-Niali Road, Adaspur
Cuttack, Odisha – 754 011
GSTIN: 21AGEPM8738K1Z5
By Profession: Business. ... Petitioner

-*VERSUS*-

1. The Superintendent
Central GST and Cx Division
Cuttack-I Cuttack
Plot No.5(P), Sector-6, CDA
Cuttack – 753 014.

2. Assistant Commissioner
Central GST and CX Division
Cuttack-I Cuttack
Plot No.5(P), Sector-6, CDA
Cuttack – 753 014. ... Opposite parties

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Counsel appeared for the parties:

For the Petitioner : M/s. Prakash Kumar Jena, Siba Prasad Dalai, and Laxmi Narayan Sahoo, Advocates

For the Opposite parties : Mr. Mukesh Agarwal, Junior Standing Counsel (Goods and Services Tax, Central Excise and Customs Department)

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 25.06.2026 :: Date of Order : 22.07.2026

ORDER

Summary of Show Cause Notice in Form GST DRC-01, dated 26.09.2025 accompanied by Demand-*cum*-Show Cause Notice dated 25.09.2025 (Annexure-1) and Order dated 29.12.2025 along with Order-in-Original dated 29.12.2025 (Annexure-2) issued by the Assistant Commissioner, GST & Central Excise, Cuttack-I Division, Cuttack, raising a demand under Section 73 in terms of the Central Goods and Services Tax Act, 2017 and the Odisha Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017, pertaining to Financial Year 2021-22

Compendium: Proceedings against deceased taxpayer | page 37 of 230 ▲ Back to Index

(covering tax periods from 01.04.2021 to 31.03.2022) are assailed in the afore-noted writ petition, wherein the petitioner craves to invoke extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India with the prayer(s) to grant following relief(s):

"Under the facts and in the circumstances of the case, in the interest of justice and equity the petitioner prays the Hon'ble Court to kindly consider the aforementioned facts and be pleased to:

(I) admit the writ petition;

(II) issue writ of certiorari calling upon the opposite parties to send all paper and documents in issuing show cause notice dated 26.09.2025 in Annexure-1 and passing order dated 29.12.2025 in Annexure-2 so that the same can be examined by the Hon'ble Court.

(III) issue writ of mandamus directing the opposite parties to show cause why the show cause notice dated 26.09.2025 in Annexure-1 and passing order dated 29.12.2025 in Annexure-2 shall not be quashed and if the opposite parties fail to show cause or show insufficient cause, make the said rule absolute.

(IV) issue rule NISI giving effect to the above prayer(s);

(V) pass such other or further order(s) or such direction(s) as this Hon'ble Court may deem fit and appropriate on the facts and in the circumstances of the case, to meet the ends of justice; and

(VI) allow this writ petition.

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And for this act of kindness the petitioner shall as in duty bound ever pray"

2. Sri Manoranjan Mohapatra (as proprietor) was carrying on business in the name and style "M/s. J.S. Enterprisers" being assigned with GSTIN: 21AGEPM8738K1Z5 and stated to have issued e-invoices as required under Notification No.88/2020-Central Tax, dated 10.11.2020 on the transactions of supply and received tax e-invoices from companies like Ultratech Cement Ltd., JK Lakshmi Cement Ltd., Bhartia Distributors Pvt. Ltd. and MSP Sponge Iron Ltd. *etc.* as per Section 31 of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (collectively be referred to as "GST Act") read with Rule 48(5) of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017 (collectively be referred to as "GST Rules"). As per records maintained by him, regular returns as required under the statute were being filed indicating claim of and availment of input tax credit and disclosing discharge of tax liability. During the Financial Year 2021-22 total tax liability discharged was shown to be at Rs.2,97,20,836.79.

2.1. On the death of proprietor of M/s. J.S. Enterprisers, namely Sri Manoranjan Mohapatra on 24.11.2022, the legal heirs decided to continue with the business in the

same name and style till 31.03.2023. Thereafter it was decided to run the business in the name and style "M/s. J.S. ENTERPRISERS" by constituting a partnership firm comprising Sri Chitta Ranjan Mohapatra, Sri Rashmi Ranjan Mohapatra and Sri Jyoti Ranjan Mohapatra as partners. Accordingly application dated 25.01.2023 was made for issue of new registration certificate in the name "M/s. J.S. Enterprisers", with the status of partnership firm. A registration certificate assigning GSTIN: 21ABWFM0651L1Z0 was issued on 03.02.2023 giving effect from 25.01.2023 in the Legal name and Trade name as "M/s. J.S. ENTERPRISERS" with status partnership firm.

2.2. It was also decided by the legal heirs of Late Manoranjan Mohapatra [1] having Legal name and Trade name "Manoranjan Mohapatra" assigned with GSTIN: 21AGEPM8738K1Z5 to continue with the proprietorship business to be run by one of the legal heirs, namely Jyoti Ranjan Mohapatra. For the said purpose application for non-core amendment being made, it was approved by the Goods and Services Tax Organisation on 20.06.2023. The petitioner filed returns in Form GSTR-3B for the tax periods April, May and June of 2023 during the Financial Year 2023-24 disclosing

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[1] Copy of Legal Heir Certificate enclosed as Annexure-4A with the writ petition, discloses the following are the heirs of Late Manoranjan Mohapatra:
Basanti Mohapatra (wife); Salina Sahoo (daughter); Rasmiranjan Mohapatra (son); Jyotiranjan Mohapatra (son).

Compendium: Proceedings against deceased taxpayer | page 40 of 230 ▲ Back to Index

"Manoranjan Mohapatra" as Legal Name and "M/S. J.S. ENTERPRISERS" as Trade Name using GSTIN: 21AGEPM8738K1Z5.

2.3. Upon scrutiny of returns under Section 61 of the GST Act, 2017, the Superintendent, opposite party No.1, issued notice in Form GST ASMT-10 dated 28.05.2025 read with Rule 99 of the GST Rules in the name of deceased "Manoranjan Mohapatra" who died on 24.11.2022 and said fact was within the knowledge of the Goods and Services Tax Organisation being intimated on 25.01.2023. No reply could be filed in response to such notice by the legal heir/petitioner as the notice in Form GST ASMT-10 in the common portal was issued in the name of the deceased-Late Manoranjan Mohapatra.

2.4. In consequence thereof, Demand-*cum*-Show Cause Notice under Section 73 of the GST Act read with Rule 100(2) and Rule 142(1)(a) *vide* Ref. No. ZD210925001298J dated 01.09.2025 was issued by the Superintendent, opposite party No.1. This apart, another Show Cause Notice was issued by the Assistant Commissioner, opposite party No.2, *vide* Ref. No.ZD210925039360M dated 26.09.2025 in Form GST DRC-01 in the common portal in the name of deceased "Manoranjan Mohapatra" despite the fact that the Goods and Services Tax Organisation has carried out

amendment of the non-core field in registration particulars on 20.06.2023 indicating Sri Jyoti Ranjan Mohapatra as legal heir of Late Manoranjan Mohapatra.

2.5. The petitioner, legal heir of the deceased Late Manoranjan Mohapatra, describing as "Jyoti Mohapatra", indicating the status "legal heir" filed reply in Form GST DRC-06 to Show Cause Notice in Form GST DRC-01, dated 01.09.2025 *vide* Ref. No. ZD210925001298J on 30.09.2025. Considering said reply the opposite party No.1 dropped the allegation(s) by passing Order-in-Original No. SUPDT/CTC-III/GST/135/2025, dated 29.12.2025.

2.6. On the other hand, so far as the proceeding initiated by the Assistant Commissioner of GST and Central Excise, Cuttack-I Division, Cuttack by issue of Show Cause Notice in Form GST DRC-06 (Ref. No.ZD210925039360M), dated 26.09.2025 (Annexure-1) under Section 73 of the GST Act indicating "NA" against serial No.2 (Date of personal hearing), serial No.3 (Time of personal hearing) and serial No.4 (Venue where personal hearing will be held), notwithstanding explanation offered by Jyoti Ranjan Mohapatra (petitioner), describing as the legal heir of Late Manoranjan Mohapatra, the proprietor of "M/s. J.S. Enterprisers" with GSTIN: 21AGEPM8738K1Z5, *vide* Reply to Show Cause Notice (ARN: SD211025020736X)

placing “tick mark” against serial No.7 exercising option for personal hearing, said Authority proceeded with the matter.

2.7. In view of voluminous documents relating to transactions effected during Financial Year 2021-22 were to be uploaded to substantiate the claim of M/s. J.S. Enterprisers proprietor Late Manoranjan Mohapatra, personal hearing was opted in the reply. Despite such information available with the Assistant Commissioner, GST and Central Excise, he concluded the proceeding, without due and reasonable adherence to the principles of natural justice. The proceeding thus concluded under Section 73 of the GST Act, said Authority passed an Order-in-Original bearing No.AC/CTC-I/GST-69/2025, dated 29.12.2025 (Annexure-2) in the name of “Manoranjan Mohapatra”, who is dead since 24.11.2022.

2.8. Alleging that the proceeding initiated by issue of Show Cause Notice and passing the Order-in-Original under Section 73 of the GST Act in furtherance thereto by the Assistant Commissioner, GST and Central Excise, Cuttack-I Division, Cuttack (opposite party No.2) are void *ab initio* and *non est* in the eye of law. As such they being untenable in law, the instant writ application has been filed with prayer to quash not only the Show Cause

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Notice(s) (Annexure-1) and the Order-in-Original (Annexure-2).

3. The short issue involved in this matter is whether the Assistant Commissioner of Central Goods and Services Tax and Central Excise, Cuttack-I Division, Cuttack is competent to initiate proceeding under Section 73 by issue of Show Cause Notice in Form GST DRC-01 dated 26.09.2025 accompanied by Demand-*cum*-Show Cause Notice dated 25.09.2025 (Annexure-1) and complete said proceeding by passing Order-in-Original dated 29.12.2025 (Annexure-2), thereby raising a demand against a dead person (by name, *i.e.,* Manoranjan Mohapatra), who was running the proprietorship concern, *viz.,* M/s. J.S. Enterprisers, bearing GSTIN: 21AGEPM8738K1Z5.

3.1. At the stage of "Fresh Admission", on 25.06.2026 Sri Prakash Kumar Jena and Sri Siba Prasad Dalai, learned Advocates and Sri Mukesh Agarwal, learned Junior Standing Counsel for the Goods and Services Tax Organisation advanced arguments.

3.2. Having heard counsel for respective parties, the matter stood reserved for preparing and delivery of judgment.

4. Sri Prakash Kumar Jena, learned Advocate contended that the Show Cause Notice (Annexure-1) and the Order-in-Original (Annexure-2) are *non est* in the eye of law

and they are rendered nullity inasmuch as the same cannot subsist as against a dead person. Arduously contending that in absence of any statutory provision to initiate and continue with the proceeding against a non-existing person, the proceeding must abate.

4.1. The learned counsel submitted that upon intimation of the fact of death of proprietor of M/s. J.S. Enterprisers, namely Manoranjan Mohapatra, on 24.11.2022, a partnership firm constituted with partners, namely Jyoti Ranjan Mohapatra, Chitta Ranjan Mohapatra and Rasmi Ranjan Mahapatra, was assigned with GSTIN: 21ABWFM0651L1Z0 *vide* Registration Certificate in Form GST REG-06 issued by the Superintendent, Cuttack-II Circle being approved by the Goods and Services Tax Network on 03.02.2023 (Annexure-5A) to carry on business in the name and style "M/s. J.S. Enterprisers". Further, on consideration of non-core amendment application, GSTIN: 21AGEPM8738K1Z5 (which was earlier allotted in the name and style "M/s. J.S. Enterprisers") has been allowed to continue with Legal Name and Trade Name: "Manoranjan Mohapatra" with approval of the Authority concerned on 20.06.2023 (Annexure-6). What is essentially sought to be projected by the learned counsel that the Show Cause Notice in GST DRC-01 dated 26.09.2025 along with Demand-*cum*-Show Cause Notice dated 25.09.2025 in the Legal Name:

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"Manoranjan Mohapatra" and Trade Name: "M/s. J.S. Enterprisers" and the Order-in-Original dated 29.12.2025 in the name: "M/s. J.S. Enterprisers, Proprietor: Manoranjan Mohapatra" raising demand with respect to Financial Year 2021-22 is liable to be quashed as no notice and demand can be sustained against a dead person.

5. Sri Mukesh Agarwal, learned Junior Standing Counsel representing the opposite parties *per contra* drawing attention of this Court to the provisions of Section 93 of the GST Act, vehemently opposed the submissions made by Sri Prakash Kumar Jena, learned Advocate and he would urge that since Show Cause Notice in GST DRC-01 dated 26.09.2025 along with Demand-*cum*-Show Cause Notice dated 25.09.2025 and the Order-in-Original dated 29.12.2025 were passed by statutory authority, no infirmity can be imputed against the Assistant Commissioner, GST and Central Excise, Cuttack-I Division, Cuttack.

5.1. Expanding his argument further it is urged that since the petitioner has been continuing with the business using the same registration number being GSTIN: 21AGEPM8738K1Z5, as he is one of the legal heirs, it cannot be said that the demand raised upon participation of the petitioner is *non est* and void. Had the petitioner been sanguine about his rights and

liabilities under the GST Act and Rules framed thereunder, it was open for him to contest the Show Cause Notice/Demand-*cum*-Show Cause Notice along with the Order-in-Original before the competent Authority by taking recourse to alternative forum available under the said statute.

6. The factual matrix and the arguments advanced by the counsel for the respective parties leaves sole question for consideration is whether the Assistant Commissioner, GST and Central Excise, Cuttack-I Division, Cuttack was competent to initiate proceeding under Section 73 of GST Act, 2017 by issue of the Show Cause Notice and Demand-*cum*-Show Cause Notice (Annexure-1) and consequent thereto pass Order-in-Original (Annexure-2) with respect to the transactions pertaining to Financial Year 2021-22 treating "M/s. J.S. Enterprisers, Proprietor Manoranjan Mohapatra" as assessee after death of the proprietor?

7. The documents forming part of the writ petition would reveal that Annual Return in Form GSTR-9 (Annexure-3B) for the Financial Year 2021-22 was filed on 31.12.2022 against GSTIN: 21AGEPM8738K1Z5 disclosing Trade Name: "M/s. J.S. Enterprisers" and Legal Name of the registered person: "Manoranjan Mohapatra". After death of Manoranjan Mohapatra proprietor of M/s. J.S. Enterprisers on 24.11.2022,

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Registration Certificate in Form GST REG-06 (Annexure-5A) was issued on 03.02.2023 depicting "M/s. J.S. Enterprisers", a partnership firm assigned with GSTIN: 21ABWFM0651L1Z0 (Period of validity is shown to have been effective from 25.01.2023).

7.1. It is discernible from record that considering the application for non-core amendment, on 20.06.2023 the system approved continuance of business assigned with GSTIN: 21AGEPM8738K1Z5 in the Legal Name and Trade Name (both) "Manoranjana Mohapatra" (Annexure-6). Against said GSTIN, while returns in Form GSTR-3B were submitted for the tax periods April, 2023 and May, 2023, return for the tax period June, 2023 was filed disclosing "Jyoti Mohapatra" as legal heir of Legal Name: Manoranjan Mohapatra and Trade Name: M/s. J.S. Enterprisers. It is further noticed that in the explanation to show cause notice dated 24.09.2025 filed before the Assistant Commissioner, GST & Central Excise, Cuttack-III Range, Cuttack (Annexure-8 series) it has clearly been indicated as follows:

*"Respectfully, I Mr. Jyoti Ranjan Mohapatra, C/o Late Manoranjan Mohapatra, legal heir of M/s. J.S. Enterprisers beg to state that we attach herewith e-invoice, purchase bill, and explanation (page 1 and 2) letter about all query mentioned in the above notice. All deposited all such purchase bill and purchase register at GST Department. ***"*

7.2. Application for rectification of orders dated 16.03.2026 clearly speaks out that Sri Jyoti Ranjan Mohapatra, legal heir of proprietor of M/s. J.S. Enterprisers, prayed for rectification of Order dated 29.12.2025 (Annexure-9).

7.3. Minute scrutiny of above documents evinces that the information regarding death of Manoranjan Mohapatra was within the knowledge of the Authority concerned. Notwithstanding the same, Show Cause Notices at Annexure-1 were issued in the name of "Manoranjan Mohapatra" describing him as proprietor of M/s. J.S. Enterprisers on 25/26.09.2025. Furthermore, the Order-in-Original dated 29.12.2025 (Annexure-2) reflects as follows:

> *"2.0 M/s. J.S. Enterprisers, Proprietor: Manoranjan Mohapatra located at Adaspur, Niali Road, Cuttack, Odisha – 754 011 ... holder of GSTIN No.21AGEPM8738k1Z5 ..."*

7.4. It is manifest from the above discussion that even though the GST Organisation was fully aware that the proprietor of M/s. J.S. Enterprisers was dead, the authority concerned issued not only show cause notice but also passed Order-in-Original against a dead person.

7.5. It may be worthwhile to have reference to following observations made in *Savita Kapila Vrs. CIT, (2020) 426 ITR 502 = 2020 SCC OnLine Del 2540* as referred to in

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Sripathi Subbaraya Manohara Vrs. CIT, (2021) 436 ITR 469 = 2021 SCC OnLine Del 3701:

"9. The objections raised by the learned counsel for the respondents on the maintainability of the present petition, as also on merit, are no longer res integra, having been elaborately discussed and rejected by this court in its judgment in Savita Kapila (supra) authored by one of us (Hon'ble Mr. Justice Manmohan). Therefore, instead of revisiting the issues raised, we would merely reproduce the findings given by this court in its referred judgment (page 509 of 426 ITR) :

'An alternative statutory remedy does not operate as a bar to maintainability of a writ petition where the order or notice or proceedings are wholly without jurisdiction. If the Assessing Officer had no jurisdiction to initiate assessment proceeding, the mere fact that subsequent orders have been passed would not render the challenge to jurisdiction infructuous. ...

Further, the fact that an assessment order has been passed and it is open to challenge by way of an appeal, does not denude the petitioner of its right to challenge the notice for assessment if it is without jurisdiction. If the assumption of jurisdiction is wrong, the assessment order passed subsequently would have no legs to stand. ***If the notice goes, so does the order of assessment. It is trite law that if the Assessing Officer had no jurisdiction to initiate assessment proceeding, the mere fact that subsequent orders have been passed***

would not render the challenge to jurisdiction infructuous. *...*

The sine qua non for acquiring jurisdiction to reopen an assessment is that notice under section 148 should be issued to a correct person and not to a dead person. Consequently, the jurisdictional requirement under Section 148 of the Act, 1961 of service of notice was not fulfilled in the present instance. ...

In the opinion of this court the issuance of a notice under Section 148 of the Act is the foundation for reopening of an assessment. ***Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law.*** *[See Sumit Balkrishna Gupta Vrs. Asst. CIT, (2019) 414 ITR 292 (Bom) = (2019) 2 TMI 1209 (Bombay High Court)]. ...*

Consequently, in view of the above, a reopening notice under section 148 of the Act, 1961 issued in the name of a deceased-assessee is null and void. ...

As in the present case proceedings were not initiated/pending against the assessee when he was alive and after his death the legal representative did not step into the shoes of the deceased-assessee, Section 159 of the Act, 1961 does not apply to the present case. ***Section 159 of the Act, 1961 applies to a situation where***

proceedings are initiated/pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased-assessee. *Since that is not the present factual scenario, Section 159 of the Act, 1961 does not apply to the present case. ...*

There is no statutory requirement imposing an obligation upon legal heirs to intimate the death of the assessee. This court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the Income-tax Department. After all, there may be cases where the legal representatives are estranged from the deceased-assessee or the deceased-assessee may have bequeathed his entire wealth to a charity. Consequently, whether the permanent account number (PAN) record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In Alamelu Veerappan Vrs. ITO, (2018) 12 ITR-OL 95 (Mad) it has been held 'nothing has been placed before this court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased-assessee to immediately intimate the death of the assessee or take steps to cancel the permanent account number (PAN) registration'. ...

Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the Revenue. Section 292B of the Act, 1961 has been held to be inapplicable, vis-a-vis, notice issued to a dead person in Rajender Kumar Sehgal Vrs. ITO,

(2019) 414 ITR 286 (Delhi), Chandreshbhai Jayantibhai Patel Vrs. ITO (2019) 413 ITR 276 (Guj) and Alamelu Veerappan (supra).

This court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, Section 292B of the Act, 1961 does not apply to the present case. ...

In Rajender Kumar Sehgal (supra) a Co-ordinate Bench of this court has held that Section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. ...

This court is also of the view that Section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. Further, in the present case one of the legal heirs of the deceased-assessee, i.e., the petitioner, had neither co-operated in the assessment proceedings nor filed return or waived the requirement of Section 148 of the Act, 1961 or submitted to jurisdiction of the Assessing Officer. She had merely uploaded the death certificate of the deceased-assessee. ...

*Consequently, the applicability of Section 292BB of the Act, 1961 has been held to be attracted to an assessee and not to legal representatives.' ***"*

7.6. Sri Mukesh Agarwal, learned Junior Standing Counsel drew attention of this Court to the following sentences recorded in the Order-in-Original:

"Shri Sruti Ranjan Swain, Accountant and authorised representative of M/s. J.S. Enterprisers (noticee) attended

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*the personal hearing in virtual mode on dated 17.11.2025. ***"*

Therefore, he submitted that having participated in the proceeding, the petitioner cannot avoid the liability as determined and contest the demand raised in the Order-in-Original and contend that the demand gets wiped out despite the fact that the same is issued in the name of the deceased proprietor. This Court cannot accede to such submission of the learned Junior Standing Counsel inasmuch as the petitioner in the present case has intimated the fact of death of the proprietor of M/s. J.S. Enterprisers and subsequent events, like issue of Registration Certificate in favour of partnership firm namely M/s. J.S. Enterprisers and non-core amendment being carried out in the Legal Name/Trade Name of Manoranjan Mohapatra, did occur prior to issue of Show Cause Notice *vide* Annexure-1. Being conscious, the Assistant Commissioner could not have proceeded with the adjudication process against the dead person.

7.7. The aforesaid stance of the learned Junior Standing Counsel is repelled as the same has no legal foundation. It may be noteworthy that in the Application for rectification of orders (Annexure-9) it has been clearly mentioned by the petitioner that "At the time of reply of notice it is not possible to upload each and every bill due

to voluminous data and virtual meeting. Due to default of GST Department IRN are not shown."

7.8. To buttress his argument that against a dead person neither Show Cause Notice can be issued nor can the Order-in-Original be passed and served, Sri Prakash Kumar Jena, learned counsel for the petitioner relied on the following Judgments:

i. *Kanakalata Senapati Vrs. Assistant Commissioner of GST and Central Excise, W.P.(C) No.29819 of 2025, vide Judgment dated 15.01.2026 of this Court*;

ii. *Devendra Kumar Singh Vrs. State of U.P., Writ Tax No.2109 of 2025, decided on 08.05.2025* reported at *2025 (99) GSTL 60 (All) = 2025 SCC OnLine All 8284*[2]:

> *"6.* ***Undisputed facts are that the show cause notice, reminders and determination of tax have been made after the death of the proprietor of the firm.*** *Provisions of Section 93 of the Act, insofar as relevant, reads as under:*

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[2] Similar are the cases of *Rajvanti Devi Vrs. State of U.P., Writ Tax No.142 of 2026, decided on 29.01.2026* reported at *2026 SCC OnLine All 15633 : 2026 (107) GSTL 23 (All-Lucknow Bench); Samban Pharma Vrs. Deputy Commissioner, Writ Tax No.2256 of 2025, decided on 15.05.2025* reported at *2025 (99) GSTL 311 (All); Mudit Gupta Vrs. State of U.P., Writ Tax No.4277 of 2025, decided on 01.09.2025* reported at *2025 (102) GSTL 105 (All).*

'93. Special provisions regarding liability to pay tax, interest or penalty in certain cases:

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a person, liable to pay tax, interest or penalty under this Act, dies, then—

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his

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death but has remained unpaid or is determined after his death.'

7. *A perusal of the above provision would reveal that the same only deals with the liability to pay tax, interest or penalty in a case where the business is continued after the death, by the legal representative or where the business is discontinued, however, the provision does not deal with the fact as to whether the determination at all can take place against a deceased person and the said provision cannot and does not authorise the determination to be made against a dead person and recovery thereof from the legal representative.*

8. *Once the provision deals with the liability of a legal representative on account of death of the proprietor of the firm, it is sine qua non that the legal representative is issued a show cause notice and after seeking response from the legal representative, the determination should take place.*

9. *In view thereof, the determination made in the present case wherein the show cause notice was issued and the determination was made against the dead person without issuing notice to the legal representative, cannot be sustained."*

iii. *Anil Kumar Vrs. State of Punjab, CWP No.5041 of 2025 (O&M), decided on 21.02.2025* reported at *2025 (97) GSTL 185 (P&H)*:

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"The petitioner is aggrieved by the impugned show cause notice dated December 19, 2023 (Form GST DRC-01), issued under Section 73 of CGST Act, 2017, by respondent No.2, in relation to the financial year 2018-2019, for certain discrepancies were noticed in the return filed by late Anil Kumar, resulting in the imposition of a liability of Rs.9,32,513/-. And also assails the final order dated April 22, 2024 (Form GST DRC-07), passed by respondent No.3, under Section 73(9) of PGST Act, 2017, whereby Rs.9,59,678/- are sought to be recovered from M/s Gauri Shankar Trading Company on account of an excess claim of Input Tax Credit (ITC).

Learned counsel for the petitioner submits that ***late Anil Kumar happened to be the sole proprietor of M/s Gauri Shankar Trading Company****, who unfortunately passed away on May 10, 2020. Therefore, she submits that the impugned show cause notice (P-5), having been issued against the deceased person, and all consequential proceedings, are null and void. Not just that, she submits that upon the demise of Anil Kumar, an application for the cancellation of the GST registration was moved by his heirs on September 28, 2020. And, vide order dated April 15, 2021, the authorities cancelled the registration with effect from June 30, 2020. It is submitted that despite the authorities being aware of the cancellation of the GST registration, recovery proceedings were initiated against a dead person. However, she fairly submits that although recovery against the LRs of the deceased (Anil Kumar) under Section 93(1)(b) of PGST Act, 2017, can be caused, but the petitioner, in the present case, were*

completely deprived of their right to participate in the impugned proceedings and set out their defence. Even otherwise, it is urged that the impugned demand is time-barred in terms of Section 73(10) of the Act, as an order under Section 73(9) can only be passed within 3 years from the due date for furnishing the annual return for the relevant financial years, which in this case is December 31, 2020.

Notice of motion.

Served with an advance copy of the petition, Ms. Neha Sonawane, learned Deputy Advocate General, Punjab, is present in Court on behalf of the respondent(s). ***And, on instructions from Mr. Karanbir Singh Mansa, STO, she submits that in the given situation, the impugned show cause notice(s) and the consequential order dated April 22, 2024, being indefensible, it would be expedient if the matter is remitted to the competent authority to pass fresh orders in accordance with law.*** *Accordingly, she submits that the impugned show cause notice(s) and the consequential orders be deemed to have been withdrawn/re-called. That being so, learned counsel for the petitioner submits that let the petition be disposed of in terms of the statement made by learned Deputy Advocate General, Punjab.*

In the wake of the position sketched out above, as also the statements of learned counsel for the parties, the petition is accordingly disposed of. This Court is sanguine that the competent authority shall re-visit the matter in issue in the right earnest, and

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pass a comprehensive order assigning reasons in support thereof.

However, it is made clear that this order shall not constitute any expression of opinion on the merits of the case of either party, for, as indicated above, the competent authority shall examine the concerns/grievances of the petitioner, strictly in accordance with law"

iv. *Baratam Satish Vrs. Joint Commissioner of Central Tax, Writ Petition No.6029 of 2025, decided on 24.12.2025* reported at *2025 SCC OnLine AP 5209:*

> *"The petitioner is the son of Late B. Kameswara Rao, who was the registered person under the provisions of the Goods & Services Tax Act, 2017 [for short "the GST Act"]. He passed away on 21.12.2021. It is stated that the tax consultant was taking care of the affairs of B. Kameswara Rao, who had also expired on 04.03.2023. The petitioner further submits that the business of Late B. Kameswara Rao, under the name of M/s. Aravinda Enterprisers had been closed on 20.02.2023 and the same was also approved by the registering authority on 21.04.2023.*
>
> ***
>
> *5.* ***This provision [Section 93 of the GST Act] does not deal with the manner in which the assessment proceedings relating to a death person should be carried out. This provision only provides for the method of recovery of taxes and other dues payable***

by a death person. *Section 93(1)(A) of the GST Act provides for recovery of the taxes from the business of the death person if the same is being carried on by his legal representative or any other person. Section 93(1)(b) of the GST Act states that the dues of the death person can be recovered from the estate of the deceased if the business is discontinued. This provision essentially relates to recovery of tax and other amounts due against a death person. This provision does not deal with however assessment is to be carried out against a death person after he has passed away.*

6. *It is settled law that the assessments and other proceedings can only be initiated against the persons who are living and such proceedings against death person would not be valid.* ***However, the fact remains that, under Section 93 of the GST Act, the dues of the death person can be recovered either from the business he had set up or from his estate.*** *In such circumstances, in the absences of any provision, this Court would have to be hold that the only practicable way of settling the affairs of the death person would be to direct the assessment being carried out by involving either the representative or person carrying on the business of a death person or which such business is not being carried on, by involving the legal representative who be holding the estate of the deceased person.*

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> *7. In the said circumstances, since the petitioner is the legal representative of the deceased person, being his son, it would be appropriate to set aside the impugned order, dated 25.01.2024, with a direction to carry out a fresh assessment after involving the petitioner herein, by issuing a notice to the petitioner. Needless to say, any recovery that may be initiated, after an Order of assessment, shall be only against the estate of a deceased person and against the petitioner to the extent of the estate of his deceased father, which is available to the petitioner."*

7.9. There is no dispute that Manoranjan Mohapatra, proprietor of M/s. J.S. Enterprisers expired on 24.11.2022 and such fact was made known to the GST Organisation even prior to issue of Summary Show Cause Notice in Form GST DRC-01, dated 26.09.2025 and Demand-*cum*-Show Cause Notice dated 25.09.2025 (Annexure-1) and Order-in-Original dated 29.12.2025 (Annexure-2) was passed despite being conscious of the fact that such order is being made against a dead person. In view of provisions of Section 93 of the GST Act and bearing in mind the afore-noted decisions, the action of the Assistant Commissioner of GST and Central Excise, Cuttack-I Division, Cuttack cannot be defended and the notice and the order against a dead person cannot be sustained as they are rendered *non est* in the eye of law. The Show Cause Notice as well as the

Order-in-Original, being inexplicable, is liable to be set aside.

8. *Ergo*, since Order-in-Original (Annexure-2) has been passed in pursuance of the Show Cause Notice (Annexure-1) under Section 73 of the GST Act against a dead person without issuing notice to the legal representative(s), the same cannot be sustained and they are hereby quashed.

8.1. At paragraph 10 of the writ petition, it is asserted by the petitioner as follows:

> *"That as the legal heirs of late Manoranjan Mohapatra have decided to continue the proprietorship concern in the name of Jyotiranjan Mohapatra as a legal heir and accordingly Sri Jyotiranjan Mohapatra applied for amendment of non-core fields in registration particular in Form GST REG-14 which was approved on 20.06.2023."*

8.2. As it is admitted fact by the petitioner, one of the legal heirs/representatives, that he has been continuing with the business of the deceased proprietor, namely Manoranjan Mohapatra, by using same GSTIN, *i.e.*, 21AGEPM8738K1Z5, which was assigned to M/s. J.S. Enterprisers, in view of Section 93 of the GST Act, the GST Organisation has the remedy available to it by initiating appropriate proceeding against the petitioner-proprietor.

9. In the wake of the above, the Summary of Show Cause Notice in Form GST DRC-01, dated 26.09.2025 accompanied by Demand-*cum*-Show Cause Notice dated 25.09.2025 (Annexure-1) and the Order dated 29.12.2025 along with Order-in-Original dated 29.12.2025 (Annexure-2) raising a demand under Section 73 in terms of the Central Goods and Services Tax Act, 2017 and the Odisha Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017, pertaining to Financial Year 2021-22 (covering tax periods from 01.04.2021 to 31.03.2022) being quashed, the Assistant Commissioner, GST & Central Excise, Cuttack-I Division, Cuttack/Proper Officer, is at liberty to take appropriate proceeding by issue of notice to the petitioner representing the interest of other legal heirs/legal representatives of the deceased-Manoranjan Mohapatra and proceed in accordance with law.

9.1. It is clarified that the facts discussed herein above are referred to and relied on as were available on record for the purpose of adjudication of the issue raised in the writ petition. Such facts are not to be construed as expression of opinion of this Court touching the merit of the determination of liability of the "proprietor" of M/s. J.S. Enterprisers.

9.2. In the event the Proper Officer/Competent Authority issues notice for the purpose of adjudication of liability with respect to transactions of M/s. J.S. Enterprisers relating to Financial Year 2021-22, if so advised, it is open for the petitioner to take all such grounds and/or raise issues before the Adjudicating Authority, who shall be obligated to deal with all such aspects and pass appropriate reasoned order.

10. With the aforesaid observation, the writ petition is disposed of and pending Interlocutory Application(s), if any, shall be deemed to have been disposed of.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 22nd July, 2026//Aswini/Laxmikant

Ushaben Kalpeshbhai Patni (Legal Heir, Wife) v. State Tax Officer, Ghatak 5, Ahmedabad

Court	High Court of Gujarat at Ahmedabad
Bench	A.S. Supehia and Vaibhavi D. Nanavati, JJ.
Date	13.08.2026
Case no. / citation	2026:GUJHC:52029-DB; R/Special Civil Application No. 8255 of 2025

Holding in brief

Proprietor died on 03.05.2021 and the registration was cancelled; DRC-01A (14.06.2024), notice under Section 73 (02.07.2024) and order with DRC-07 (01.02.2025) were issued on the GST portal in his name. The widow, a housewife unconnected with the business, was unaware. Since the proceedings were initiated against a dead person, notices and order are quashed, with liberty to initiate proper proceedings against the petitioner for the outstanding demand.

Paragraphs highlighted

Paras 6 and 7

Status

Final judgment of a Division Bench (rule made absolute).

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 67.

NEUTRAL CITATION
2026:GUJHC:52029-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8255 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

==========

Approved for Reporting	Yes	No
	✔	

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USHABEN KALPESHBHAI PATNI LEGAL HEIR (WIFE) OF DECEASED KALPESHBHAI RAMUBHAI PATNI
Versus
STATE TAX OFFICER, GHATAK 5 (AHMEDABAD)

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Appearance:
KRUTARTH K DESAI(9662) for the Petitioner(s) No. 1
MR ABHAY Y DESAI(12861) for the Petitioner(s) No. 1
MS TANUSHREE SHRIMAL, AGP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 13/08/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Rule returnable forthwith. Ms.Tanushree Shrimal, learned Assistant Government Pleader waives service of notice of Rule for and on behalf of the respondent.

2. In the present writ petition, the petitioner has prayed for quashing and setting aside the notice dated 02.07.2024 issued to the petitioner, who is wife of the deceased-Shri Kalpeshbhai Ramubhai Patni (assessee).

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2026:GUJHC:52029-DB

BRIEF FACTS

3. Late Shri Kalpeshbhai Ramubhai Patni (husband of the petitioner) was engaged in the business of trading of various goods in the name and style of Shivam Trading Co.. Shri Kalpeshbhai Ramubhai Patni passed away on 03.05.2021 due to Covid-19 at the young age of 37 years. The registration of the proprietorship entity was cancelled by the authorities vide order dated 16.07.2021, assessing nill demands on failure to file the GST returns for a continuous period of six months.

3.1 It is the case of the petitioner, that the business of the deceased proprietor was not continued upon the death of the said proprietor, and she being a householder, was unable to locate the records of the business undertaken by the deceased husband. The respondent authority subsequent to the death of the proprietor and subsequent to the cancellation of registration, issued pre-show cause notice intimation under section 73(5) of the Gujarat Goods and Services Tax Act, 2017 (for short 'the GGST Act') dated 14.06.2024 in the name of the deceased proprietor in FORM DRC-01A, intimating proposed tax liability of Rs.28,49,906/- along with interest and penalty for the tax period Financial Year (for short 'F.Y.') 2020-21. Since the aforesaid intimation was issued only on the GSTN portal after the death of the taxpayer, the present petitioner (legal heir) was not aware of the same and was unable to respond to the said intimation.

3.2 The respondent authority thereafter issued the impugned notice under section 73(1) of the GGST Act along with FORM

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DRC-01 dated 02.07.2024 on the deceased taxpayer seeking to recover the tax liability of Rs.28,49,906/- along with interest and penalty for the tax period F.Y. 2020-21. The said notice was issued apparently merely on the differential tax liability on taxable outward supplies as per GSTR-01 and GSTR-3B without undertaking any further verification as regards the actual supplies made by the deceased taxpayer, as well as the availability of the input tax credit against the purported supplies. Since the aforesaid notice was issued on the GSTN portal after the death of the taxpayer, the present petitioner (legal heir) was not aware of the same and was unable to respond to the said notice.

3.3 The respondent authority thereafter passed the impugned order along with FORM DRC-07 dated 01.02.2025 against the deceased taxpayer, confirming the demands proposed in the show cause notice in the absence of any reply filed by the deceased taxpayer. Subsequent to the issuance of the impugned order, the petitioner received a call from the consultant handling and filing of the GST returns for the business of the deceased taxpayer that the impugned notice and the order had been issued on the GSTN portal.

4. Learned advocate, Mr.Abhay Y. Desai appearing for the petitioner has submitted that the impugned notices as well as the subsequent orders are required to be quashed and set aside as the same were issued against the dead person. It is submitted that the petitioner was a house wife and was not related to the business activities of the proprietorship, which was being run by her late husband and hence, was not aware

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of the proceedings which culminated into the impugned demand orders. In support of his submissions, he has placed reliance on the judgment dated 28.07.2026 passed in Special Civil Application No.10294 of 2026.

5. Learned AGP, Ms.Tanushree Shrimal appearing for the respondent while opposing the present writ petition, has submitted that the respondent authority has issued 3 notices; on 19.10.2024, 08.11.2024 and 11.12.2024 asking the deceased assessee to submit his reply however, no reply has been given by the late husband of the petitioner. It is submitted that through the notice dated 11.12.2024, the deceased assessee was asked to remain present at 2:13 hours for physical hearing and since no one appeared, the impugned order was passed. She has also submitted that on the principle place of business, the notices were also affixed and it is urged that the impugned orders may not be quashed and aside.

6. It is not in dispute that the petitioner is a house wife of the deceased assessee – Shri Kalpeshbhai Ramubhai Patni, who passed away during Covid Pandemic on 03.05.2021. The petitioner was not remotely connected to the proprietorship and ultimately, the registration was cancelled on 16.07.2021 of the proprietorship. After the period of almost 3 years, on 14.06.2024, the respondent authority issued the pre-show cause notice intimation to the deceased assessee under the provisions of Section 73(5) of the GGST Act intimating about the proposed tax liability of Rs.28,49,906/-. Thereafter, the proceedings further continued and the notices were issued and affixed at the factory premises of the deceased assessee.

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Since no one appeared, the respondent authority passed the impugned order dated 01.02.2025 confirming the demands, proposed in the show cause notices. It is true that the respondent authority was not aware about the death of the husband of the petitioner, who was connected with the business activities of the proprietorship. However, the petitioner, being a housewife, was not even remotely connected with the business and was unaware of the niceties of the GSTN portal.

7. Thus, in wake of the aforesaid facts, since the proceedings are initiated against the dead person, we quash and set aside the show cause notices as well as the impugned orders passed thereafter with a clarification that it will be open for the respondent to initiate proper proceedings in accordance with law against the petitioner for the outstanding demand. The present petition stands ***allowed.*** Rule is made absolute. No order as to costs.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

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Gita Rani Pan v. Union of India & Ors.

Court	High Court at Calcutta
Bench	Smita Das De, J.
Date	27.08.2026
Case no. / citation	WPA 10402 of 2025

Holding in brief

Show cause notice of 08.03.2022 (Section 74) and Order-in-Original of 21.01.2025 were issued in the name of the dead proprietor (died 20.05.2021). Notice in the name of a dead person is a nullity; Section 93(1)(b) requires a show cause notice to the legal representative, and determination of tax cannot take place against a dead person. Notice, order and recovery notice quashed; fresh notice to the legal heirs within three weeks; limitation excluded; recovery limited to the estate. Section 93 is a charging provision and the machinery is in Sections 73 and 74.

Paragraphs highlighted

Paras 19 to 23, 24 (direction), 26, 28 and 29 (reasoning)

Status

Final disposal of the writ petition without going into merits. Note: para 29 attributes to Shabina Abraham (Supreme Court) para 27 the words 'Section 93 provision does not provide machinery to assess dead person'. Those words do not appear in the Supreme Court judgment, which concerns the Central Excise Act; that sentence is not highlighted.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 73.

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27.08.2026
Court No. 10
AGM/SM

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 10402 of 2025

Gita Rani Pan
-versus
The Union of India & Ors.

Mr. Himangshu Kumar Roy.
Mr. Subhasis Podder.
Mr. Sushant Bagaria.
Ms. Shiwani Shaw.
Ms. Sayantika Dutta.
Mr. Animitra Roy.
...For the Petitioner.

Mr. Uday Sankar Bhattacharya.
Mr. Tapan Bhanja.
... For the CGST Authority.

Mr. Kushi Prasun Chatterjee.
... For the Union of India.

Mr. Vipul Kundolia. Sr. Adv.
Ms. Ekta Sinha.
Mr. Anindya Kanan.
Mr. Dhirodatto Chaudhuri.
Ms. Anukriti Agarwal.
... For the CGST Authority.

1. The petitioner in the instant case, challenges inter alia, the legality, validity, propriety and sustainability of the Order in Original dated 21.01.2025 passed under Section 74 of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as the CGST Act, 2017) whereby the demand of Rs. 38,44,674/- along with the applicable interest and penalty has been raised for the tax

period from July 2017 to September 2021 pertaining to the Financial Years 2017-18 to 2020-2021.

2. The Learned Counsel appearing for the petitioners submit that a Show Cause Notice has been issued under Section 74 of the CGST Act dated 08.03.2022 in the name of a deceased person, namely, Late Haradhan Pan, who expired on 20.05.2021.

3. It is further submitted that after the death of the deceased assessee, his wife, the petitioner herein, made an application for registration in respect of the same trade on the basis of her own PAN, on 18.06.2021 declaring the date of commencement of business with effect from 21.05.2021 and accordingly the department issued a fresh registration number.

4. Subsequently, an application for cancellation of the registration in the name of the deceased proprietor was also made on 10.05.2022 which stood cancelled with effect from 10.05.2022.

5. Despite such application for cancellation filed before the department, the GST authorities issued a Show Cause Notice in the name of a dead person. After receipt of the said Show Cause Notice, the petitioner responded by filing a reply on two occasions, namely on 22.04.2024 and 06.08.2024. Upon such consideration of the replies the Order in Original was accordingly passed on 21.01.2025.

6. It is further submitted that the orders passed by the GST Authorities is void ab initio since the same has been passed against a dead person.

7. In this context the Learned Counsel for the petitioners relies upon the following judgments;

i. Arvind Treaders –versus- State of Uttar Pradeh & Another reported in 2025 (4) TMI 1380.

ii. T. Nigil –versus- The Commissioner of GST & Central Excise (Appeals), The Commissioner of GST & Central Excise Madurai, The Additional/Joint Commissioner of GST & Central Excise Tirunelveri, The Superintendent of GST & Central Excise Nagarcoil reported in 2024 (9) TMI 1685.

iii. Kakali Saha, Legal Heir of the predeceased Ashok Saha –Vs. State of West Bengal & Ors in WPA 5510 of 2023.

iv. Gurnam Singh (Dead) Trhough Legal Representatives & Ors. –Vs- Gurbachan Kaur (Dead) by Legal Representatives reported in (2017) 12 Supreme Court Cases 414.

8. The petitioner further places reliance upon Section 2(84) of the CGST Act to demonstrate that the definition of a 'person' does not include a dead person.

9. It is further submitted that determination of tax can be made only under Sections 73 of 74 of the CGST Act and such determination must be against a living person or his legal representative and not against a dead person.

10. The Learned Counsel appearing on behalf of the petitioner places reliance upon several judgments to

demonstrate that issuance of a Show Cause Notice in the name of a dead person is a nullity, non-est and void ab initio in the eye of law. Unlike other statute such as the Income Tax Act, 1961, which contains a specific machinery provision under Section 159 for assessment in case of death, the GST Act does not contain any machinery provision to determine the tax liability of a deceased person in the name of the deceased. In this context, reliance is placed upon the judgment of the Supreme Court in the case of **Sabina Abraham Vs. Collector of Central Excise and Customs,** reported in **(2015) 61 Taxmann.com 95 (Supreme Court) .... 2015 (10) SCC 770**, particularly paragraphs 17, 18, 27 and 28 thereof, to contend that any action or proceeding initiated by the department in the name of a dead person is void ab initio.

11. The Learned Counsel appearing for the CGST Authorities vehemently opposes the submissions made by the petitioner. It is submitted that the petitioner did not intimate within time regarding the death of the proprietor. Therefore, the allegation regarding the issuance of notice in the name of a dead person is not acceptable.

12. It is further submitted that section 93(1) Clause (b) of the CGST Act contemplates payment of tax, interest and penalty in cases where the tax has been determined before the death of the assessee but remained unpaid or is determined after the death. Even if the tax, interest, penalty have not been determined during the lifetime of

the assessee, the same can be determined after his death against his legal heirs. Since in the instant case, the tax was not determined prior to death, the department contends that the question of making payment does not stand obliterated.

13. The Learned Counsel draws the attention of this Court to Rules 19 and 20 of the GST Rules, 2017 to contend that the petitioner made an application for cancellation beyond the statutory period prescribed therein. The application for cancellation of registration with effect from 10.05.2022 was made at a very belated stage. Such belated application cannot be accepted to efface the allegations of issuing a notice in the name of a dead person.

14. The Learned Counsel places reliance upon a judgment of a Hon'ble Madras High Court in the case of **V. Damayanti –vs- The Superintendent of GST and Central Excise, Kariapatti Range, III Floor, Division Office Buildings, Bibikulam, Madurai 625002** reported in **W.P. (MD) No. 10000 of 2026 and W.M.P. (MD) Nos. 7859 and 7860 of 2026**and places reliance upon paragraphs 4.6 thereof which is reproduced herein below :

> *"4.6. In this context, Section 93 of the CGST Act expressly creates a statutory liability upon the legal heirs. In cases where the business is continued, the legal heir becomes liable to discharge the tax, interest and penalty due from the deceased. Even in cases where the business is discontinued, the statute authorities recovery from the legal heir to the extent that the estate inherited by him is capable of meeting the*

liability. Significantly, Section 93 expressly contemplates a situation where the tax, interest or penalty is determined after the death of the taxable person."

15. The Learned Counsel also places reliance upon Section 29(3) of the CGST Act which is reproduced below:

" (3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation."

16. The Learned Counsel for the CGST authorities also places reliance upon Section 93(1)(b) of the CGST Act which is reproduced herein below

" (b). if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act."

17. It is further submitted that the Order in Original is sustainable in law since the application for cancellation of registration has been filed beyond the prescribed period mentioned in the statute.

18. Having heard the parties at length and upon perusal of the materials on record, this Court has taken into consideration all the relevant documents, along with the judgment cited at the bar for adjudication of the issues involved herein.

19. It is a well settled proposition of law that issuance of a notice in the name of a dead person is a nullity, non-est and void ab initio in the eye of law.

20. The moot question for determination in the present case is whether the Show Cause Notice issued and the consequential determination against a dead person, without notice to the legal representative, is sustainable in the eye of law or not.

21. It clearly envisages from the plain reading of the Section 93(1)(b) of the CGST Act that the liability of a legal representative on account of death of the proprietor, it is a condition precedent that the Show Cause Notice must be issued to the legal representative, after seeking his response, to determine tax. Determination of taxes cannot take place against a dead person. This proposition has been categorically observed in the case of Arvind Traders Vs. State of Uttar Pradesh and Anr. (supra), wherein in paragraph Nos. 7, 8 and 9 it has been held that a "Show Cause Notice cannot be issued in the name of a dead person for determination of the liability of the deceased without giving an opportunity to the legal representative."

22. In view of the judgments relied upon by the respective parties, this Court is of the view that the determination of the taxes in the name of a non-existing entity or person is not legally permissible and stands vitiated.

23. In view of the above, the Show Cause Notice dated 08.03.2022 for the tax period from July 2017 to September 2021, the Order in Original dated 21.01.2025 and the recovery notice dated 08.06.2024 are hereby quashed and set aside.

24. The respondent No. 1 is directed to issue a fresh Show Cause Notice in the name of the legal heirs of the deceased person as disclosed in paragraph 2(a) of the Supplementary Affidavit which is reproduced below:-

> *2. a) That Haradhan Pan died on 20.05.2021, your petitioner is the wife of said Late Haradhan Pan and there are two other legal heir, son namely Mr. Barun Pan (address is 25/14/1, L. Road, P.O. Netajigarh, Thana Liluah, Howrah, West Bengal, India 711108), married daughter Smt. Kakoli Manna(Pan) [address is 7 Nilgange Road, Belgharia, P.O. Belgharia, Thana Belgharia, North 24 Parganas, West Bengal-700056].*

25. The Show Cause Notice shall be issued within a period of three weeks from the date of receipt of the copy of this order. Upon receipt of the show cause notice, the legal heirs of the deceased assessee shall file their respective/comprehensive replies within three weeks from the date of receipt of the show cause notice. Thereafter, the respondent No.1 shall issue a notice of hearing to the legal heirs of the deceased assessee informing thereby, the date time and venue of the hearing.

26. The respondent No. 1 shall consider the replies thereto, after affording an opportunity of personal hearing to all the legal representative to make appropriate submissions and to produce relevant documents, to the

extent to which the estate of the deceased is capable of meeting the charge of tax, interest and penalty due from the deceased person, as contemplated under Section 93(1)(b) of the CGST Act, 2017.

27. It is made clear that the petitioner shall not seek unnecessary adjournments and the respondent No. 1 shall consider the reply and pass a reasoned and speaking order in accordance with law after affording an opportunity of personal hearing without being influenced by any observations made in this order.

28. The entire exercise of adjudication shall be completed peremptorily within a period of six weeks from the date of receipt of the reply filed by the petitioner. The computation of the limitation shall be excluded at the time of hearing.

29. This Court further observes that Learned Departmental Counsel confuses between charging provision and machinery provision. Section 93(1) is a charging provision which says legal heirs is liable to pay tax due from deceased, to extent estate capable. But how that liability to be determined being machinery not provided in Section 93. The machinery remains Section 73, 74, which requires issuance of show cause notice to person liable. Therefore, correct machinery is to issue Show Cause Notice to legal heirs, in his own name describing him as legal heirs of deceased and to determine the liability. Department cannot issue Show Cause Notice

to deceased and then direct the legal heirs to give a reply to same. The Hon'ble Apex Court has already observed in the case of **Shabina Abraham (supra)** in paragraph 27 that "Section 93 provision does not provide machinery to assess dead person. Department must issue notice to legal representative."

30. With the above observations and directions the writ petition stands disposed of without going into the merits of the case.

31. Since affidavits have not been called for, the allegations made in the instant writ petition are deemed to have been denied and not admitted.

32. Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Smita Das De, J.)

Jaiwanti (W/o Late Ankit Dabas) v. Union of India & Ors.

Court	High Court of Delhi
Bench	Anil Kshetarpal and Vimal Kumar Yadav, JJ.
Date	25.09.2026
Case no. / citation	W.P.(C) 7254/2025

Holding in brief

Notice of 31.07.2024 (DGGI) proposed penalty under Section 122(3)(a) on the widow as legal representative for acts of her husband, who had died on 06.05.2021. Section 93 permits determination of tax, interest or penalty after death, and does not require notice in the lifetime; the notice was not without jurisdiction merely because issued after death. Shabina Abraham does not establish that fiscal proceedings invariably abate. Section 93(1)(b) upheld against the Article 14 challenge. Conditions of clause (b), service and merits left to the statutory appeal (liberty to appeal within four weeks), and a direction to account for Rs. 15,40,000 retained.

Paragraphs highlighted

Paras 2, 3, 22, 23, 25, 27, 28, 31 and 43

Status

Final judgment of a Division Bench on the construction and validity of Section 93; merits left open. Later history not checked.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 84.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 10.09.2026***
Judgment pronounced on: 25.09.2026
Judgment uploaded on: 25.09.2026

CNR No. DLHC010336622025

\+ W.P.(C) 7254/2025 and CM APPL. 32667/2025

JAIWANTI .....Petitioner

Through: Mr. Bharat Bhushan, Ms. Nidhi Gupta and Mr. Anuay Mishra, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Raj Kumar Yadav & Ms, Preeti Gothwal, Advs. for R-1/UOI.
Ms. Monica Benjamin, SSC with Ms. Laiba Arif and Ms. Prerika Narang, Advs. for R-2 and R-4.
Ms. Vaishali Gupta, Panel Counsel (Civil) GNCTD with Ms. Rashi Aggarwal, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

J U D G M E N T

ANIL KSHETARPAL, J.:

1. More than three years after the Petitioner's husband died, the Department issued a Show Cause Notice[1] to the Petitioner proposing penalties for acts allegedly committed by him during his lifetime. Through the present Writ Petition, the Petitioner challenges that

[1] For short, the 'Notice' or 'SCN'

Notice and the Order-in-Original passed pursuant to it, insofar as they proceed against her.

2. Section 93 of the Central Goods and Services Tax Act, 2017[2] provides for tax, interest or penalty being "determined after his death". The question is whether those words permit proceedings to be commenced after death, or only the completion of proceedings already commenced during the deceased's lifetime.

3. For the reasons that follow, this Court holds that Section 93 does permit proceedings to be commenced after death, provided the conditions prescribed by the provision are satisfied. Whether those conditions were satisfied when the Department proceeded against the Petitioner is a separate matter and does not depend on the existence of the statutory power under Section 93 of the Act.

4. The Petitioner also challenges the constitutional validity of Section 93(1)(b) of the CGST Act, which exposed the Petitioner to such proceedings and seeks release of ₹15,40,000/- retained by the Department. These issues fall for separate consideration.

FACTUAL MATRIX

5. The proceedings arise from an investigation conducted by the Directorate General of GST Intelligence ('DGGI') concerning alleged fraudulent availment and passing on of Input Tax Credit and refund of Integrated Goods and Services Tax on the strength of invoices without corresponding supply of goods.

[2] For short, the 'CGST Act'

6. The Show Cause Notice attributes a role to the Petitioner's husband, late Sh. Ankit Dabas in relation to, *inter alia*, three entities, M/s P.C. International, M/s Satguru Corporation and M/s B.K. Enterprises. The present Writ petition is confined to the penalty proposed in respect of his alleged acts and the liability sought to be enforced against the Petitioner as his legal representative.

7. On 23.07.2020, the residential premises of late Sh. Ankit Dabas at Dwarka, New Delhi were searched. Cash amounting to ₹15,40,000/- was found during the search. The SCN records that the amount was voluntarily submitted by the husband of the Petitioner with the Department till completion of the investigation, as security against any tax liability which might arise or for any other purpose permitted by law. It further records that the amount was thereafter kept in a fixed deposit with the State Bank of India, R.K. Puram Branch, New Delhi. The Petitioner disputes the legality of the taking and continued retention of the said amount.

8. Sh. Ankit Dabas died on 06.05.2021. During the investigation, the Department was informed of his death through a letter dated 05.10.2021 from his cousin, Sh. Sachin Dabas, along with a copy of the death certificate. The communication also requested that any inquiry relating to late Sh. Ankit Dabas be forwarded to the Petitioner at her address in Sector-106, Gurugram, Haryana.

9. On 31.07.2024, the SCN was issued to several noticees, including the Petitioner. Insofar as the Petitioner is concerned, it proposed separate penalties under Section 122(3)(a) of the CGST Act

and the corresponding provisions referred to therein, by invoking Section 93 against her as the legal representative of her late husband. The Notice stated that the proposed penalty was in respect of the "acts and deeds of Late Sh. Ankit Dabas". It also proposed appropriation of ₹15,40,000/- towards the proposed liability.

10. The Order-in-Original dated 01.02.2025[3] records that the adjudication arose from the aforesaid SCN as well as a corrigendum dated 16.12.2024 issued by the Additional Director, DGGI Headquarters. The corrigendum has not been placed on record before this Court.

11. The Petitioner did not participate in the adjudication proceedings. She maintains that she did not receive the Notice and consequently filed no reply. The Respondents dispute this assertion and rely upon the modes of service stated to have been adopted under Section 169 of the CGST Act. The Adjudicating Authority proceeded *ex parte* against those noticees who had not responded.

12. In the operative portion of the Impugned Order, clause AD imposes a penalty of ₹1,50,000/- upon the Petitioner. The immediately succeeding clause AE, however, contains a statement that no penalty is being imposed upon the Petitioner and also contains inconsistent language concerning appropriation of ₹15,40,000/-.

SUBMISSIONS ADVANCED ON BEHALF OF THE PARTIES

13. Learned counsel representing the Petitioner submits that the

[3] For short, the 'Impugned Order', or 'OIO'

expression "is determined after his death" occurring in Section 93(1) of the CGST Act permits only completion of proceedings which had already commenced during the lifetime of the deceased. According to him, fresh proceedings proposing a penalty for the alleged acts of late Sh. Ankit Dabas could not have been initiated against the Petitioner more than three years after his death.

14. It is further submitted that liability for aiding or abetting under Section 122(3)(a) is founded upon the personal conduct of the alleged wrongdoer. The Petitioner also relies upon Section 126(3) and contends that a legal representative cannot meaningfully answer allegations concerning matters within the personal knowledge of a person who is no longer alive. On this foundation, Section 93(1)(b) of the Act, insofar as it permits determination of a penalty after death, is also assailed as arbitrary and violative of Article 14 of the Constitution. The Petitioner additionally disputes service of the Notice and the continued retention of ₹15,40,000/- by the Department.

15. *Per contra*, Ms. Monica Benjamin, learned Senior Standing Counsel representing the Respondents, submits that Section 93 expressly contemplates determination of tax, interest or penalty after death and contains no requirement that adjudicatory proceedings must have commenced during the lifetime of the deceased. It is emphasised that the investigation had commenced during the lifetime of late Sh. Ankit Dabas and his statement had also been recorded.

16. The Respondents further contend that the penalty contemplated under Section 122 of the CGST Act is a civil liability and that

principles governing abatement of criminal proceedings are inapplicable. They dispute the plea of non-service and maintain that the SCN was served through the modes contemplated by Section 169 of the Act. An objection is also raised to the entertainment of the present Writ Petition in view of the statutory remedy of Appeal under Section 107. The Respondents also contend that the Petitioner has only approached this Court as the ordinary period of three months prescribed for filing such Appeal had already expired.

ANALYSIS AND FINDINGS

17. The objection regarding availability of an alternative statutory remedy requires a distinction to be drawn between the questions raised in the present Writ Petition. The construction of Section 93, including whether proceedings may be commenced after the death of the person whose alleged conduct gives rise to the proposed liability, is a question of law. The challenge to the constitutional validity of Section 93(1)(b) also requires consideration by this Court. In ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority***[4], the Supreme Court distinguished the maintainability of a Writ Petition from the discretion to entertain it and recognised that a pure question of law may be examined notwithstanding the availability of an alternative remedy. This Court, therefore, proceeds to examine these questions.

18. The same consideration does not require this Court to undertake an appellate examination of the Impugned Order in all respects.

[4] Civil Appeal No.5393/2010, decided on 01.02.2023

Whether the SCN was duly served, whether the material on record establishes the alleged contravention, whether the requirements of Section 93(1)(b) are satisfied on the facts, the computation of the penalty and the effect of the operative clauses of the OIO concern the individual adjudication. These are matters which can appropriately be examined in the statutory Appeal. The exercise of jurisdiction under Article 226 ought not to substitute the appellate mechanism for determination of such issues.

19. There is one further aspect concerning the availability of that remedy. The Impugned Order is dated 01.02.2025, whereas the present Writ Petition was instituted on 23.05.2025. Section 107(1) of the Act prescribes a period of three months from "communication of the decision or order" for filing an Appeal, and sub-section (4) permits the Appellate Authority, upon sufficient cause being shown, to allow it to be presented within a further period of one month. Even if, for the limited purpose of examining the chronology, the date of the Impugned Order itself is taken as the date of its communication, the present Writ Petition was instituted before expiry of that further period. The Petitioner has thereafter been prosecuting her challenge before this Court. Having regard to these circumstances, after deciding the questions of law noticed above, the Petitioner shall be relegated to the Statutory remedy of Appeal under Section 107 of the Act in respect of the remaining objections to the Order-In-Original. The Petitioner can appropriately seek condonation of delay, if any remains, after excluding the period spent in prosecuting this Writ Petition and the period of four weeks given for filing the Appeal.

20. Section 93(1) of the CGST Act, insofar as relevant, reads as follows:

> ***"93. Special provisions regarding liability to pay tax, interest or penalty in certain cases.***—*(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016),* ***where a person, liable to pay tax, interest or penalty under this Act, dies****, then—*
>
> > *(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and*
> >
> > *(b)* ***if the business carried on by the person is discontinued,*** *whether before or after his death, his legal representative shall be* ***liable to pay, out of the estate of the deceased****, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,*
>
> *whether such tax, interest or penalty has been determined before his death but has remained unpaid* ***or is determined after his death."***
>
> **(Emphasis supplied)**

21. Three features of the provision are significant. First, Section 93 includes a penalty. Secondly, it contemplates a liability which is determined after the death of the person concerned. Thirdly, the nature and extent of representative liability depend upon whether clause (a) or clause (b) is attracted. Under clause (b), payment is confined to the estate of the deceased and only to the extent that the estate is capable of meeting the charge.

22. The construction urged by the Petitioner, in essence, would require the words "is determined after his death" to be read as meaning "is determined after his death in proceedings already commenced during his lifetime". The provision contains no such

qualification. Its concluding words distinguish a liability determined before death but remaining unpaid from one determined thereafter. They do not make a Notice during the deceased's lifetime a condition precedent to the latter determination.

23. The opening words "where a person, liable to pay tax, interest or penalty under this Act, dies" do not lead to a different conclusion. Those words cannot be confined to a liability already quantified before death, for the provision itself contemplates the tax, interest or penalty being determined thereafter. The underlying liability must, of course, arise from conduct attributable to the deceased under the substantive provisions of the Act. Section 93 enables that liability to be determined and, where its conditions are satisfied, enforced through the legal representative in the manner prescribed therein.

24. The fact that investigation had commenced and the statement of late Sh. Ankit Dabas had been recorded during his lifetime does not constitute the source of this power. Investigation and adjudication are distinct stages. It is unnecessary to treat the investigation itself as commencement of penalty proceedings in order to sustain a post-death determination. The authority to make a determination after death must be found in the statute itself and, in the present case, follows from Section 93. The material collected during the lifetime of the deceased may nevertheless form part of the evidentiary record in the adjudication.

25. Section 93 must at the same time be kept distinct from Section 122(3)(a) of the Act. Section 122(3)(a) applies to a person who aids or

abets any of the offences specified in clauses (i) to (xxi) of Section 122(1) and provides for a penalty which may extend to ₹25,000/-. Whether late Sh. Ankit Dabas committed the alleged acts is one question. Whether the pecuniary consequence of any such proved contravention can thereafter be enforced through Section 93 is another. Section 93 of the Act is not an independent penal provision against the legal representative.

26. Those conditions remain integral to representative liability. Clause (a) concerns a business continued after death, whereas clause (b) concerns a business which stands discontinued. In the latter situation, liability is expressly confined to the estate of the deceased and to the extent that the estate is capable of meeting the charge. Whether the requirements of clause (b) are established on the facts of the present case is distinct from the question whether proceedings may at all be commenced after death. As noticed above, the former is a matter which may appropriately be examined in the statutory Appeal.

27. In ***Shabina Abraham v. Collector of Central Excise and Customs***[5], the Supreme Court found no machinery in the applicable Excise legislation for assessment against the legal representatives of a deceased individual. A provision for recovery of sums already payable could not supply that omission. The decision requires statutory authority for determination against an estate, and it does not establish that fiscal proceedings invariably abate upon death.

28. Here, Section 93 itself provides for determination after death

[5] (2015) 10 SCC 770

and identifies the representative and the permissible source of payment. It operates alongside the Act's adjudicatory provisions. Section 122 supplies the substantive penalty, Section 126 requires a hearing and disciplines its imposition. Explanation 1(ii) to Section 74 recognises connected proceedings against persons liable to penalty under Section 122. These provisions operate within their respective fields. The power to determine liability after death follows from Section 93 read with that scheme, rather than from a rule or a recovery provision alone.

29. The Petitioner also relies upon ***Commissioner of Income Tax v. Late Dr. K.C.G. Verghese***[6]. There, penalty proceedings under the Income Tax Act were initiated after the death of the assessee, and the Madras High Court upheld deletion of the penalty. The Court observed, *inter alia*, that no penalty proceedings had been initiated against the assessee during his lifetime and that the assessment had not been made in the hands of the legal representatives. Significantly, Section 159(2)(b) expressly permits 'any proceeding which could have been taken against the deceased if he had survived' to be taken against the legal representative. Despite that language, the Court concluded that the penalty proceedings could not be sustained. The decision undoubtedly supports the Petitioner's submission that the death of the alleged wrongdoer may have consequences for subsequent penalty proceedings.

30. The proposition cannot, however, be treated as a rule operating independently of the statutory scheme. The Allahabad High Court in

Kalawati Devi v. Income Tax Officer[7] took a different view while construing the same statutory provision of the Income Tax Act. There, the legal representative contended that she could not reasonably explain the inaccurate particulars furnished by the deceased, since the relevant facts were within his personal knowledge. The Court nevertheless held that penalty proceedings for a default committed by the deceased could be commenced or continued against the legal representatives. The Court relied upon the express legislative extension of liability to sums which the deceased would have been liable to pay had he survived.

31. This Court does not read ***Dr. Verghese*** *(supra)* as laying down a rule applicable irrespective of the statutory scheme. Section 93 of the CGST Act itself answers the question. By contemplating a penalty being "determined after his death", the provision permits liability attributable to the deceased's conduct to be adjudicated through his legal representative, subject to the conditions prescribed therein. A Show Cause Notice issued during the lifetime of the person concerned would neither establish the alleged contravention nor determine the penalty. The alleged contravention would still have to be established in adjudication. The CGST Act does not make issuance of such a notice during lifetime a condition precedent to a determination after death. This conclusion follows from the language of the provision and scheme of the CGST Act itself, without recourse to the deeming provisions contained in the Income Tax Act.

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[6] (2019) 416 ITR 155 (Mad).
[7] (1981) 21 CTR (All) 62

32. The decision of this Court in ***Lal Chand Verma v. Union of India***, W.P.(C) 8184/2023, decided on 08.01.2025, as relied upon by the Petitioner, arose in a different factual setting. The notice was issued in the deceased assessee's name despite intimation of his death, and this Court specifically noted that no notice under Section 159(2)(b) had been issued to the legal heir. Its observations must be read in that setting. Here, the SCN identifies the Petitioner and invokes Section 93 in her representative capacity. Whether the Notice was validly served is, as already noticed, a separate question.

33. The constitutional challenge requires consideration on this construction. Section 93(1)(b) must therefore be examined on the grounds of discrimination and denial of a meaningful defence as advanced by the Petitioner.

34. The provision preserves liabilities attributable to the deceased's lifetime conduct for lawful determination and satisfaction from his estate. Death creates the need for someone to represent that estate. The resulting distinction bears a direct relation to the statutory purpose. Section 93 does not deem the representative to have committed the alleged wrong, and clause (b) confines payment to the estate's capacity to meet the charge. The underlying contravention and the conditions of representative liability must still be established by the Adjudicating Authority.

35. The loss of the person possessing first-hand knowledge may seriously affect the explanation available to the representative and the weight that can fairly be attached to the evidence. Section 126(3) of

the CGST Act in fact requires an effective opportunity of hearing. The representative must receive the relied-upon material and be permitted to contest the alleged contravention, the statutory basis and the proposed amount. Inability to give a personal account of the deceased's affairs cannot be treated as an admission. The statute also preserves an Appeal against an adverse determination.

36. These safeguards answer the contention that Section 93 confers unguided power or necessarily denies a defence. A particular adjudication may fail for want of evidence or a fair opportunity. That does not establish that every determination after death must be unfair. The presumption of constitutionality and the latitude recognised for economic legislation in ***R.K. Garg v. Union of India***[8], do not exclude scrutiny under Article 14. Here, the statutory purpose, representative procedure and limitation to estate assets provide a rational basis for the provision.

37. The Petitioner's reliance upon ***Shree Meenakshi Mills Ltd. v. A.V. Visvanatha Sastri***[9], does not alter this conclusion. That decision concerned materially different procedures applied to comparable classes of tax evaders. Section 93(1)(b) does not withdraw ordinary adjudicatory safeguards from a selected class. It provides for representation after death while limiting the source of payment. On the grounds urged, the provision is neither discriminatory nor manifestly arbitrary. The constitutional challenge is accordingly rejected.

38. The conclusions reached above answer the questions

[8] (1981) 4 SCC 675

concerning the scope and constitutional validity of Section 93. Insofar as the merits of the Impugned Order are concerned, there is a fundamental uncertainty in the operative portion of the Impugned Order. Clauses AD and AE therein read as under:

> *"AD. I impose Penalty of Rs. 1,50,000/- on Mrs. Jaiwanti Dabas, w/o Late Sh. Ankit Dabas, for each instance of contravention of CGST Act, IGST Act & respective State GST Acts and rules thereof in respect of M/s P C International, M/s Satguru Corporation and M/s B.K Enterprises under provisions of Section 122 (3)(a) of the CGST Act, 2017 and corresponding provisions of respective State GST Acts, 2017 read with Section 20 of the IGST Act, 2017, for his acts and deeds detailed supra.*
>
> *AE. I refrain from imposing any penalty upon Mrs. Jaiwanti Dabas, w/o Late Sh. Ankit Dabas. I order appropriation of Cash amount of Rs 15.40 Lakhs voluntarily submitted by Late Sh. Ankit Dabas with the department, should not be appropriated against the aforesaid liability."*

39. The apparent inconsistency between clauses AD and AE of the Impugned Order was not addressed by either side during the course of hearing. It would not be appropriate to make an issue which was not argued before this Court an independent ground for interfering with the Impugned Order. The questions based on facts and those touching upon the merits of the Impugned Order-In-Original ('OIO') can appropriately be examined by the Appellate Authority.

40. The claim concerning ₹15,40,000/- requires separate consideration. The Department describes the amount as voluntarily submitted pending investigation and records its placement in a fixed deposit. The Petitioner disputes that description. The Department must establish a subsisting lawful basis for the continued retention and account for the money and its earnings.

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[9] AIR 1955 SC 13

41. In ***K.M. Food Infrastructure Pvt. Ltd. v. Director General, DGGI Headquarters,*** W.P.(C) 328/2024 and W.P.(C) 363/2024, decided on 13.02.2024, this Court directed return of cash with the interest earned on fixed deposits after finding no lawful justification for its taking and retention. The factual position here differs because voluntariness is disputed. Even on the Department's account, however, a deposit pending investigation does not establish a right to indefinite retention.

42. In view of the aforesaid, rather than adjudicating the disputed factual questions concerning the taking of the money or construing clauses AD and AE in these proceedings, the appropriate course is to require the Respondents to furnish a complete account of the amount and disclose the subsisting legal authority relied upon for retaining or appropriating any part thereof. The Petitioner's claim may thereafter be considered by the competent authority by a reasoned decision, subject to the directions issued hereafter. This exercise shall not amount to rectification, review or modification of the OIO, the effect of which remains open for consideration in the statutory Appeal.

CONCLUSION AND DIRECTIONS

43. For these reasons, the contention that the Show Cause Notice dated 31.07.2024 is without jurisdiction solely because it was issued after death is rejected. The challenge to Section 93(1)(b) on the constitutional grounds urged is also rejected. These conclusions do not establish that the conditions of clause (b) are satisfied, that abetment stands proved, or that the Notice is otherwise sustainable. The lapse of

three years after death does not create a bar under Section 93, but this judgment confers no exemption from any applicable limitation requirements.

44. No finding is returned on the merits of the Petitioner's remaining objections thereto, including the service of the Notice, proof of the alleged contravention, satisfaction of the conditions prescribed by Section 93(1)(b), computation of the penalty, or the meaning and effect of clauses AD and AE of the Impugned Order. All such contentions of the parties are left open for consideration in Appeal.

45. The Petitioner is granted liberty to institute an Appeal under Section 107 of the CGST Act against the Impugned Order within a period of four weeks from today. If such Appeal is instituted within the aforesaid period, it shall be entertained and decided on merits and shall not be rejected on the ground of limitation.

46. The Appellate Authority shall examine the issues left open independently and in accordance with law, uninfluenced by any observation which may be construed as touching upon their merits. The findings in the present judgment are confined to the questions specifically decided herein concerning the interpretation and constitutional validity of Section 93 of the CGST Act.

47. Independently, within three weeks from today, the Respondents shall furnish to the Petitioner a complete account of ₹15,40,000/-, including its present status, particulars of the fixed deposit, interest earned thereon, and details of any withdrawal, appropriation, transfer

or release, together with the supporting records.

48. For every amount claimed to be lawfully retained or appropriated, the Respondents shall identify the precise statutory provision and order relied upon, the liability sought to be secured or discharged, its computation, and the basis on which it is asserted to be enforceable against the estate of late Sh. Ankit Dabas. A general reference to the Impugned Order shall not constitute sufficient compliance with this direction. If reliance is placed upon that Order, the Respondents shall explain how it is said to authorise retention or appropriation of the whole amount. They shall separately address the entitlement to return of any balance, together with the interest attributable thereto. This disclosure shall set out the Respondents' position for the Petitioner to answer and it shall neither enlarge the liability under the Impugned Order nor operate as its rectification, review or modification.

49. The Petitioner may submit her response within two weeks of receipt of the aforesaid disclosure. After affording her an opportunity of hearing, the competent authority shall pass and communicate a reasoned decision upon her claim for return of the amount within four weeks of receipt of the response. If no reply is submitted within the period granted, the decision shall be taken within four weeks of its expiry after due intimation of the hearing.

50. Any amount for which no subsisting lawful basis of retention or appropriation is established shall be released to the Petitioner, in her capacity as the legal representative of late Sh. Ankit Dabas, within two

weeks of the aforesaid decision, together with the interest actually earned thereon in the fixed deposit. Such release shall remain without prejudice to the *inter se* rights, if any, of the legal heirs or successors of late Sh. Ankit Dabas.

51. The directions concerning ₹15,40,000/- shall not be construed as determining the effect of clauses AD and AE of the Impugned Order or as authorising its rectification, review or modification. The Petitioner's right to challenge any decision passed upon her claim concerning the said amount, in accordance with law, is preserved.

52. The Writ Petition is, accordingly, disposed of in the aforesaid terms. The pending Application stands closed.

ANIL KSHETARPAL, J.

VIMAL KUMAR YADAV, J.

SEPTEMBER 25, 2026
sp/ad

Gotru Lakshmi Devi v. Assistant Commissioner, Autonagar Circle, Vijayawada & Ors.

Court	High Court of Andhra Pradesh at Amaravati
Bench	Ninala Jayasurya and T.C.D. Sekhar, JJ.
Date	25.09.2026
Case no. / citation	Writ Petition No. 27669 of 2026

Holding in brief

Assessment order of 20.04.2023 (tax period 2020-21) was passed against the proprietor, who died on 18.06.2019. An order against a dead person has no legal efficacy. Following W.P. No. 6029 of 2025, the only practicable course is assessment after involving the legal representative, with recovery only from the estate. Order set aside; liberty to issue notice to the daughter and proceed; period from the order to receipt of the judgment excluded for limitation; consequential proceedings (including auction notice) revoked.

Paragraphs highlighted

Paras 7, 8 (extract from W.P. No. 6029 of 2025), 9, 10 and 12

Status

Final disposal of the writ petition at admission.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 104.

APHC010507262026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE 25th DAY OF SEPTEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 27669 OF 2026

Between:

1. GOTRU LAKSHMI DEVI, Daughter of Gotru Dharmaiah (died) Occ Government Service aged about 58 years, Residing at B2-905, My Home Tarkshya, Jayachandra Reddy circle VTC, Kokapet-500075, Gandipet Hyderabad, Telangana State

...Petitioner

AND

1. THE ASSISTANT COMMISSIONER, Autonagar circle, D.No.74-2-20, KMR and Sons Plaza Ground Foor, Krishna Nagar, Yanamalakuduru Road, Vijayawada,- 520007 Andhra Pradesh

2. Deputy Assistant Commissioner STII, Machilipatnam circle, D.No 17-296-8,Sedimbai Agraharn Opp Police Parade Grounds, Machilipatnam 521002,Krishna District

3. The State of Andhra Pradesh, . Rep. by its Principal Secretary, Revenue (CT) Department, Secretariat Complex, Amaravati-522503

4. The Union of India, Rep. by its Secretary (Finance) Ministry of Finance, North Block, New Delhi 110001

...Respondents

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 toissue Writ of Mandamus or any other appropriate Writ or order or direction declaring the action of the 1st Respondent in passing the impugned order of assessment 20.4.2023, for the tax period 2020.21 under the Goods and Service Tax Act, 2017, (during which turnover was zero) against the deceased person who passed away on 18.6.2019 as per the Death Certificate, dated 2.7.2019, as arbitrary, contrary to the provisions of Section 93(1)(b) of the Act, without jurisdiction, and in violation of Principles of Natural Justice and consequently set-aside the impugned assessment order dated 20.4.2023 and consequential notices thereon including the auction notice dated 19.9.2026 proposing to conduct action of the personal properties of the legal heirs, as null and void

IA NO: 1 OF 2026

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 stay of all further proceedings including the stay of action proposed to be conducted on 29.9.2026 vide notice dated 19/.9.2026 issued by the 2nd Respondent, pursuant to the impugned order of assessment dated 20.4.2023 passed by the 1st Respondent, and against the deceased person/non-existent person for the tax period 2020-21 under the CGST Act, pending disposal of the above Writ Petition

Counsel for the Petitioner: SRINIVASA RAO KUDUPUDI

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following order:

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION No: 27669 OF 2026

ORDER: *(per Hon'ble Sri Justice Ninala Jayasurya)*

Heard learned counsel for the petitioner and Mr.S.A.V. Sai Kumar, learned Assistant Government Pleader for Commercial Tax, representing respondent Nos.1 to 3. With their consent, the writ petition is disposed of at the stage of admission.

2. Aggrieved by the impugned order of assessment dated 20.04.2023 against proprietary concern M/s. Mithraya Communications, the present writ petition is filed.

3. As per the averments made in the affidavit, the father of the deponent was proprietor of the said concern and he expired on 18.06.2019 due to critical illness. Respondent authorities passed impugned assessment dated 20.04.2023 against the proprietor, since the father of the petitioner being proprietor was looking after the financial activities of the business, initiation of proceedings by the respondents was not within the knowledge of the deponent. Be that as it may.

4. Learned counsel for the petitioner submits that petitioner's father Mr. Gotru Dharmaiah is running proprietary concern by name M/s. Mithraya Communications and on 09.04.2019 a work was awarded, that during the course of execution of the said contract, he died on 18.06.2019. Thereafter bills were paid in the year 2020-21 in respect of the said works and taking the

same as basis, the 1st respondent had issued Show-Cause-Notice and passed impugned assessment order against the dead person. Making the said submissions, he seeks to allow the writ petition by setting aside the impugned order. He also placed reliance on the decision of a Co-ordinate Bench.

5. *Per contra*, learned Assistant Government Pleader sought to sustain the impugned order. He submits that the writ petition is filed with a delay and the same is liable to be dismissed.

6. This Court has considered the submissions made and perused the material on record.

7. Death certificate dated 02.07.2019 (Ex.P.3) indicates that Gotru Dharmaiah purportedly the proprietor died on 18.06.2019, i.e., much prior to passing of the impugned order dated 20.04.2023. It is settled position that any order passed against a dead person does not have legal efficacy.

8. At this stage, it may be appropriate to refer to the relevant portion of decision in W.P.No.6029 of 2025, which is applicable to the present facts:-

> "6. It is settled law that the assessments and other proceedings can only be initiated against the persons who are living and such proceedings against death person would not be valid. However, the fact remains that, under Section 93 of the GST Act, the dues of the death person can be recovered either from the business he had set up or from his estate. In such circumstances, in the absences of any provision, this Court would have to be hold that the only practicable way of settling the affairs of the death person would be to direct the assessment being carried out by involving either the

representative or person carrying on the business of a death person or which such business is not being carried on, by involving the legal representative who be holding the estate of the deceased person.

7. In the said circumstances, since the petitioner is the legal representative of the deceased person, being his son, it would be appropriate to set aside the impugned Order, dated 25.01.2024, with a direction to carry out a fresh assessment after involving the petitioner herein, by issuing a notice to the petitioner. Needless to say, any recovery that may be initiated, after an Order of assessment, shall be only against the estate of a deceased person and against the petitioner to the extent of the estate of his deceased father, which is available to the petitioner."

9. In the light of above said decision and the conclusion arrived at supra, the impugned assessment order dated 20.04.2023 is declared invalid and the same is set-aside.

10. In the result, the writ petition is allowed. However, the 1st respondent is at liberty to issue appropriate notice to the petitioner and proceed with the assessment proceedings after giving due opportunity of hearing to the deponent of the affidavit herein Smt. Gotru Lakshmi Devi.

11. In view of setting aside the impugned assessment order, all consequential proceedings shall stand revoked.

12. Needless to say that the period from the date of passing of the impugned order till the date of receipt of this order shall be excluded for the purpose of limitation.

13. There shall be no order as to costs. Miscellaneous petitions, if any, shall stand closed.

NINALA JAYASURYA, J

T.C.D.SEKHAR, J

GVK

30

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

AND

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION No. 27669 OF 2026

Dt. 25.09.2026

GVK

Ben Medicals v. Commissioner of Kerala State GST

Court	Goods and Services Tax Appellate Tribunal, Thiruvananthapuram Bench
Bench	Subramanya Rayaprol, Vice-President and Ramamoorthi Sriram, Member (Technical)
Date	30.10.2026
Case no. / citation	Appeal No. APL/18/TVP/2026; Final Order No. 14/TVP/KERALAM/2026

Holding in brief

Proprietor died on 17.12.2022 after the Order-in-Original and Order-in-Appeal; business was discontinued, and the appeal was filed by the son as legal heir. Issue: whether the procedure under Section 93(1)(b) was followed. No notice was issued to the legal heir and no inquiry was made into the estate, so the department has no case to recover, even from the estate; the proceedings against the deceased taxpayer are null and void and the Order-in-Appeal is quashed. The ITC claim was also held to be on merits in the appellant's favour (para 13).

Paragraphs highlighted

Paras 6, 8, 9, 10, 12, 14 and 15

Status

Final order of the Appellate Tribunal. Para 11 summarises other decisions; its summary of P.B. Sethi Plastics (Allahabad) does not match that judgment, which concerns service of the order after cancellation of registration and has no death element.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 112.

GOODS AND SERVICES TAX APPELLATE TRIBUNAL
THIRUVANANTHAPURAM BENCH
Division Bench : Court No I

APPEAL NO : APL/18/TVP/2026
(hearing in hybrid mode)

[arising out of OIA No. GSTA (KLM) 164/2022 dated 26-11-2022 passed by Joint Commissioner (Appeals), Keralam State GST, Kollam]

BEN MEDICALS .....Appellant

VERSUS

THE COMMISSIONER OF KERALA STATE GST .....Respondent

for Appellant
K R Balachandran, Advocate

for Respondent
Mansur MI, AR

CORAM : Hon'ble Shri Subramanya Rayaprol, Vice-President
Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

.....

FINAL ORDER NO : 14/TVP/KERALAM/2026

Date of Hearing: 10-9-2026
Date of Order: 30-10-2026

Per: Subramanya Rayaprol, Vice-President

1.0 Mr K R Balachandran, Ld Advocate appeared for the appellants. Mr Mansur MI, Ld Joint Commissioner appeared as AR for the respondents.

2.0 Ld Advocate submits that the appellant is a proprietorship firm, and the Proprietor Mr Walter Joseph, died on 17-12-2022. The said appellant / proprietor was carrying on business as a dealer in pharmaceuticals and was holding GSTIN 32ADNPJ8914C1ZP. The returns for FY 2017-18 were scrutinized and Form GST ASMT-10 dated 05.03.2020 was issued and alleged excess availment and utilisation of ITC of Rs.1,12,264/-. The

ASMT-10 itself records that the allegation arose from comparison of GSTR-3B with GSTR-2A. They had submitted a reply dated 03.11.2020, explaining that the mismatch occurred because the suppliers had reported the supplies as B2C instead of B2B, with the result that the invoices did not appear in the recipient's GSTR-2A. He further specifically asserted that the purchases were genuine, invoices were available and the tax relating to the purchases had been paid to the Government by the suppliers. He also places reliance on the judgement of this Tribunal in the case of Vijayan Sahadevan vs Commissioner of Kerala GST cited in 2026 (8) TMI 1362 - GSTAT THIRUVANANTHAPURAM. He also submitted a death certificate of the proprietor. The business was discontinued after his death and the GST registration was also cancelled w.e.f 1-4-2023. He prays that the appeals may be allowed.

3.0 The Ld AR for the Revenue (State), submits that he has made a detailed pointwise written submission on 7-9-2026. He submits that the Appellant's ground based on Circular No. 183/15/2022-GST is factually misconceived, the Circular being dated 27-12-2022 — subsequent to both the Order-in-Original (27-06-2022) and the impugned Order-in-Appeal (26-11-2022). In any event, the burden to prove eligibility to ITC, including reconciliation of the GSTR-2A/GSTR-3B difference, lies squarely on the Appellant under Section 155 of the CGST/SGST Act, 2017. Such burden can only be discharged through an invoice-wise reconciliation statement — correlating the Appellant's GSTR-2A, the supplier-wise/invoice-wise purchase ledger, and the underlying tax invoices — which has not been furnished by the Appellant at any stage; and such invoice-wise reconciliation was never placed on record by the Appellant either at the reply stage (FORM GST DRC-06 dated 10-09-2021) or at the first-appeal stage, despite adequate opportunity, and none accompanies the present Second Appeal

either; and JCTVPM/1362/2026-B4 I/339671/2026. He further submits that the order in Vijayan Sahadevan (Deceased) v. Commissioner of Kerala State GST [Final Order No. 03/TVP/Kerala/2026 dated 21-08-2026] is factually and legally distinguishable — the present Second Appeal being filed by the legal heir himself, and the demand arising under Section 16(2)(c) rather than Section 16(4)/16(5) — and does not assist the Appellant; The impugned Order-in-Appeal, having correctly applied the law and having already extended verifiable relief, does not warrant interference. He further prays to dismiss the Appeal and uphold the impugned Order-in-Appeal.

4.0 We have heard both sides in detail.

5.0 We find that the present appeals are filed on 26-2-2026, by the son of the deceased appellant, who claims to be the legal heir, and in such capacity, he has signed and submitted the present appeals before us. The GST Registration No. 32ADNPJ8914C1ZP was cancelled for non-continuation of business w.e.f 1-4-2023. The GST Returns were also filed only up to March-2023.

6.0 We find that the issue to be decided here is

Whether the Respondent has properly followed the procedure envisaged under Section 93 (1) (b) of the CGST/KGST Act, on demise of the proprietor-appellant when business is discontinued, by issuing notice to the legal heir for the estate of the deceased appellant.

7.0 With regard to the first issue, the chronology of the events is as below:

1. Assessment Order ASMT-10 was issued on 5-3-2020

2. SCN DRC-01 was issued on 30-7-2021

3. OIO was issued on 27-6-2022

4. OIA was issued on 26-11-2022

5. GST Registration was cancelled wef 1-4-2023

5. Appellant-Proprietor died on 17-12-2022

6. Present appeals before Tribunal is filed on 12-6-2026

8.0 We find that on demise of the Proprietor, the Proprietorship Firm also comes to an end. As per the prescribed procedure, the GSTIN 32APNPS6894L1ZX of the deceased appellant was cancelled wef 6-6-2023. Hence, there was no further business conducted in the name of the deceased appellant. The Section 93 (1) of the CGST/KGST Act reads as,

93. Special provisions regarding liability to pay tax, interest or penalty in certain cases.

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a person, liable to pay tax, interest or penalty under this Act, dies, then––

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

9.0 We find that at the time of demise of the appellant on 7-12-2022, the matter was still under the appeal period as the appeals could have been filed before the GSTAT on or before 30-6-2026 which was further extended to 31-7-2026. The appeal was therefore filed by the legal heir of the appellant before this Tribunal on 12-6-2026. The last GSTR3B filed by the appellant was for the Month of March-2023 on 21-4-2023. After that no returns were filed and the GSTIN was also cancelled, as there was no business continued. Therefore, it is on record that the business of the deceased was not continued in anyway. As per Section 93 (1) (b), the liability if any arising out of the present matter, the legal representative / legal heir shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act.

10.0 But in the present case, we find that there is no effort made to find whether there was any such estate of the deceased, nor any notice was sent to the legal heir for recovery of the dues. In the absence of any process done by the Respondent under Section 93 (1) (b) of the CGST/KGST Act, the respondent department has no case to recover any of the dues from the deceased appellant, even through the estate of the legal heir. We find that time and again various High Courts and Hon'ble Supreme Court has also held that no proceedings can be conducted against a deceased person. Section 93 of the CGST Act authorises post-death initiation of assessment and recovery proceedings against a legal heir where the taxable person has died and the business has been discontinued. The provision is read with Sections 73, 74 and 74A to mean that tax, interest or penalty may be determined after death, including by issuing notice after the taxpayer's demise, the term "person chargeable with tax" is not limited to the registered taxable person. Recovery against the legal heir is permissible, but in a discontinued business it is confined to the inherited estate. The respondent has not brought into record any inherited estate of the deceased appellant. Where adjudication fails to examine whether heirs continued the business or whether an estate is available for recovery, the statutory basis for liability remains unaddressed. As such there is no legal proceedings against the Legal Heir or Legal Representative under Section 93, the order of the first appellate

authority is unsustainable and the entire proceedings are liable to be set aside.

11.0 We find that our contention is supported by the various settled positions of law as below:

(i) In the case of SSS Agro Foods Versus The Assistant Commissioner ST, Kakinada cited in 2026 (8) TMI 899 – AP High Court it is held that the Assessment proceedings cannot validly continue against a deceased proprietor. An assessment issued after death is non est because it is directed at a person incapable of being proceeded against, and the required opportunity of personal hearing is not met. Although Section 93 permits recovery of tax dues from the deceased person's business or estate, fresh assessment proceedings must be initiated against the appropriate legal representative or person carrying on the business after notice and hearing. Any recovery remains limited to the deceased proprietor's estate, and a consequential rejection of the statutory appeal is invalid.

(ii) In the case of Chotu Devi, Ajmer Versus Union Of India cited in 2026 (8) TMI 308 – Rajasthan High Court, it is held that a legal representative may be liable for a deceased sole proprietor's tax, interest and penalty only from the deceased's estate, where the business is discontinued and liability is determined before or after death. That statutory liability does not remove procedural safeguards: an adverse assessment requires independent notice and an opportunity of hearing for the legal representative, and the order must state relevant facts and reasons. Assessment orders issued without these safeguards are vitiated. Tax dues may therefore be pursued against the legal representative only through fresh proceedings that comply with notice, hearing and reasoned-order requirements, within the limits of the estate."

(iii) In the case of M/s. J.S. Enterprisers Versus The Superintendent Central GST and Cx Division Cuttack-I Cuttack cited in 2026 (7) TMI 1524 – Orissa HC it is held that GST liability

proceedings under Section 73 cannot be initiated or concluded against a deceased sole proprietor where the authorities knew of the death but did not issue notice to the legal representative. Section 93 imposes liability on legal representatives or persons continuing the business, but does not authorise adjudication in the deceased person's name. Notice to a living and correctly identified person is a foundational jurisdictional requirement, and participation by an authorised representative cannot cure this defect. The show cause notice and consequential order were non est and quashed, with fresh proceedings permitted against the legal representative in accordance with law.

(iv) In the case of BKR Services Pvt Ltd & Santosh Kumar Rudraswamy vs Satte of Karnataka cited in 2026 (8) TMI 774 – Karnataka HC, it is held that GST recovery for a deceased proprietor's liabilities cannot be enforced against a separate private limited company merely through recovery proceedings, because the company is legally distinct from the proprietary concern. Liability of legal representatives or the deceased person's estate must be assessed under section 93(1)(a) or section 93(1)(b) of the CGST/KGST framework.

(v) In the case of V. Damayanti, W/o. Late V. Vasudevan (Proprietor, M/s. Vasu Chemicals) Versus The Superintendent of GST and Central Excise, Madurai cited in 2026 (6) TMI 1093 – Madras HC it is held that, Section 93 of the CGST Act authorises post-death initiation of assessment and recovery proceedings against a legal heir where the taxable person has died and the business has been discontinued. The provision is read with Sections 73, 74 and 74A to mean that tax, interest or penalty may be determined after death, including by issuing notice after the taxpayer's demise; the term "person chargeable with tax" is not limited to the registered taxable person. Recovery against the legal heir is permissible, but in a discontinued business it is confined to the inherited estate.

(vi) In the case of M/s. S.B. Enterprises Versus Directorate General of GST Intelligence

cited in 2026 (6) TMI 790 – Jharkhand HC it is held that the proceedings against a deceased sole proprietor require notice to the legal representative before continuation of tax action. An order-in-original passed against a deceased sole proprietor was treated as legally vulnerable and was quashed. The HC held that proceedings against a proprietary concern could not continue against a dead proprietor without first taking steps against the legal representative, at least by issuing notice if the department intended to proceed further. The Court did not decide the disputed question of whether death had been specifically intimated, but noted that an earlier order in similar proceedings had already stayed further action after the same objection was raised. The respondents were left free to pursue their claims in accordance with law against the petitioner's estate or legal representative."

(vii) In the case of M/s P.B. Sethi Plastics Versus State of U.P. cited in 2026 (2) TMI 390 – Allahabad HC, it is held that, Assessment and recovery proceedings under Section 73 could not validly be initiated and concluded against a deceased sole proprietor, because tax liability against a dead person must be pursued, if at all, against the legal representative after due notice and opportunity to respond. The jurisdictional defect went to the root of the matter and could not be cured by treating the appeal as barred by limitation. The appellate authority was required to address that foundational objection rather than reject the appeal solely on delay. Proceedings against the deceased proprietor were therefore unsustainable, and the limitation-based appellate order was set aside.

(viii) In the case of Rajvanti Devi Versus State of U.P. 2026 (2) TMI 164 – Allahabad HC, show cause notices and tax determinations issued to a deceased proprietor were held invalid because statutory liability attaches to the legal representative; the provision governing post death liability requires issuance of notice to the legal representative and an opportunity to respond, and a determination made against the deceased without serving the legal representative cannot be sustained. The HC allowed the writ and set aside the determination made after the proprietor's death for failure to comply with the notice requirement under the

relevant GST provision.

(ix) In the case of Sambul Shahid Versus State Of U.P. cited in 2025 (12) TMI 937 – Allahabad HC, Hon'ble HC quashed the order passed u/s 73 of the U.P. GST Act, holding that proceedings initiated and concluded in the name of a deceased sole proprietor are void. Interpreting Section 93, the Court held that while the provision governs liability of legal representatives for tax, interest or penalty after the proprietor's death, it does not authorize determination of such liability against a dead person. It is mandatory that any show cause notice and adjudication be directed to the legal representative. As the notice and determination were issued solely against the deceased, the impugned proceedings were declared unsustainable and the petition allowed.

(x) In the case of Shubhangi Gupta vs State of UP, cited in 2025 (9) TMI 595 – Allahabad HC it is held that the show cause notice and subsequent order under Section 74 unsustainable because the proceedings were initiated against a deceased person after authorities had been informed of the death and the notices were uploaded without bringing them to the notice of the legal heirs. The Court found proceedings against a deceased person impermissible and that authorities should have proceeded properly against the legal representatives. The SCN and ex parte orders, including the cancellation action, were quashed and set aside; petition allowed.

(xi) In the case of Vijayan Sahadevan Vs The Commissioner of Keralam State GST cited in 2026 (8) TMI 1362 – GSTAT, this Tribunal has taken a view that GST recovery from a deceased proprietor's legal representative is permissible under Section 93(1)(b) only through proceedings directed at that representative and only against the inherited estate, limited to its capacity to meet the liability. Where the business has discontinued, registration is cancelled, and no notice, proceedings, or inquiry identifies the inherited estate, recovery lacks a statutory basis.

12.0 We find that no notice was issued to the legal heir, no inquiry was caused regarding the inherited estate of the deceased appellant, even when the GST Registration was cancelled w.e.f. 1-4-2023, and business was discontinued. The impugned order in appeal is unsustainable in the absence of any action by the respondent under Section 93 even after more than 3 years from the date of death on 17-12-2022.

13.0 We find that on merits of the case, the deceased appellant was eligible for ITC as they have filed all the certificates issued by the suppliers, who have certified that they have paid the GST on the invoices and only due to mistake in filing GST Return GSTR1 they have shown such invoices in B2C instead of B2B. This aspect is not countered by the Revenue (State), and we do not find any reasons not to believe it. It is not at all disputed that the suppliers have paid the tax and the appellant was always eligible for ITC, even during his lifetime.

14.0 Therefore, to answer the question, we find that the *Respondent has NOT properly followed the procedure envisaged under Section 93 (1) (b) of the CGST/KGST Act, on demise of the proprietor-appellant when business is discontinued, by issuing notice to the legal heir for the estate of the deceased appellant.* Hence, the entire proceedings against the deceased taxpayer is illegal and without jurisdiction, and thus rendered NULL & VOID.

15.0 In view of the above, we find that the impugned OIA dated 26-11-2022 is liable to be quashed and set aside, as unsustainable and without jurisdiction. We pass the following order:

ORDER

The impugned OIA dated 26-11-2022 is quashed and set aside and the appeals are allowed with consequential relief.

(Order pronounced in open court)

Subramanya Rayaprol
Vice-President

Ramamoorthi Sriram
Member (Technical)

Dated: 30-10-2026

GST APPELLATE TRIBUNAL
जीएसटी अपीलीय अधिकरण
धर्मो रक्षति रक्षितः

Commissioner of Customs, Chennai v. M/s K.V. Paints & Chemicals Co.

Court	Customs, Excise and Service Tax Appellate Tribunal, Chennai (Regional Bench, Court No. I)
Bench	P. Dinesha, Member (Judicial) and Vasa Seshagiri Rao, Member (Technical)
Date	12.06.2023
Case no. / citation	Customs Appeal No. 41700 of 2013; Final Order No. 40419/2023

Holding in brief

Department's appeal against a refund of 4% additional duty (SAD). The respondent's sole proprietor died on 22.08.2019 during the appeal; no application for continuance was made under Rule 22 of the CESTAT (Procedure) Rules, 1982 within sixty days. Relying on Shabina Abraham, the Tribunal held that the appeal stands abated.

Paragraphs highlighted

Paras 4.1, 4.2, 6, 7 and 8

Status

Final order of the Tribunal (appeal abated on the respondent's death).

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 124.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41700 of 2013

(Arising out of Order-in-Appeal C.Cus. No. 705/2013 dated 10.05.2013 passed by the Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 001.)

The Commissioner of Customs, **: Appellant**
Chennai Export Commissionerate,
60, Rajaji Salai,
Custom House,
Chennai – 600 001.

VERSUS

M/s. K.V. Paints & Chemicals Co., **: Respondent**
No.70, Najafgarh Road,
New Delhi – 110 015.

APPEARANCE:

Mr. S. Balakumar, Asst. Commissioner / Authorised Representative
For the Appellant

Ms. Shobana Krishnan, Advocate
For the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40419/ 2023

DATE OF HEARING : 25.05.2023

DATE OF DECISION: 12.06.2023

Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]

The Commissioner of Customs Seaport, Chennai has filed this appeal against the order passed by the Commissioner (Appeals) *vide* Order-in-Appeal C.Cus. No. 705/2013 dated 10.05.2013, wherein the departmental

appeal was rejected in respect of sanction of SAD Refund to the Respondent.

2. Briefly stated the facts are M/s. K.V. Paints & Chemical Co. No.70, Najafgarh Road, New Delhi – 110 015, has filed the refund claim of 4% Additional Duty of Customs in respect of Eighteen Bills of Entry in terms of Notification No.102/2007-Cus dated 14.09.2007 as amended by Notification No.93/2008 dated 01.08.2008 read with Board's Circulars No.6/2008-Cus dated 28.04.2008 and 16/2008-Cus dated 13.10.2008.

3. The original refund sanctioning authority on scrutiny of the documents submitted by the responded, sanctioned the refund amount of Rs.20,82,736/- to the importer *vide* Order-in-Original No.12670/2010 dated 13.08.2010. It appears that the refund sanctioning authority has not verified compliance to the important conditions for sanctioning the SAD refund. The importer has to comply with the following conditions before sanctioning the refund:

(i) The importer has sold the goods to the consignment agents by an agreement. While issuing the invoice for sale of the goods, the importer or his agent shall specifically indicate on the invoice that "In respect of the goods covered therein, no credit of the Additional Duty of Customs levied under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible";

(ii) The importer shall pay on sale of the said goods, appropriate Sales Tax or Value Added Tax, as the case may be;

(iii) The importer should produce documents evidencing payment of appropriate Sales Tax or Value Added Tax;

(iv) Documents evidencing payment of said additional duty and invoices of sale of the imported goods

in respect of which refund of the said Additional Duty is claimed;

4.1 When the case was posted for hearing on 25.05.2023 before the Tribunal, the learned Advocate Ms. Shobana Krishnan has stated that the Respondent M/s. K.V. Paints & Chemicals Co., is a sole proprietorship concern and its sole proprietor is Mr. Kishan Chand Ohri, who died on 22.08.2019 and the Death Certificate issued by Government of Haryana, Municipal Corporation Gurugram has been submitted. Further, Directorate General of Foreign Trade's IEC Registration of K.V. Paints & Chemicals Co., indicates that it is a sole proprietorship and the proprietor is Mr. Kishan Chand. She has drawn our attention to Rule 22 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982. Rule 22 of 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."*

4.2 In terms of the above Rule, any proceeding will be abated on the death unless an application has been made for continuation of such proceedings within sixty days of the occurrence of the event.

5. The learned AR has accepted the death of the Respondent during the pendency of the proceedings.

6. After perusing the material on record, we find the Respondent has died on 22.08.2019 during the pendency of the present appeal. We also find that in terms of Rule 22 of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 on the death of the Respondent, the proceedings will be abated unless an application is made for continuance of such proceedings. In this case no such application is made. As the Death has occurred on 22.08.2019, more than three and half years passed already.

7. 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 in terms. 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/manufacturer after he is dead."

8. In view of the above, we hold that on the death of the Respondent, the appeal stands abated. The appeal is accordingly disposed of.

(Order pronounced in the open court on 12.06.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)

MK

Sangeeta Goyal v. Commissioner of Customs (Exports)

Court	High Court of Delhi
Bench	Yashwant Varma and Ravinder Dudeja, JJ.
Date	06.09.2024
Case no. / citation	W.P.(C) 13025/2019

Holding in brief

Exporter (sole proprietor) died on 17.08.2018; the demand-cum-show cause notice of 28.09.2018 for recovery of duty drawback (Section 75, Customs Act) was issued in his name after his death, and the Order-in-Original and recovery notice followed. A notice in the name of a dead person suffers from a fundamental jurisdictional error, and no steps were taken to bring the legal heirs on record. Following Shabina Abraham and Amandeep Singh Sehgal (no machinery provision in the Customs Act), the notice, order and recovery proceedings were quashed; no recovery from the legal heirs.

Paragraphs highlighted

Paras 3, 14, 15, 16 and 17

Status

Final judgment of a Division Bench on the writ petition.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 130.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 20 August 2024**

Judgment pronounced on: 06 September 2024

+ W.P.(C) 13025/2019 & CM APPL. 53138/2019

SANGEETA GOYAL ..... Petitioner

Through: Ms. Reena Rawat & Ms. Jyotika Sharma, Advocates.

versus

COMMISSIONER OF CUSTOMS (EXPORTS) ..... Respondent

Through: Mr. Harpreet Singh, SSC with Ms. Suhani Mathur, Mr. Jatin Kumar Gaur and Ms. Pritika Nagpal, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present Writ Petition has been filed by the writ petitioner with the following prayer:-

> "(a) Issue a Writ of Mandamus or any other appropriate Writ, direction or order directing learned Respondent to drop the recovery proceedings initiated against the Petitioner vide Recovery Notice dated 12.09.2019;
> (b) Issue Rule Nisi in terms of prayers at (a) above and confirm the same after hearing the parties;
> (c) Pass ad-interim ex-parte order in terms of prayer at (a) above;
> (d) Award cost of this Petition."

2. Brief facts of the case are that petitioner's husband, late Arun Kumar Goyal effected certain exports during 2009-2014 through ICD Tughlakabad and availed benefit of Duty Drawback Scheme in terms of Section 75 of the Customs Act, 1962 [**"Act"**] read with the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

Compendium: Proceedings against deceased taxpayer | page 130 of 230 ▲ Back to Index

3. Petitioner's husband expired on 17.08.2018, leaving behind petitioner and two sons. Consequent to his demise, the activities of the firm abruptly stopped.

4. Respondent sent a letter dated 09.02.2017 in the name of Arun Kumar Goyal, requesting to submit copies of pending 48 BRCs in which total drawback of Rs. 22,62,352/- was involved but the letter was returned undelivered by postal authority with the remarks "Kaafi Poochh Taachh Par Firm Ka Pata Nahin Chala". On verification of exporter's BRC details at the website, it was found that no e-BRC in respect of the exporter was available there.

5. In view of the above, a Demand cum Show Cause Notice [**"SCN"**] dated 28.09.2018 was issued to the exporter, asking him to explain and to show cause as to why the availed drawback amounting to Rs. 22,62,352/- against the shipping bills could not be recovered from him along with applicable interest and why penalty should not be imposed upon him under the Act. SCN was returned 'undelivered'. No reply was filed.

6. Order-in-Original dated 31.05.2019 was passed confirming the demand of duty drawback amounting to Rs. 22,62,352/- and orders were passed for its recovery along with penalty of Rs. 1,00,000/- upon M/s. L.V. Tools & Components.

7. Pursuant to the passing of Order-in-Original, a recovery notice dated 12.09.2019 was issued in the name of late husband of the petitioner, which has been challenged before us.

8. During the pendency of the petition, learned counsel for the respondent confirmed that out of 48 invoices, remittances against 24

invoices were already received and insofar as the remaining invoices are concerned, petitioner has filed an affidavit pointing out that the remittances against the 8 invoices were substantially received as there were minor differences between the amounts received and the invoiced amounts.

9. It has been argued by the learned counsel for the petitioner that the late husband of the petitioner was the sole proprietor of M/s. L.V. Tools & Components and consequent to his death and closure of the proprietorship firm, no recovery can be effected from his legal heirs in terms of the law propounded by the Supreme Court in the case of **Shabina Abraham vs. Collector of Central Excise and Customs 2015 (10) SCC 770** and the order of this Court in **Amandeep Singh Sehgal vs. Commissioner of Customs (Preventive) Delhi W.P. No. 3523/2018**.

10. Per contra, the learned counsel appearing for the respondent has submitted that upon the death of exporter, the recovery proceedings would not abate and that the government dues can be recovered from his properties falling into the hands of his legal heirs by inheritance.

11. Undisputably, husband of the petitioner was the sole proprietor of M/s. L.V. Tools & Components which affected the exports and claimed duty drawback. Admittedly, he expired on 17.08.2018.

12. Section 75(1) of the Act stipulates that if the sale proceeds in respect of the goods of which duty drawback has been allowed are not received by or on behalf of the exporter in India within the time stipulated under Foreign Exchange Management Act, 1999, such drawback shall be deemed never to have been allowed and the Central

Government may by Rule made under Sub Section (2) specify the procedure for the recovery of adjustment of the amount of such drawback.

13. Relevant part of Rule 16-A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 stipulates that:-

> "2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act 1999 or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be of Deputy Commissioner of Customs shall cause notice to be issued to for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be or Deputy Commissioner of Customs shall pass an order to recover the amount of drawback paid to claimant and the exporter shall repay the amount so demanded within) thirty days of the receipt of the said order:
> Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds."

14. Thus, as per the aforesaid rule, issuance of notice is sine qua none before affecting the recovery of erroneously availed drawback. The requirement of issuing notice in the name of a right person and not a dead person is not merely a procedural requirement but is a condition precedent to the notice being valid in law. Such notice was issued in the name of the exporter on 28.09.2018, after his death. The notice therefore suffers from fundamental jurisdictional error as it was issued in the name of a dead person and the proceedings initiated consequent to such notice were also proposed in the case of a dead person. No steps

were taken to bring the legal heirs of the deceased/exporter on record at the time of issuance of the Demand cum Show Cause Notice. The issue of the validity of a notice issued against a dead person is no longer res-integra. This Court in **Savita Kapila v. Assistant Commissioner of Income Tax in W.P. (C) No. 3258 of 2020** has held as under:-

> "26. In the opinion of this court the issuance of a notice under section 148 of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. (See Sumit Balkrishna Gupta v. Asst. CIT [2019] 414 ITR 292 (Bom); [2019] 2 TMI 1209- Bombay High Court).
>
> 27. In Chandresh Jayantibhai Patel v ITO [2019] 413 ITR 276 (Guj), [2019] (1) TMI 353-the Gujarat High Court has also held (page 290 of 413 ITR) : "the question that therefore arises for consideration is whether the notice under section 148 of the Act issued against the deceased-assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under section 148 of the Act is a jurisdictional notice, and existence of a valid notice under section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under section 147 of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the the validity of the proceedings for assessment or reassessment. A notice issued under section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection." Consequently, in view of the above, a reopening notice under Section 148 of the Act, 1961 issued in the name of a deceased-assessee is null and void.
>
> Also, no notice under Section 148 of the Act, 1961 was ever issued upon the petitioner during the period of limitation. Consequently the proceedings against the petitioner are barred by limitation as per section 149(1)(b) of the Act, 1961.
>
> As in the present case proceedings were not initiated/pending against the assessee when he was alive and after his death the legal representative did not step into the shoes of the deceased assessee, section 159 of the act, 1961 does not apply to the present case."

15. Since the Show Cause Notice dated 28.09.2018 was issued against a dead person and the Order-in-Original has been passed against the dead person without bringing on record his legal representatives, therefore, the Order-in-Original confirming the demand of duty drawback amounting to Rs. 22,62,352/- and penalty of Rs. 1,00,000/- and the subsequent notice of recovery are liable to be set aside.

16. We are also in agreement with the argument of learned counsel for the petitioner that consequent to the death of the petitioner's husband, the sole proprietor of M/s. L.V. Tools & Components, no recovery can be effected from his legal heirs in terms of law propounded by the Supreme Court in the matter of Shabina Abrahad (supra) and Amandeep Singh Sehgal (supra). This Court in the case of Amandeep Singh Sehgal (supra), while taking note of the decision of the Supreme Court in the case of Shabina Abraham (supra) observed as under:-

> "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)*** 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."

17. Taking note of the above position, we are of the view that Show Cause Notice dated 28.09.2018, having been issued against a dead person cannot be sustained and consequently the recovery proceedings initiated pursuant thereto are quashed.

18. Petition is accordingly allowed in the above terms.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

06 September 2024
RM

Shabina Abraham & Ors. v. Collector of Central Excise & Customs

Court	Supreme Court of India
Bench	R.F. Nariman and A.K. Sikri, JJ.
Date	29.07.2015
Case no. / citation	(2015) 10 SCC 770; 2015 (322) E.L.T. 372 (SC); Civil Appeal No. 5802 of 2005

Holding in brief

Whether assessment proceedings under the Central Excises and Salt Act, 1944 can continue against the legal representatives of a deceased sole proprietor. Held that there is no machinery provision in the Act to proceed against a dead person or his estate (unlike Section 159 of the Income-tax Act); the definition of 'assessee' refers to a living person; Section 11 deals only with recovery of sums already payable. The show cause notice could not be continued against the legal heirs. Appeal allowed; the Single Judge's order restored. This is the foundation case for the other decisions in this compendium.

Paragraphs highlighted

Paras 1, 8, 17, 19, 27 and 34

Status

Final judgment of the Supreme Court; reported. Concerns the Central Excise Act; whether the same follows under a statute with a provision like Section 93 CGST was considered in Jaiwanti (para 27).

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 138.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5802 OF 2005

SHABINA ABRAHAM & ORS. ... APPELLANTS

VERSUS

COLLECTOR OF CENTRAL EXCISE
& CUSTOMS ...RESPONDENT

J U D G M E N T

R.F. Nariman, J.

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 in terms. 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 an assessment proceeding under the Central Excises and Salt

Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacturer after he is dead. The facts of the case are as follows.

2. One Shri George Varghese was the sole proprietor of Kerala Tyre and Rubber Company Limited. By October 1985, this proprietary concern had stopped manufacture and production of tread rubber. By a show cause notice dated 12.6.1987, for the period January 1983 to December 1985, it was alleged that the assessee had manufactured and cleared tread rubber from the factory premises by suppressing the fact of such production and removal 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 Rs.74,35,242/- was sought to be recovered from the assessee together with imposition of penalty for clandestine removal.

3. On 14.3.1989, the said Shri George Varghese died. As a result of his death, a second show cause notice was issued on 18.10.1989 to his wife and four daughters asking them to make submissions with regard to the demand of duty made in the

show cause notice dated 12.6.1987. By their reply dated 25.10.1989, the said legal heirs of the deceased stated that none of them had any personal association with the deceased in his proprietary business and were not in a position to locate any business records. They submitted that the proceedings initiated against the deceased abated on his death in the absence of any provision in the Central Excises and Salt Act to continue assessment proceedings against a dead person in the hands of the legal representatives. The said show cause notice was, therefore, challenged as being without jurisdiction.

4. As the Central Excise Authorities posted the matter for hearing and refused to pass an order on the maintainability of the show cause notice alone, the legal heirs approached the High Court under Article 226 of the Constitution by filing a Writ Petition in January, 1990. The learned single Judge of the High Court quashed the proceedings against the legal heirs stating that the Central Excises and Salt Act did not contain any provisions for continuing assessment proceedings against a dead person. Against this, revenue went in appeal. The

Division Bench of the High Court of Kerala reversed the single Judge's judgment.

5. Shri Rajshekhar Rao, learned counsel appearing for the legal heirs made submissions before us with great clarity and persuasiveness. He submitted that a reading of Sections 2(f), (3), Section 4(3)(a), Section 11 and 11A as they stood at the relevant time would show that unlike the provisions of the Income Tax Act, there is no machinery provision in the Central Excises and Salt Act for continuing assessment proceedings against a dead individual. He stressed the fact that an assessee under the said Act means "the person" who is liable to pay the duty of excise under this Act and further stressed the fact that in cases of short levy, such duty can only be recovered from a person who is chargeable with the duty that has been short levied. He further invited our attention to the Central Excise Rules and Rules 2(3) and 7 in particular to buttress his submission that there is no machinery provision contained either in the Act or in the Rules to proceed against a dead person's legal heirs. He cited certain judgments before us which we will advert to later on in this judgment.

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6. Shri A.K. Panda, learned senior advocate appearing on behalf of the revenue contended that a close reading of Section 11 of the Central Excises and Salt Act will indicate that sums are recoverable from an assessee by an attachment and sale of excisable goods belonging to such assessee and further that if the amount so recoverable falls short, it can be recovered from the person himself as an arrear of land revenue. Inasmuch as a dead man's property can be attached and sold and proceeded against, it is clear that the necessary machinery is contained in the Central Excises and Salt Act. His further submission is that Section 11A of the said Act is a machinery provision and, therefore, the rule to be applied is that that construction should be preferred which makes a machinery Section workable. He also referred us to the definition of "person" in Section 3(42) of the General Clauses Act to buttress his submission that a legal representative would be included within a "person" as so defined. He referred us to Section 6 of the said Act dealing with registration and argued that registration of a person makes him a legal entity liable to be assessed as such. His other submission is that the general

principle, namely, that a cause of action abates when a person who institutes a proceeding dies is not applicable in the present case and cited various judgments before us in support of the said principle. He also submitted that the position under the Income Tax Act would be entirely different as income tax is a tax leviable on a person whereas a duty of excise is leviable on manufacture of goods. He also cited a number of decisions which will be dealt with in the course of this judgment.

7. We have heard learned counsel for the parties. Before entering into a discussion on the merits of the case, it is necessary to set out the statutory provisions contained in the Central Excises and Salt Act at the relevant time, which are given below:-

> 2(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and
>
> (i) In relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff,
>
> (ia) in relation to manufactured tobacco, includes the labeling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer.

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(ii) In relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpeter, the separation of salt from earth or other substance so as to produce elementary salt, and the excavation or removal of natural saline deposits or efflorescence;

(iii) In relation to patent or proprietary medicines, as defined in Item No. 14-E of the first Schedule and in relation to cosmetics and toilet preparations as defined in Item No.14-F of that Schedule, includes the conversion of powder into tablets or capsules, the labeling or relabeling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumers;

(iv) In relation to goods comprised to Item No.18-A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reeling, or any one or more of these processes, or the conversion of any form of the said goods into another form of such goods;

And the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

3. Duties specified in the First Schedule to be levied. (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on

salt manufactured in, or imported by land into, any part of India as, and at the rates set forth in the First Schedule.

4. Valuation of excisable goods for purposes of charging of duty of excise. –
(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section be deemed to be –
(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale:"

(4) For the purposes of this section, -
(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;"

11. Recovery of sums due to Government. - In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person

resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

11A. Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded.-

(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "six months", the words "five years" were substituted."

Rule 2(3) and Rule 7 of the Central Excises Rules, 1944, read as under:

"2. Definitions.—In these rules, unless there is anything repugnant in the subject or context—

(3) "assessee" means any person who is liable for payment of duty assessed and also includes any producer or manufacturer of excisable goods or a

registered person of a private warehouse in which excisable goods are stored;

7. Recovery of duty.- Every person who produces, cures or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty or duties leviable on such goods, at such time and place and to such persons as may be designated, in, or under authority of these rules, whether the payment of such duty or duties is secured by bond or otherwise.

Provided that nothing contained in this rule shall apply to molasses produced in a khandsari sugar factory.

Provided further that in respect of goods falling under Chapter 62 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), manufactured on job-work, the provisions of these rules shall apply subject to the provisions of rule 7AA."

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**, A.I.R. 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. Having noticed various provisions of the said Act, the Division Bench went on to say:-

"These are, I think, the only material provisions, of the Act. It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present to the mind of the legislature that whatever privileges the payment of Income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and in practically every case, before the last installment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from, the estate of a deceased person. In order that the Government may succeed and the assessment made in this case may be held legal I think, one must do a certain amount of violence to the language of Section 23(4); I think one must either do a certain amount of violence - I should say a considerable amount of violence - to the language of Section 27, or else hold that the privilege conferred on a living person assessed under Section 23(4) of getting the assessment set aside is not to be enjoyed by the estate of a deceased person - a distinction for which I can see no logical reason. One must also construe Section 29 so as to give to the word "assessee" one meaning in one place and another meaning in another place.

In my judgment, in construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. If the legislature intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the legislature must provide proper machinery and not leave it to the Court to endeavor to extract the appropriate machinery out of the very unsuitable language of the statute. We are not concerned with the case which may arise of the death of a person

after assessment but before payment." (at page 335)

10. Given the aforesaid decision of the Bombay High Court, the legislature was quick to amend the Income Tax Act, 1922 by inserting Section 24B which reads as follows:-

> **Section 24B : Tax of deceased person payable by representative-**
>
> (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.
>
> (2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.
>
> (3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the

Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person."

11. This judgment of the Bombay High Court has been affirmed in two judgments of this Court. In **Commissioner of Income Tax, Bombay City I** v. **Amarchand N. Shroff**, [1963] 48 I.T.R. 59, this Court referred with approval to **Ellis C. Reid** and held:-

"The correct position is that apart from section 24B no assessment can be made in respect of the income of a person after his death. See Ellis C. Reid v. Commissioner of Income-tax. In that case, and that was a case before section 24B was enacted, a person was served with a notice under section 22(2) of the Income-tax Act but no return was made within the period specified and he died. It was held that no assessment could be made under section 23(4) of the Act after his death. At p.106 it was observed:-

"It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present in the

mind of the legislature that whatever privileges the payment of income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and, in practically every case, before the last instalment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from the estate of a deceased person".

The individual assessee has ordinarily to be a living person and there can be no assessment on a dead person and the assessment is a charge in respect of the income of the previous year and not a charge in respect of the income of the year of assessment as measured by the income of the previous year. Wallace Brothers & Co. Ltd. v Commissioner of Income-tax. By section 24B the legal representatives have, by fiction of law, become assessees as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this Court in Bengal Immunity Co. Ltd. v. State of Bihar legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub sections of section 24B and cannot be extended further than the liability for the income received in the previous year." (at page 66)

12. Similarly, in **Commissioner of Income Tax, Bombay** v. **James Anderson**, [1964] 51 I.T.R. 345, this Court referred with approval to the judgment in **Ellis C. Reid's case** and further

held that even after Section 24B was enacted tax cannot be assessed on receipts on the footing that it is the personal income of the legal representative. This Court held:-

> "It was then urged that apart from section 24B, the legal representatives of a deceased person also represent his estate in the matter of taxation of income and it is competent to the taxing authorities to assess them on income received on behalf of the estate. Counsel did not rely upon any specific provision of the Act in support of the contention, and merely asserted that the Act seeks to tax all assessable incomes, and income received by a legal representative of the estate of a deceased person should not be permitted to escape tax to the detriment of public revenue. But if the Legislature has failed to set up the procedure to assess such income, the Courts cannot supply it. The expression "assessee" in section 2(2) as substituted by the Indian Income Tax (Amendment) Act, (25 of 1953), with effect from April 1, 1952, means a person by whom income-tax or any other sum of money is payable under the Act, and includes every person in respect of whom any proceeding and this Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him. By section 3 where income-tax is chargeable for any year at any rate or rates prescribed by the Act of the Central Legislature, tax at that rate shall be charged for that year in accordance with and subject to the provisions of the Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually. The charge to income-tax has therefore to be in

accordance with and subject to the provisions of the Act, and the Legislature has not provided that the income received by a legal representative which would, but for the death of the deceased, have been received by such deceased person, is to be regarded for the purpose of assessment as the personal income of the legal representative. To assess tax on such receipts on the footing that it is the personal income of the legal representative is to charge tax not in accordance with the provisions of the Act." (at page 352)

13. In **Commissioner of Income Tax, Bombay** v. **Darabsha Nasarwanji Mehta**, A.I.R. 1935 Bombay 167, the Bombay High Court held that Section 24B of the 1922 Act was not retrospective and stated that as Avabai N. Mehta died before the said Act came into force and before she had made any return, her estate was not liable to be assessed to tax particular regard being had to the opening words of Section 24B which state "where a person dies" which are words in the present tense.

14. Pursuant to the 12th Law Commission Report, a new Income Tax Act was passed in 1961 which contained elaborate provisions for assessment of deceased persons after they die. The anomalies left by Section 24B of the 1922 Act, as pointed

out in the two Supreme Court judgments referred to above, were sought to be rectified in the new provisions contained in the 1961 Act. Sections 159 and 168 of the Act are apposite in this regard and read as follows:-

> "159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.
>
> (2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—
>
> (*a*) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;
>
> (*b*) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and
>
> (*c*) all the provisions of this Act shall apply accordingly.
>
> (3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.
>
> (4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of

the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability."

"168. (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

(a) if there is only one executor, then, as if the executor were an individual; or

(b) if there are more executors than one, then, as if the executors were an association of persons;

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee."

15. It will be noticed that under Section 159(2), for the purpose of making any assessment, any proceeding taken against the deceased before his death is by deeming fiction deemed to have been taken against his legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased. Further, the legal representative under sub-section (3) of 159 is again by deeming fiction deemed to be an assessee himself. However, the liability of such representative is limited only to the extent to which the estate left by the deceased is capable of meeting the tax liability subject to the contingencies mentioned in sub-sections (4) and (5) of Section 159.

16. Similarly, under Section 168, where the assessee has left a Will, the income of the estate of the deceased person

becomes chargeable in the hands of the executor of such will. This is made clear by Section 168.

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.

20. Learned counsel for the revenue, however, contended that the principles applied in the case of the Income Tax Act should not be applied to the Central Excises and Salt Act as the latter Act is a tax on manufacture of goods and not on persons. We are afraid this argument cannot be countenanced in view of this Court's judgment in **State of Punjab** v. **M/s Jullunder**

Vegetables Syndicate, [1966] 2 S.C.R. 457. In that judgment, the question before this Court was whether a dissolved firm could be assessed to sales tax under the East Punjab General Sales Tax Act, 1948, with respect to its pre-dissolution turn over. After analyzing the East Punjab General Sales Tax Act, this Court held:-

> "The scheme of the Act is a simple one. A firm is a dealer; the said dealer is assessable to tax on its turnover, if its turnover exceeds the prescribed limit. It cannot do business while being liable to pay tax under the Act without getting itself registered and possessing a registration certificate. It is assessed to tax under Section 11 of the Act in the manner prescribed thereunder. If it discontinues its business, it shall within the specified time inform the prescribed authority accordingly. A dealer and its partners are jointly and severally responsible to pay the tax assessed on the dealer. But there is no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution. The question is whether such a power can be gathered by necessary implication from the other provisions of the Act." (at page 461)

The Court went on to say:

> "Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales-tax, it is a legal entity. If that be so, on dissolution, the firm ceases to be a legal entity. Thereafter, on principle, unless there is a statutory

> provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm which ceased to have a legal existence. As in the present case, admittedly, the firm was dissolved before the order of assessment was made, the said order was bad." (at page 462)

The Court went on to consider various High Court decisions and ultimately concluded as follows:-

> "Strong reliance was placed upon two judgments of this Court. This Court in C.A. Abraham v. Income-tax Officer, Kottayam, speaking through Shah, J., held that S.44 of the Income-tax Act set up a machinery for assessing the tax liability of firms which have discontinued their business. This was followed by this Court again in Commissioner of Income-tax, Madras v. S.V. Angidi Chettiar. These two decisions are of no help to the Revenue in the present case. Indeed, in a sense they are against it. The Income-tax Act contains an express provision for assessing a dissolved firm. Indeed, but for that provision no assessment could be made under that Act on dissolved firms.
>
> For the foregoing reasons we hold that the High Court was right in holding that the assessment order on the dissolved firm could not be supported under the provisions of the Act. The High Court has given a correct answer to the question propounded for its decision." (at page 464)

21. This judgment is a complete answer to the contention of learned counsel for the revenue inasmuch as on a parity of reasoning, sales tax is not a personal tax but a tax on the sale

of goods. Nevertheless, this Court held that in the absence of any machinery provisions to assess and collect sales tax from a deceased person – in that case it was a dissolved partnership firm – all proceedings against such deceased person/dissolved firm abate. The aforesaid judgment has been followed by this Court in **Khushi Ram Behari Lal & Co.** v. **Assessing Authority, Sangrur**, (1967) 19 STC 381 and in **Additional Tahsildar, Raipur v. Gendalal**, (1968) 21 STC 263.

22. Learned counsel for the revenue, however, strongly relied upon **M/s. Murarilal Mahabir Prasad and others** v. **Shri B.R. Vad and others**, (1975) 2 SCC 736, a case arising under the Bombay Sales Tax Act, 1953. Since this judgment has been relied upon as the sheet anchor of the revenue's case, it is important to deal with it in some detail.

23. The question that arose in the aforesaid case was whether a dissolved firm could be re-assessed to sales tax in respect of its pre-dissolution turnover. By a two to one (2:1), decision, this Court held that the Bombay Act contained the necessary provisions to re-assess such a dissolved firm in respect of its pre-dissolution turnover. The majority judgment

referred to the definition of "dealer" in the Bombay Act of 1953 and referred to this Court's judgment in **State of Punjab** v. **M/s Jullunder Vegetables Syndicate** (supra). We find that the majority judgment of this Court relied heavily on the fact that dishonest persons may dissolve a firm in order to escape liability to assessment of taxes legitimately due from them but which have escaped assessment. In paragraph 19, the majority held:

> "It is plausible that a distinction ought to be made between the death of an individual and the dissolution of a firm. Human beings, as assessees, are not generally known to court death to evade taxes. Death, normally, is not volitional and it is understandable that on the death of an individual, his liability to be assessed to tax should come to an end unless the statute provides to the contrary. With firms it is different, because a firm which incurs during its existence a liability to pay sales-tax may, with a little ingenuity, evade its liability by the voluntary act of dissolution. The dissolution of a firm could therefore be viewed differently from the death of an individual and the partners could be denied the advantage of their own wrong. But we do not want to strike this new path because the Jullundur case (supra) and the two cases which follow it have likened the dissolution of a firm to the death of an individual. Let us therefore proceed to examine the other provisions of the 1953 Act."

It then went on to quote Section 15(1) of the Bombay Sales Tax Act, 1953 and then arrived at this conclusion:

> "22. Section 15(1) contains an important clause that action thereunder can be taken by the Collector after giving a notice to the assessee under Section 14(3) of the Act within the prescribed period. Once such a notice is given, the Collector gets the jurisdiction to assess or re-assess the amount of tax due from the dealer and all the provisions of the Act "shall apply accordingly as if the notice were a notice served under" Section 14(3). Section 14(3) speaks of the power of the Collector to assess the amount of tax due from the dealer after giving notice to him, if the Collector is not satisfied that the returns furnished are correct and complete. The jurisdiction to assess or reassess which is conferred by section 15(1) is thus equated with the original jurisdiction to assess the dealer under section 14. By this method, the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. It is no answer to a notice under section 15 that the partners having dissolved the firm, the assessment cannot be reopened. It puts a premium on one's credulity to accept that having created a special jurisdiction to assess or reassess an escaped turnover, the Legislature permitted that salutary jurisdiction to be defeated by the device of dissolution. The argument of the appellants really comes to this: suppress the turnover, evade the sales-tax, dissolve the firm and earn your freedom from taxation."

The Court then went on to add:

> "24. Section 15A confers on the Collector analogous powers to asses or re-assess a dealer for taxes due prior to November 21, 1956 when the States were reorganised, if either no assessment was made for the prior period or if any turnover had escaped assessment. This provision, like the one contained in Section 15, is of general application and makes no exception in favour of dissolved firm. Therefore, if a firm was not assessed prior to the re-organisation of States or if any part of its turnover had escaped assessment, it is competent to the Collector to assess or re-assess the firm notwithstanding its subsequent dissolution. This is the necessary implication of Section 15A. It must follow as a corollary that the power to rectify a mistake apparent from the record can be exercised by the Collector under Section 35 of the Act of 1953 even after the dissolution of an assessed firm, though on conditions specified in the section. The section contains a compelling implication that evident errors can be corrected no matter whether the firm is in existence or is dissolved. Dissolution is not a panacea for liability to pay sales-tax."

It also added in paragraph 32:

> "It is indisputable that the first appellant firm was liable to be charged to sales tax on its business turnover. The charging provisions are contained in Chapter III of the Act of 1953 and Chapter II of the Act of 1959. In this appeal, we have to construe the machinery provisions of those Acts. In accordance with the view taken in the cases cited above, the machinery sections ought to be construed so as to effectuate the charging sections. The construction which we have placed on the machinery provisions of the 1953 Act will give meaning and content to the charging sections, in the sense that our construction will effectuate the provision contained in the

charging sections. The resourcefulness and ingenuity which go into well-timed dissolution of firms ought not to be allowed to be used as convenient instruments of tax evasion. As observed by Lord Dunedin in Whitney v. Commissioners of Inland Revenue:

> "A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission of clear direction makes that end unattainable."

Far from there being any crucial omission or a clear direction in the present case which would make the end unattainable, the various provisions to which we have drawn attention leave it in no doubt that a dissolved firm can be assessed on its pre-dissolution turnover."

24. It is clear that on a conjoint reading of these paragraphs this Court found that the machinery provisions contained in the Bombay Sales Tax Act, 1953, were sufficient to reassess a dissolved firm in respect of income that had escaped assessment before its dissolution. A distinction was drawn between an individual who dies and a firm that is dissolved as a device to evade tax. The Court laid great stress on the provision contained in Section 15(1) of the said Act by which the jurisdiction to assess or reassess under Section 15(1) is equated with the original jurisdiction to assess the dealer under

Section 14. By this method, the Court found the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. The crucial difference, therefore, between Section 15(1) of the Bombay Sales Tax Act, 1953 and Section 11A of the Central Excises and Salt Act is that Section 11A does not contain any such provision as is contained in Section 15(1) which equates the jurisdiction to assess or reassess with the original jurisdiction to assess the dealer in the very first place. Further, this Court also construed Section 19 of the Bombay Sales Tax Act, 1959 which would throw light on the earlier Bombay Sales Tax Act, 1953, as containing the necessary machinery provisions to assess dissolved firms in respect of escaped turnover pre-dissolution. Hence, this Court added:

> "35. It is relevant, though we did not refer to this aspect while dealing with the provisions of the 1953 Act, that section 19(3) of the 1959 Act contains a clear indication that the legislature intended that a dissolved firm could be assessed under the 1953 Act also. Section 19(3) speaks of the liability of partners for the tax due from a dissolved firm and provides that they shall be jointly and severally liable to pay the tax due from the firm under the Act of 1959 or "under any earlier law", whether such tax has been assessed before or after dissolution.

Section 2(12) of the 1959 Act defines "earlier law" to mean, inter alia, the Bombay Sales Tax Act, 1953. Thus, one of the postulates of section 19(3) at any rate is that a dissolved firm could be assessed under the 1953 Act. Such a postulate accords with the principle that if the legislature provided for a charge of sales-tax, it could not have intended to render that charge ineffective by permitting the partners to dissolve the firm, an easy enough thing to do. Nothing, in fact, would be easier to evade a tax liability than to declare that the firm, admittedly liable to pay tax, has been dissolved. Section 19(3) of the 1959 Act not only makes clear what was necessarily implied in the 1953 Act, but it throws additional light on the true construction of the earlier law. But we thought it advisable to keep section 19(3) of the 1959 Act apart while construing the 1953 Act because it is the courts, not the legislature, who have to construe the laws of the land authoritatively. As said in Craies on Statute Law:

> Except as a parliamentary exposition, subsequent Acts are not to be relied on as an aid to the construction of prior unambiguous Acts. (6th Ed., p. 146).

The limited use which may be made of the language of section 19(3) of the 1959 Act, though such a course is unnecessary, is for saying that it serves to throw some light on the Act of 1953, in case the argument is that the Act of 1953 is ambiguous.

36. Section 19(3) being quite clear and explicit, it is unnecessary to dwell on the other provisions of the Act of 1959 in order to show that a dissolved firm can be assessed under it. We may only point out that the Act of 1959 contains provisions similar to those in sections 15, 15A and 35 of the Act of 1953 on which we have dwelt at some length. Those

provisions can be found in sections 35, 35A and 62 of the Act."

25. A reading of the ratio of the majority decision contained in **Murarilal's case** (supra) would lead to the conclusion that the necessary machinery provisions were already contained in the Bombay Sales Tax Act, 1953 which were good enough to bring into the tax net persons who wished to evade taxes by the expedient of dissolving a partnership firm. The fact situation in the present case is entirely different. In the present case an individual proprietor has died through natural causes and it is nobody's case that he has maneuvered his own death in order to evade excise duty. Interestingly, in the written submissions filed by revenue, revenue has argued as follows:-

> "It is pertinent to mention that in the present case, Shri George Varghese (predecessor in interest of the appellants herein) was doing business in the name of manufacturing unit namely M/s. Kerala Tyre & Rubber Company and after the death of Shri George Varghese, his legal representatives (appellants herein) might have been in possession of the plant, machinery, stock etc. and continuing the same business, but might be in some other name in order to avoid the excise duty chargeable to the previous manufacturing unit."

26. It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in **Murarilal's case** (supra), we wish to add that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in **M/s. Murarilal's case** (supra).

27. The argument that Section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing Section

11A read with the definition of "assessee" earlier in this judgment.

28. Learned counsel for the revenue also relied upon the definition of a "person" under the General Clauses Act, 1897. Section 3(42) of the said Act defines "person as under:-

> "(42) "Person" shall include any company or association or body of individuals whether incorporated or not."

It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, **Yeshwantrao** v. **The Commissioner of Wealth Tax, Bangalore**, AIR 1967 SC 135 at pages 140, 141 para 18:

(1966) Suppl. SCR 419 at 429 A-B, **C.A. Abraham** v. **The Income-Tax Officer, Kottayam & Another**, AIR 1961 SC 609 at 612 para 6: (1961) 2 SCR 765 at page 771, **The State of Tamil Nadu** v. **M.K. Kandaswami & Others**, Air 1975 SC 1871 (para 26): (1975) 4 SCC 745 (para 26), **Commissioner of Sales Tax, Delhi & Others** v. **Shri Krishna Engineering Co. & Others**, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different – it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion.

29. Learned counsel for the revenue also cited **Girja Nandini Devi & Ors.** v. **Bijendra Narain Choudhury**, [1967] 1 S.C.R. 93 at paragraph 15, and **Shri Rameshwar Manjhi (deceased) Through his son Shri Lakhiram Manjhi** v. **Management of Sangramgarh Colliery & Ors.**, (1994) 1 SCC 292 at paragraph

12, in support of the general principle that an action begun in a court of law by a person does not cease with his death. The context of both decisions was very different. The first decision was in the context of proceedings in relation to partition of a joint family whereas the second was under the Industrial Disputes Act. Neither judgment has any direct bearing on the controversy before us.

30. It remains to consider a judgment cited by learned counsel for the appellants, namely, **Commissioner of Central Excise, Bangalore –III** v. **Dhiren Gandhi**, 2012 (281) E.L.T. 64 (Karnataka). This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To the extent that this judgment holds what is set out hereinbelow, it is correct:-

> "We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way section 11 and 11A are worded, it is amply clear, the legislature has consciously kept

away the legal heirs from answering to liabilities under the Act." (at page 69)

31. The impugned judgment in the present case has referred to **Ellis C. Reid's case** but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is therefore necessary to reiterate the law as it stands. In **Partington** v. **A.G.**, (1869) LR 4 HL 100 at 122, Lord Cairns stated:

SUPREME COURT OF INDIA
JUDGMENT

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute".

32. In **Cape Brandy Syndicate** v. **IRC**, (1921) 1 KB 64 at 71, Rowlatt J. laid down:

> "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

33. This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in **Commissioner of Sales Tax Commissioner, Uttar Pradesh** v. **Modi Sugar Mills**, 1961 (2) SCR 189 at 198:-

> "In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions

or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

34. We are, therefore, of the view that this appeal must be allowed and the judgment of the High Court of Kerala is, accordingly set aside and that of the learned Single Judge restored.

.....J.
(A.K. Sikri)

.....J.
(R.F. Nariman)

New Delhi;
July 29, 2015.

SUPREME COURT OF INDIA
JUDGMENT

Commissioner of Central Excise, Thane-II v. M/s MEC Engineers

Court	Customs, Excise and Service Tax Appellate Tribunal, Mumbai (Regional Bench, Court No. 5)
Bench	Dr. Suvendu Kumar Pati, Member (Judicial) and Anil G. Shakkarwar, Member (Technical)
Date	19.09.2024
Case no. / citation	Excise Appeal No. 90120 of 2014; Final Order No. 85948/2024

Holding in brief

Department's appeal; the respondent's proprietor had died, and his widow stated in writing that the business closed after his death. On Shabina Abraham, no amount could be recovered from the legal heirs (the proprietor having succeeded below, nothing was due from him at death). Appeal abated under Rule 22 of the CESTAT Procedure Rules, 1982; no recovery proceedings against the legal heirs in respect of the order assailed.

Paragraphs highlighted

Paras 2, 5 and 6

Status

Final order of the Tribunal.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 179.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5

EXCISE APPEAL NO. 90120 OF 2014

(Arising out of Order-in-Appeal No. PD/754/THII/2014 dated 11.09.2014 passed by the Commissioner of Central Excise & Service Tax (Appeals-IV), Mumbai-I.)

COMMISSIONER OF CENTRAL EXCISE-THANE-II
Central Excise & Service Tax Zone, Utpad Shulk Bhavan, Plot No. Commissioner-24, Secstor-E, BKC, Bandra (E), Mumbai-400051. .....Appellant

VERSUS

M/s. MEC ENGINEERS .....Respondent
7/8, Vardhaman Industrial Estate,
Gowripada, Vasai (E), Dist:Thane-401 202.

APPERANCE:
Shri Anant Khandait, Advocate for the Appellant
Shri P.K. Acharya, Supdt.,Authorised Representative for the Respondent

CORAM:
HON'BLE Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85948/2024

Date of Hearing: 19/09/2024
Date of Decision: 19/09/2024

PER: BENCH

Both sides are present.

2. Death certificate of the proprietor of the Appellant firm was produced by learned counsel for the Appellant on 13.09.2024 and it was substituted with attested photocopy for the purpose of record. In response to of our oral query regarding continuance of business of the Proprietorship firm, Widow of Respondent Proprietor Mrs. Rajni Arora submitted in writing that business was closed after the death of her husband.

3. Learned counsel for the Respondent also produced judgment of Hon'ble Supreme Court passed in the case of Sabina Abraham V/s. Collector of Central Excise And Customs reported in 2015 (322) E.L.T. 372(S.C.)[29-07-2015] and makes a submission that duty and other sums are not payable by the dead

person's legal heirs, as has been observed by the Hon'ble Supreme Court in the same judgment.

4. Learned counsel for the Appellant Department is present. He took note of the legal position and left it to the decision of the court to pass appropriate order concerning this appeal.

5. Having regard to the submission and having regard to the fact that by the time the proprietor was dead, no amount was due on him as he succeeded in the appeal before the authorities below, we consider it a fit case to abate the appeal filed against the Respondent deceased proprietor by the department as no amount could be recoverable from the legal heirs, in view of the findings of the Hon'ble Supreme Court in Shabina Abraham, cited above.

Learned counsel for the Respondent further submits that appeal is otherwise also not maintainable on monetary limit, as fixed in under the litigation policy of the Government of India.

6. We, therefore, abate the appeal under Rule 22 of the CESTAT Procedure Rules, 1982. No recovery proceedings in any manner whatsoever can be initiated against the legal heirs in respect of the order assailed herein.

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Arti

M/s Evergreen Engineering Works v. Commissioner of Central Excise & Service Tax, Jamshedpur

Court	Customs, Excise and Service Tax Appellate Tribunal, Kolkata (Eastern Zonal Bench, Court No. 2)
Bench	R. Muralidhar, Member (Judicial) and K. Anpazhakan, Member (Technical)
Date	13.09.2024
Case no. / citation	Service Tax Appeal No. 393 of 2011; Final Order No. 77011/2024

Holding in brief

Both partners of the appellant firm had died. The Tribunal held that the confirmed demands abate on the expiry of the partners and dismissed the appeal as infructuous. A short order without reasoning or citation of authority.

Paragraphs highlighted

Paras 1 and 2 (whole order)

Status

Final order of the Tribunal; a short order that records the death and abatement only.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 182.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No.393 of 2011

M/s. Evergreen Engineering Works **: Appellant**
Post Office Road, Baikunth Nagar, Mango,
Jamshedpur-831 012

VERSUS

Commissioner of Central Excise & Service Tax, **: Respondent**
143, New Baradwari, Sakchi, Jamshedpur.

APPEARANCE:

Mr. Arnab Chakraborty,Advocate for the Appellant

Mr. Debopriyo Sue for the Respondent

CORAM:

HON'BLE SHRI R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

DATE OF HEARING: 13.09.2024

FINAL ORDER NO. 77011/2024
ORDER

The Ld. Counsel submits that both the partners of the appellant firm have expired. He submits copies of their Death Certificates.

2. As the confirmed demands abate in view of the expiry of the partners, we dismiss the Appeal as infructuous.

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RG

Shaista Parween (Wife of Late Sarfaraz Ahmad) v. Assistant Commissioner, GST and Central Excise, Rourkela-I Division

Court	High Court of Orissa at Cuttack
Bench	Dr. Sanjeeb K. Panigrahi and Murahari Sri Raman, JJ.
Date	06.11.2026
Case no. / citation	W.P.(C) No. 446 of 2025

Holding in brief

Order-in-Original of 04.05.2023 raising service tax demand under Section 73 of the Finance Act, 1994 was passed in the name of a service provider who had died on 27.04.2020; recovery under Section 87 was then threatened against the widow. Applying Shabina Abraham, a legal heir is not the 'assessee' (Section 65(7)) or his 'agent'; there is no provision in Chapter V to continue Section 73 proceedings against a legal heir, so on death the proceeding abates. Order-in-Original and the recovery direction set aside.

Paragraphs highlighted

Paras 3, 7.18, 7.23, 7.25, 7.28, 8, 8.1 and 9

Status

Final judgment of a Division Bench. Follows Kanakalata Senapati (Orissa, 2026 SCC OnLine Ori 156). Later history not checked.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 184.

ORISSA HIGH COURT : CUTTACK

W.P.(C) No.446 of 2025
CNR No.ODHC01-093437-2024

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

* * *

Shaista Parween
Aged about 52 years
Wife of the deceased husband
Sarfaraz Ahmad
Residing at: Yasin Manzil
Dargahi Mohalla, Old Station Road
Raurkela, Odisha – 769 001. ... Petitioner

-VERSUS-

The Assistant Commissioner
GST and Central Excise
Office of the Assistant Commissioner
GST and Central Excise
Rourkela-I Division, Nayabazar
Sector-21, Rourkela
Odisha – 769 010. ... Opposite party

Counsel appeared for the parties:

For the Petitioner : M/s. Saswat K. Acharya,
Abhijit Agarwal,
Abhisek Agarwal and
Jaish Joshi,
Advocates

For the Opposite party : Mr. Avinash Kedia,
Junior Standing Counsel
Income Tax Department

P R E S E N T:

HONOURABLE
DR. JUSTICE SANJEEB K PANIGRAHI

AND

HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing : 03.11.2026 :: Date of Order : 06.11.2026

ORDER

The Order-in-Original dated 04.05.2023 (Annexure-4) of the Assistant Commissioner of Goods and Services Tax and Central Excise, Rourkela-I Division, Rourkela raising a demand of service tax under Section 73, Section 75, Section 77 and Section 78 of Chapter-V of the Finance Act, 1994 (for convenience hereinafter be referred to as "the Act, 1994"), pertaining to Financial Year 2015-16, is assailed in the afore-noted writ petition craving to invoke extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India with the prayer(s) to grant following relief(s):

"In view of the aforesaid facts and circumstances, it is humbly prayed that this Hon'ble Court may kindly be pleased to:

A. Admit this writ petition and issue appropriate writ(s) quashing the impugned order passed by the

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opposite party dated 04.05.2023 under Annexure-4, and all such proceedings consequent thereto;

B. Pass such other order(s) as may be deemed just and proper in the interest of justice;

And for this act of kindness, the petitioner as in duty bound shall ever pray."

2. Pursuant to the Order-in-Original No.39/ACCE/ST/ RKL-1/2023, dated 4th May, 2023 (Annexure-4), the Assistant Commissioner, Raurkela-I Division, Raurkela-opposite party on 5th April, 2024 issued notice dated 05.04.2024 (Annexure-1) in the name of Sarfaraz Ahmad (since dead), the husband of petitioner (Shaista Parween) for payment of an amount of Rs.66,67,040/- and interest as applicable.

2.1. Enclosing death certificate issued by the Registrar, Birth and Death), Municipal Corporation, Gurugram, the petitioner intimated on 2nd August, 2024 to the authority concerned that her husband has passed away on 27th April, 2020 (See, Annexure-2). Despite such information made available to the authority-opposite party, Order-in-Original was passed on 04.05.2023 and a letter dated 05.04.2024 was issued demanding to deposit an outstanding amount arising out of said Order-in-Original with a warning "failing which necessary recovery action will be initiated" against the present petitioner under the provisions of Section 87 of the Finance Act, 1994, as amended read with Section 79 of the CGST Act, 2017.

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2.2. Objecting to such a recourse to be initiated, questioning jurisdiction of the authority concerned the petitioner knocked the doors of this Court by way of filing the instant writ petition with prayer to quash the Order-in-Original.

3. The short issue involved in this matter is whether the Assistant Commissioner of Central Goods and Services Tax and Central Excise, Rourkela-I Division, Rourkela was justified in ignoring the intimation dated 2nd August, 2024 apprising that the noticee (Sarfaraz Ahmed) had already left for heavenly abode since 27th April, 2020 and proceed to pass Order-in-Original, dated 4th May, 2023 raising demand of service tax under the provisions of Chapter-V of the Finance Act, 1994 and warned to take coercive measure against the petitioner-wife of the service provider (namely Sarfaraz Ahmed).

3.1. The matter was on board on 15.01.2025 and in course of hearing the issue being agitated by the Sri Abhijeet Agarwal, learned Advocate, the learned Junior Standing Counsel for the opposite party sought for accommodation to obtain instructions. The matter again appeared before this Court for hearing on 18.12.2025, when the learned Junior Standing Counsel instead of filing response, sought to argue the matter. However, necessary order could not be passed. The matter came up before this Court 03.11.2026. On the consent of

counsel for both the parties, the matter is heard for final disposal.

3.2. Accordingly, heard Sri Abhijeet Agarwal, learned Advocate for the petitioner and Sri Avinash Kedia, learned Junior Standing Counsel for the opposite party.

4. Sri Abhijeet Agarwal, learned Advocate contended that the Order-in-Original (Annexure-4) is *non est* in the eye of law and a nullity inasmuch as the same cannot subsist as against a dead person. It is explained that in absence of any statutory provision to continue with the proceeding against a non-existing person, the proceeding must stand abated.

4.1. In furtherance to such submission, the learned Advocate would argue that merely because the income for the Financial Year 2015-16 was disclosed in the returns furnished under Section 139 of the Income Tax Act, 1961, it would not *ipso facto* attract service tax liability under Chapter-V of the Finance Act, 1994. The record would reveal that the initiation of proceeding contemplating fastening liability and recovery thereof under provisions of the said Act was on the basis of presumption. Thus, the *ex parte* Order-in-Original, being against a dead person, of course, without hearing, cannot be held to be tenable in the eye of law.

4.2. It is sought to be explained by the learned Advocate for the petitioner that Section 65 of Chapter-V of the Finance Act, 1994, enumerates the "taxable service" provided *"to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing accommodation for a continuous period of less than three months"*. The purpose of above section is to levy service tax on "taxable service" specified therein. No finding of fact is returned by the Assistant Commissioner, Central Tax, GST and Central Excise, Raurkela-I Division to demonstrate that the service provider at any time received amount towards service provided for "a continuous period of less than three months". The presumptive basis of fastening liability is discernible from the following words contained in the Order-in-Original:

"I find that the noticee has received Rs.2,28,86,339/-only towards providing taxable service during the period 2015-16 but they appears to be declared NIL taxable value in ST-3 returns during the period."

The authority ought to have examined whether such information of receipt available with him comes within the fold of Notification relating to Mega Exemption. It is contended that while income from services provided may attract liability under the Income Tax Act, 1961; nevertheless, service tax liability cannot be saddled *ex hypothesi* under the Finance Act, 1994, particularly in

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the absence of material on record falling within the scope of charge.

4.3. It is articulated by the learned Advocate that unlike provisions of Section 159 of the Income Tax Act, 1961, no statutory provision is available in the Finance Act, 1994 to comprehend that the legal representatives, much less the legal heirs, can be roped into the ken of service tax. Stemming on the interpretation propounded by the Hon'ble Supreme Court of India in the case of *Shabina Abraham Vrs. Collector of Central Excise and Customs, (2015) 10 SCC 770* referring to a Judgment rendered by the Bombay High Court in *CIT Vrs. Ellis C. Reid, AIR 1931 Bom 333* [which was referred to with approval in *CIT Vrs. James Anderson, AIR 1964 SC 1761*], it is, thus, submitted that if the law does not explicitly provide for the liability of legal representatives, then such liability arising out of service provided by the deceased cannot be inferred or imposed by analogy, especially when a similar provision does exist in another tax law but is absent in the statute under which demand is raised by way of assessment. Highlighting the principle of *casus omissus* it is impressed upon that the Court need not venture to fill the legislative gaps.

5. Sri Avinash Kedia, learned Junior Standing Counsel representing the opposite parties submitted that since there was no representation on behalf of the assessee

despite notice/intimation, the authority concerned cannot be faulted with. Finding no other alternative, he had to conclude the proceeding and has rightly determined the tax liability. Strongly objecting to entertain the writ petition, he urged that the petitioner is not remediless. The Finance Act, 1994 enables the petitioner to ventilate her grievance before the Appellate Authority under Section 85. Therefore, he fervently emphasised for relegating the petitioner to alternative remedial forum.

6. The factual matrix and the arguments advanced by the counsel for the respective parties leaves sole question for consideration is whether proceeding under Section 73 of Chapter-V of the Finance Act, 1994 initiated by issue of Notice can proceed further culminating in passing of Order-in-Original in the name of the service provider-assessee on his death, notwithstanding information regarding death is intimated to the authority concerned *vide* letter dated 02.08.2024 (acknowledged by the Office to have received said letter on 05.08.2024)?

7. Before delving into the merit of the matter to examine whether death of an assessee stops the clock ticking to proceed further to assess liability, *a fortiori,* to have regard to *Shabina Abraham Vrs. Collector of Central*

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Excise, (2015) 10 SCC 770[1]. Paragraphs 32 to 34 of said reported judgment need to be quoted:

> *"32. The impugned judgment in the present case has referred to Ellis C. Reid case, 1930 SCC OnLine Bom 58 = AIR 1931 Bom 333 but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short-levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court.* ***It flies in the face of first principle when it comes to taxing statutes.*** *It is therefore necessary to reiterate the law as it stands.*
>
> *In Partington Vrs. Attorney General, (1869) LR 4 HL 100, Lord Cairns stated: (LR p. 122)*
>
> *'**** ***If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the State, seeking to recover the tax, cannot bring the citizen within the letter of the law, the citizen is free, however apparently within the***

[1] Equivalent citation: *(2015) 34 GSTR 146 = (2015) 83 VST 450.*

spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable, construction, certainly such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute*.'*

33. *In Cape Brandy Syndicate Vrs. IRC, (1921) 1 KB 64, Rowlatt, J. laid down: (KB p. 71)*

' in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used****.'*

34. *This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in CST v. Modi Sugar Mills Ltd., AIR 1961 SC 1047 = (1961) 2 SCR 189, SCR at p. 198 = (AIR p. 1051, para 11)*

'11. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. ***It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency.****' ***"*

7.1. Hence, what is not explicit cannot be construed to be implicit in the provisions of the statute. Rudimentary principles of taxation is reflected in *Mineral Area Development Authority Vrs. Steel Authority of India, (2024) 7 SCR 1549* [nine-Judge Bench of the Hon'ble Supreme Court of India] with the following observations:

> *"182. Conceptually, a tax has four elements—*
>
> *(i) the nature of the tax which prescribes the taxable event attracting the levy;*
>
> *(ii) the person who is liable to pay tax;*
>
> *(iii) the rate at which the tax is paid; and*
>
> *(iv) the measure or value to which the rate will be applied for computing the liability.*
>
> *[Govind Saran Ganga Saran Vrs. CST, (1985) Supp. SCC 205 (6); Mathuram Agrawal Vrs. State of M.P., (1999) 8 SCC 667 (12); Union of India Vrs. Mohit Minerals (P) Ltd., (2022) 10 SCC 700 (97)].*
>
> *183. The subject matter of taxation has been exhaustively enunciated in the Union and State Lists in the Seventh Schedule of the Constitution. [Chhotabhai Jethabhai Patel and Co. Vrs. Union of India, (1962) Supp 2 SCR 1 (68)].*
>
> *The occurrence of the taxable event creates or attracts the liability to tax. [Goodyear India Ltd. Vrs. State of Haryana (1990) 2 SCC 71]. For example, In re Sea Customs Act, S.20(2), (1964) 3 SCR 787 (23) this Court held that in the case of excise duties, the*

taxable event is the manufacture of goods and the duty is not directly on the goods but the manufacture thereof. Thus, the activity of the manufacture of goods attracts the liability for the levy of excise duties.

184. *The incidence of taxation pertains to the manner in which the burden of tax would fall on a person. [Godfrey Phillips India Ltd Vrs. State of UP, (2005) 2 SCC 515 (47)].*

The incidence of tax was exemplified by the decision of this Court in State of Karnataka Vrs. Drive-In Enterprise, (2001) 2 SCR 378 = (2001) 4 SCC 60 (13).

While dealing with the validity of an entertainment tax imposed by the State of Karnataka, it was held that since an entertainment necessarily requires a person who is entertained, the incidence of the tax is on the persons entertained. The incidence of tax is relatable to the person who bears the ultimate burden of the tax.

185. *The subject matter of Entry 50 of List II is "taxes on mineral rights." As discussed in the above segment, 'mineral rights' is a comprehensive term to mean the bundle of rights with respect to minerals. The taxable event under Entry 50 of List II would relate to the exercise of mineral rights.*

***

188. *The taxable event with respect to taxes on mineral rights will be the exercise of mineral rights. The incidence of the tax on mineral rights depends upon who is exercising the right. We do not agree with the*

respondents that the incidence of a tax on mineral rights would necessarily have to be on the owner of the land. A tax under Entry 49 of List II is not only levied on the owner of the land, but also an occupier. [See Anant Mills Co. Ltd. Vrs. State of Gujarat (1975) 2 SCC 175].

Similarly, a tax on mineral rights could be levied on any person who has an interest in the minerals.

189. The measure of tax is a matter of legislative policy. The legislature can select any measure of tax to compute liability, as long as it has a reasonable nexus with the nature of the tax. Hence, it is for the legislature to devise an appropriate measure of tax to compute the tax liability, provided the measure has a nexus with the nature of levy, that is a tax on mineral rights."

7.2. Analysing from the aforesaid angle, the field of legislation for exigibility of Service Tax can be traced out to Entry 97 of List-I of Seventh Schedule appended to the Constitution of India in pursuance of Article 246 of the Constitution of India[2]. The taxable event, measure of

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[2] By dint of the Constitution (One Hundred and First Amendment) Act, 2016, the Central Goods and Services Tax Act, 2017, having been enacted came into force with effect from 01.07.2017. Section 173 and Section 174 of said Act, 2017 provide as follows:

"173. Amendment of Act 32 of 1994.—
Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

174. Repeal and savings.—
(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and

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tax and rate of tax are spelt out in Section 66 to Section 66F read with Section 67 and Section 67A. However, the term "taxable person" is defined by providing the meaning of "assessee" in Section 65(7) of the Act, 1994.

7.3. In *State of Telangana Vrs. Tirumala Constructions, (2023) 15 SCR 141* it is stated thus:

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the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as 'such amendment' or 'amended Act', as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:
Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed; or

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal."

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> *"3. The pre-Amendment constitutional scheme had a vision of taxation of goods and services supplied within India. Excise and customs duty and excise on manufacture were within the scope of the legislative powers of the Union Parliament[3], under the Seventh Schedule. No separate entry for Service Tax existed in the Constitution at the time it was enacted. In Tamil Nadu Kalyana Mandapam Assn. Vrs. Union of India, 2004 Supp (1) SCR 169 = (2004) 5 SCC 632 this court held that service tax as a subject matter was within the "residuary power" of the Union; nevertheless, Entry 92C was introduced into the Union List by the Constitution (88th Amendment) Act, 2004 clarifying that the Union had exclusive authority to impose a service tax. Taxation of sale and movement of goods was within the exclusive purview of the States, by Entries 52 and 54 of the State List (List II of the VIIth Schedule to the Constitution). The delineation of Union and State taxation powers through the Union and State Lists of the Seventh Schedule was precise and clear, leaving little room for any overlap in the kind of taxes that the Union could impose and those that a State could levy. The "Concurrent List" (or List III of the VIIth Schedule) contained no taxing entries, signifying that the constitutional scheme for taxation was to apportion two distinct, exclusive spheres of taxation for the Union and the States."*

7.4. With the above perspective of law, this Court now proceeds to examine the issue involved in the instant case.

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[3] Entries 83 and 84, List I, Seventh Schedule of the Constitution of India.

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7.5. From the above factual matrix, which remained uncontroverted by the learned Junior Standing Counsel, it surfaced that it was within the knowledge of the Assistant Commissioner of Goods and Service Tax and Central Excise, Raurkela-I Division on the date of passing the Order-in-Original, dated 04.05.2023 that the assessee-Sarfaraz Ahmed expired on 27th April, 2020; yet he has also directed a dead person to discharge outstanding liability by letter dated 05.04.2024. Law is well settled that if a proceeding is initiated against a dead person, it should be treated as a nullity. In the instant case, during the course of proceeding under Section 73 of the Act, 1994, the assessee, an individual proprietor, is dead, and such death was on account of natural cause, but not manoeuvred one.

7.6. Section 65(7) of the Act, 1994 defines the term "assessee" to mean "a *person* liable to pay the service tax and includes *his agent*".

7.7. In the case at hand service provider, namely Sarfaraz Ahmed, is the person liable to pay the service tax. The terms "person" and "agent" are not defined in Chapter-V of the Finance Act, 1994. To understand the connotation of the words not defined in the statute, the Hon'ble Supreme Court of India in *MSCO Pvt. Ltd. Vrs. Union of India, (1985) 1 SCR 1146* laid down the following as a guiding principle:

"The expression 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment' etc., But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. ***It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject.*** *Craies on Statute Law (6th Edn.) says thus and page 164:*

'In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. 'It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone.', Macbeth Vrs. Chislet, (1910) A.C. 220, 223.'

When the word to be construed is used in a taxing statute or a notification issued thereunder it should be understood in its commercial sense."

7.8. In the case of *Collector of Customs, Bombay Vrs. Swastic Woollens Pvt. Ltd., (1988) Supp. 2 SCR 370* the observation made is as follows:

"We are of the opinion that when no statutory definition is provided in respect of an item in the Customs Act or the Central Excises Act, the trade understanding, meaning

thereby the understanding in the opinion of those who deal with the goods in question is the safest guide."

7.9. In *Union of India Vrs. G.S. Chatha Rice Mills, (2020) 14 SCR 571* it has been laid down as follows:

> *"44. In Kolhapur Canesugar Works Ltd. Vrs. Union of India (UOI), AIR 2000 SC 811, Constitution Bench of this Court had to decide, inter alia, if Rules 10 and 10-a of the Central Excise Rules could be considered a 'Central Act' as defined in Section 3(7) of the General Clauses Act. This decision of the Court, albeit subsequently questioned for its interpretation of 'repeal' through omission [which does not have a bearing on the issue at hand], was not assailed for its interpretation of "Central Act" within the General Clauses Act. Speaking through Justice D.P. Mohapatra, this Court answered the question of whether the aforesaid Rules constituted a 'Central Act' in the negative, in the following terms:*
>
> > *'32.* ***When the term Central Act or Regulation or Rule is used in that Act reference has to be made to the definition of that term in the statute. It is not possible nor permissible to give a meaning to any of the terms different from the definition. It is manifest that each term has a distinct and separate meaning attributed to it for the purpose of the Act. Therefore, when the question to be considered is whether a particular provision of the Act applies in a case then the clear and unambiguous language of that provision has to be given its true meaning and import.*** *The Full Bench has equated a 'rule' with 'statute'. In our*

*considered view this is impermissible in view of the specific provisions in the Act. When the Legislature by clear and unambiguous language has extended the provision of Section 6 to cases of repeal of a 'Central Act' or 'Regulation', it is not possible to apply the provision to a case of repeal of a 'Rule'. The position will not be different even if the rule has been framed by virtue of the power vested under an enactment; it remains a 'rule' and takes its colour from the definition of the term in the Act (General Clauses Act).' ***"*

7.10. In *Concise Law Dictionary, by P.G. Osborn, published by Sweet and Maxwell, 1927,* the term "agent" is described as a person employed to act on behalf of another. An act of an agent, done within the scope of his authority, binds his principal. There are four kinds of agents—

(1) Universal.—

Appointed to act for the principal in all matters, *e.g.*, where a party gives another a universal power of attorney.

(2) General.—

Appointed to act in transactions of a class, e.g., a banker, solicitor. The scope of authority of such agent is the authority usually possessed by such agents, unless notice is given to third parties of some limitation.

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(3) Special.—

Appointed for one particular purpose. The agent's scope of authority is the actual authority given to him.

(4) Agent of necessity.—

A person, who in urgent circumstances acts for the benefit of another, there being no opportunity of communicating with that other.

7.11. To conceive the meaning of "agent", if one turns to Section 182 of the Contract Act, the term "agent" has been defined as being a person employed to do any act for another, or to represent another in dealings with a third person. Section 186 lays down that the authority of the agent may be expressed or implied. Section 187 lays down that an authority is said to be expressed when it is given by the words spoken or written, while it is implied when it is to be inferred from the circumstances of the case and things spoken or written or the ordinary course of dealings. It will, thus, be seen that under the Contract Act, an agent may be authorised expressly by the principal to do a particular act or his power to do such act may be implied from other circumstances. It is not the case of the opposite party that the deceased service provider engaged his legal heirs as agents in his business.

7.12. It may be pertinent to take note of the following observations found in *Mahavir Prasad Amrit Lal Vrs. Commissioner of Sales Tax, (1977) 39 STC 531 (All)*:

"The word 'employee' as commonly understood in vernacular, means a servant and the present case has been argued by the parties on this footing. Now a servant is not an agent of the master for all purposes. The distinction between an agent and a servant has been considered by their Lordships of the Supreme Court in the case of Lakshminarayan Ram Gopal & Son Ltd. Vrs. Government of Hyderabad through the Commissioner of Excess Profits Tax, (1954) 25 ITR 449 (SC) = (1955) 1 SCR 393[4]. Their Lordships of the Supreme Court after referring to Halsbury's Laws of England have approved of the distinction laid down by these authorities between an agent and a servant. It will be profitable to extract the decision of the Supreme Court on this point:

'10. The distinction between a servant and an agent is thus indicated in Powell's Law of Ageney, at page 16:

(a) Generally a master can tell his servant what to do and how to do it.

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[4] *Lakshminarayan Ram Gopal & Son Ltd. Vrs. Government of Hyderabad through the Commissioner of Excess Profits Tax, (1954) 25 ITR 449 (SC) = (1955) 1 SCR 393* has been referred to in *Singapore Airlines Ltd. Vrs. CIT, Delhi, (2022) 9 SCR 1* with the following observations:

"21. The definition of a "principal" and an "agent" is provided under Section 182 of the Contract Act. The provision states:

182. "Agent" and "principal" defined.—
An "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

22. Due to the interlinked nature of Section 194H of the Income Tax Act and Section 182 of the Contract Act, our examination will axiomatically focus upon both provisions."

(b) *Generally a principal cannot tell his agent how to carry out his instructions.*

(c) *A servant is under more complete control than an agent,*

and also at page 20:

(a) *Generally, a servant is a person who not only receives instructions from his master but is subjected to his masters right to control the manner in which he carries out those instructions. An agent receives his principals instructions but is generally free to carry out those instructions according to his own discretion.*

(b) *Generally, a servant, qua servant, has no authority to make contracts on behalf of his master. Generally, the purpose of employing an agent is to authorise him to make contracts on behalf of his principal.*

(c) *Generally, an agent is paid by commission upon effecting the result which he has been instructed by his principal to achieve. Generally, a servant is paid by wages or salary.*

11. *The statement of the law contained in Halsbury's Laws of England, Hailsham Edition: Vol. 22, page 113, paragraph 192, may be referred to in this connection:*

'The difference between the relations of master and servant and of principal and agent may be said to be this: a principal has the right to direct what work

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the agent has to do : but a master has the further right to direct how the work is to be done.'

The position is further clarified in Halsbury's Laws of England, Hailsham Edition-Vol.1, at page 193, Article 345, where the positions of an agent, a servant and independent contractor are thus distinguished:

'An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master and is bound to conform to all reasonable orders given him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent as such is not a servant, but a servant is generally for some purposes his masters implied agent, the extent of the agency depending upon the duties or position of the servant."

7.13. This Court, thus, finds that the word "agent" as found in the definition of the term "assessee" *vide* Section 65(7) of the Act, 1994, it cannot be treated as equal in status of "legal heir".

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7.14. The meaning of "person" can be derived from the definition of the term ascribed to in Section 3(43) of the General Clauses Act, 1897, which reads thus:

> *"(42) "person" shall include any company or association or body of individuals, whether incorporated or not;"*

7.15. The Hon'ble Supreme Court of India in *Shabina Abraham Vrs. Collector of Central Excise and Customs, (2015) 10 SCC 770* having noted the said definition held as follows:

> *"It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, Yeshwantrao Vrs. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135 at pages 140, 141 para 18 = (1966) Suppl. SCR 419 at 429 A-B, C.A. Abraham Vrs. The Income Tax Officer, Kottayam & Another, AIR 1961 SC 609 at 612 para 6 = (1961) 2 SCR 765 at page 771, The State of Tamil Nadu Vrs. M.K. Kandaswami & Others, AIR 1975 SC 1871 (para 26) = (1975) 4 SCC 745 (para 26), Commissioner of Sales Tax, Delhi & Others Vrs. Shri Krishna Engineering Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the*

context of construing provisions which are designed to prevent tax evasion. The question at hand is very different— it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion."

7.16. To adhere to a meaning of a term not defined, Clause (121) of Section 65 of the Finance Act, 1994 provides for the following:

"Words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the Rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:

Explanation.—
For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration:

Provided that the provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint."

7.17. In the context of whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacturer after he is dead, in the

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case of *Shabina Abraham Vrs. Collector of Central Excise and Customs, (2015) 10 SCC 770* it is held as follows:

> *"26. A reading of the ratio of the majority decision contained in Murarilal Mahabir Prasad Vrs. B.R. Vad, (1975) 2 SCC 736 would lead to the conclusion that the necessary machinery provisions were already contained in the Bombay Sales Tax Act, 1953 which were good enough to bring into the tax net persons who wished to evade taxes by the expedient of dissolving a partnership firm. The fact situation in the present case is entirely different. In the present case an individual proprietor has died through natural causes and it is nobody's case that he has maneuvered his own death in order to evade excise duty. Interestingly, in the written submissions filed by revenue, revenue has argued as follows:*
>
> *'It is pertinent to mention that in the present case, Shri George Varghese (predecessor in interest of the appellants herein) was doing business in the name of manufacturing unit namely M/s. Kerala Tyre & Rubber Company and after the death of Shri George Varghese, his legal representatives (appellants herein) might have been in possession of the plant, machinery, stock etc. and continuing the same business, but might be in some other name in order to avoid the excise duty chargeable to the previous manufacturing unit.'*
>
> *27. It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in Murarilal's case (supra), we wish to add*

that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in M/s. Murarilal's case (supra).

28. The argument that Section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing Section 11A read with the definition of "assessee" earlier in this judgment.

***"

7.18. In view of Section 65(121) of Chapter-V of the Finance Act, 1994, the exposition of law in *Shabina Abraham (supra)* shall apply to the present fact-situation of the case.

7.19. Glance at Section 65(7) reveals that the "assessee" is a "person" and said term includes "his agent". It is also well-settled that in order to determine whether the word 'includes' has that enlarging effect. The interpretation and purport of "includes" in definition clause being referred to a three-Judge Bench of the Hon'ble Supreme

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Court of India, in the case of *Ramala Sahkari Chini Mills Ltd. Vrs. Commissioner of Central Excise, Meerut-I, Meerut, Civil Appeal No. 3976 of 2007, decided on February 19, 2016* it has been held that:

"We have heard the learned counsels for the parties. We have also read and considered the order dated 29th November, 2010 of this Court referring the matters to a larger bench for a decision on the question as to whether the definition of the term "input" in Rule 2(g) of the CENVAT Credit Rules, 2002 is to be understood to include items beyond the six items mentioned specifically in Rule 2(g). The answer to the question referred, according to us, is self-contained in the order of reference which has referred, inter alia, to a three judge bench decision of this Court in Regional Director, Employees' State Insurance Corporation Vrs. High Land Coffee Works of P.F.X. Saldanha and Sons, (1991) 3 SCC 617. There are other decisions of this Court by Coordinate Benches (three judge) on the issue which need not be adverted to specifically inasmuch as it has been clearly held in Regional Director, Employees' State Insurance Corporation (supra) that ***the word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.*** *We answer the question referred to us in the above manner leaving it for the appropriate bench of this Court to decide on the factual parameters of the case(s) and the entitlement of the assessee(s) to CENVAT credit in the facts of each case."*

7.20. Three-Judge Bench of the Hon'ble Supreme Court of India in the case of *B.B. Patel Vrs. DLF Universal Ltd.*,

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(2022) 8 SCR 51 took note of decision rendered in *Philips Medical Systems (Cleveland) Inc. Vrs. Indian MRI Diagnostic & Research Ltd., (2008) 10 SCC 227.*

7.21. In *Philips Medical Systems (Cleveland) Inc. Vrs. Indian MRI Diagnostic & Research Ltd., (2008) 10 SCC 227* it has been explained as follows:

> *"24. In the original Section 36A [of the Monopolies and Restrictive Trade Practices Act, 1969] which was introduced by 1984 amendment, it was necessary to attract the provision that some injury or the unfair trade practice should have caused some loss to the consumer. By the 1991 amendment to Section 36A, the requirement to establish loss or injury to the consumer has been deleted. Also, another change brought out by the 1991 amendment was that while the original Section 36A had adopted an exhaustive definition of unfair trade practice, the 1991* ***amendment has given an inclusive and not an exhaustive definition of unfair trade practice****.*
>
> *25. However, we are of the opinion that principles of ejusdem generis and noscitur a sociis will apply to the interpretation of Section 36A as amended in 1991. Applying these well-known principles of interpretation we are of the opinion that Section 36A does not apply in a situation where goods are not sold at all. It only applies where goods in fact are sold.*
>
> ***
>
> *28. No doubt by the 1991 amendment the definition of unfair trade practice was made inclusive and not*

exhaustive, but this does not mean that when interpreting the amended Section 36A we should disregard the object for which Section 36A was enacted. Thus in Hemens (Valuation Officer) vs. Whitsbury Farm and Stud Ltd., (1988) 1 All ER 72 (HL), in construing Section 2(3) of the Rating Act, 1971 which defines 'Livestock' to include any mammal or bird kept for the production of food or wool or for the purpose of its use in the farming of land, the word livestock was not given the wide meaning (in contradiction to deadstock) to include any animal whatsoever and was held not to extend to thorough bred horses not kept for use in the farming of land.

29. Similarly, in South Gujarat Roofing Tile Manufacturers Association Vrs. State of Gujarat AIR 1977 SC 90 (vide pp. 93-94) and Hindustan Aluminium Corporation Vrs. State of UP, AIR 1981 SC 1649, the inclusive definition was given a restrictive meaning. As observed by Wanchoo, J. in Vanguard Fire and General Insurance Co. Ltd., Madras Vrs. Fraser & Ross, AIR 1960 SC 971, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning; intended to be conveyed by the use of the words under the circumstances. ***No doubt, because of the inclusive definition the meaning of the expression 'unfair trade practice' goes beyond the specific clauses mentioned in Section 36A, but that does not mean that the meaning will go beyond the very object of Section 36A.****"*

7.22. The Hon'ble Supreme Court of India in the case of *Thalappalam Ser. Coop. Bank Ltd. Vrs. State of Kerala,*

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(2013) 14 SCR 475 interpreted the meaning of "means and includes" in the following words:

> *"27. Legislature, in its wisdom, while defining the expression 'public authority' under Section 2(h) [of the Right to Information Act, 2005], intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions 'means and includes'.* ***When a word is defined to 'mean' something, the definition is prima facie restrictive and where the word is defined to 'include' some other thing, the definition is prima facie extensive. But when both the expressions 'means' and 'includes' are used, the categories mentioned there would exhaust themselves.*** *Meanings of the expressions 'means' and 'includes' have been explained by this Court in Delhi Development Authority Vrs. Bhola Nath Sharma (Dead) by LRs and others, (2011) 2 SCC 54, (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions."*

7.23. One of the legal heirs of the deceased service provider in the status of "individual" can neither be construed as a "person liable to pay service tax" nor is he/she treated to be "his agent". The proceeding under Section 73 of the Act, 1994 could not, therefore, have been completed after the death of the service provider and the Order-in-Original being issued in the name of a dead person,

namely Sarfaraz Ahmed, cannot be held to be tenable in the eye of law.

7.24. It is also noticed that a notice *vide* Letter dated 5th April, 2024 (Annexure-1) has come to be issued by the opposite party with the following text under the caption: "Recovery of Government Dues/Arrears":

> *"Therefore, you are requested to pay the above amount of Service Tax (including Penalty and Late Fee, if any) of Rs.66,67,040/- along with interest, as applicable within 15 (fifteen) days of receipt of this letter and submit the payment particulars to this office, failing which necessary recovery action will be initiated against you under the provisions of Section 87 of the Finance Act, 1994, as amended read with Section 79 of the CGST Act, 2017. "*

7.25. As the "assessee" is dead and gone, the actions contemplated under Section 87 of the Act, 1994 cannot be taken inasmuch as the Order-in-Original itself is vitiated in view of discussions made herein above and on the ratio of *Shabina Abraham (supra).* A co-ordinate Bench of this Court in the case of *Smt. Kanakatala Senapati Vrs. The Assistant Commissioner GST and Central Excise, Bhubaneswar-II Division and another, 2026 SCC OnLine Ori 156* following *Shabina Abraham (supra)* held the question in favour of the petitioner and against the opposite party-Revenue.

7.26. Basic allegation seems to be failure of the service provider to get himself registered, as he is allegedly to

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have concealed the fact. Section 69 deals with "Registration" of service provider, which reads as follows:

> *"(1)* ***Every person liable to pay the service tax under this Chapter or the rules made thereunder*** *shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*
>
> *(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed."*

7.27. Said section employs the expression "person liable to pay the service tax". This makes abundantly clear that it is the "person", as defined in Section 3(42) of the General Clauses Act, 1897 and expounded by the Hon'ble Supreme Court of India in *Shabina Abraham (supra),* liable to get registered. Section 73 with the marginal heading "Recovery of service tax not levied or paid or short levied or short paid or erroneously refunded" in sub-section (1) makes it ample clear that *"where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded the Central Excise Officer may within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short levied or short paid or the person to whom*

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such tax refunded has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice". The stress is laid on the word "person".

7.28. The argument of learned Counsel that there is no explicit provision contained in Chapter-V of the Finance Act, 1994, which lays down that proceeding under Section 73 thereof could be continued against the legal heir remained uncontroverted by the learned Junior Standing Counsel. The Order-in-Original dated 04.05.2023 (Annexure-4) passed by the Assistant Commissioner, GST and Central Excise, Rourkela-I Division, Rourkela in the name of a person, who is no more, is faulted with.

Conclusion:

8. It is, thus, deduced from the above discussions that "legal heir" cannot fall within ken of Section 65(7) of Chapter-V of the Finance Act, 1994 so as to proceed further to determine service tax under Section 73 of said Act after the death of service provider. In other words, on the death of the service provider, in absence of statutory provision empowering the authority to continue further, the proceeding under Section 73 would abate.

8.1. In the light of legal position set forth by the Hon'ble Supreme Court of India in the case of *Shabina Abraham*

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Vrs. Collector of Central Excise and Customs, (2015) 10 SCC 770, that in absence of provision to continue with the proceeding after the death of service provider, it is, hence, held the Order-in-Original could not be passed against the dead person.

8.2. Fact on record emerges that notwithstanding copy of certificate of death issued by the Department of Health Services, Municipal Corporation Gurugram enclosed to the letter of intimation dated 2nd August, 2024 to the Assistant Commissioner, GST and Central Excise, Rourkela-I Division regarding death of Sarfaraz Ahmed, the authority could not have discarded such vital piece of evidence (Annexure-2 series) and pass the Order-in-Original dated 04.05.2023 (Annexure-4). This Court is thus persuaded to hold that the contemplated action for initiation of recovery proceeding under Section 87 of Chapter-V of the Finance Act, 1994 *vide* Letter dated 5th April, 2024 indicating the demand of Rs.66,67,040/- along with interest, cannot be held to be valid.

9. In view of the enunciation of law on the subject and the discussion on the facts made above, there is no scope left for this Court but to set aside Order-in-Original dated 04.05.2023 (Annexure-4) by the Assistant Commissioner, GST and Central Excise, Rourkela-I Division, Rourkela. Accordingly direction contained in

vide Letter dated 5th April, 2024 to discharge liability is quashed.

9.1. With the aforesaid observation, the writ petition is allowed.

9.2. As a result of disposal of the writ petition, pending Interlocutory Application(s), if any, shall stand disposed of.

9.3. In the circumstances there shall be no order as to costs.

(Dr. SANJEEB K PANIGRAHI)
JUDGE

(MURAHARI SRI RAMAN)
JUDGE

Gowthaman S (Legal Heir of Late K. Selvarasu) v. Income Tax Officer, Ward 2, Cuddalore & Anr. (Division Bench)

Court	High Court of Madras
Bench	Sushrut Arvind Dharmadhikari, C.J. and G. Arul Murugan, J.
Date	23.03.2026
Case no. / citation	2026:MHC:1173; W.A. No. 529 of 2026 and C.M.P. No. 5130 of 2026

Holding in brief

Writ appeal against the Single Judge's order of 27.10.2025 (which had quashed the proceedings but remitted the matter). Order under Section 148A(d) of 31.03.2024, assessment order and demand notice of 17.02.2025 were all issued after the assessee's death on 04.01.2024. Agreeing with Meet Lalwani v. ITO (2025) 483 ITR 172 (MP), the Division Bench held that the Department cannot issue notice and consequential proceedings to a dead person; Section 159 can be invoked only if proceedings were already initiated when the assessee was alive. Appeal allowed, Single Judge's order set aside, writ petition allowed, the order, assessment and demand set aside; no remand.

Paragraphs highlighted

Paras 6, 7, 8 and the operative order

Status

Final judgment of a Division Bench under the Income-tax Act; relevant to GST only by analogy, since Section 159(2) is an express deeming provision that the CGST Act lacks.

Relevant paragraphs are highlighted in light blue. The judgment begins on compendium page 221.

2026:MHC:1173

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

WA No.529 of 2026
and CMP No.5130 of 2026

Gowthaman S
Legal heir of Late.K. Selvarasu,
Kootampalli, Perur Post
Kattumannarkoil Taluka
Cuddalore - 608 707.

Appellant(s)

Vs

1. The Income Tax Officer, Ward 2
   1st Floor Cuddalore Income Tax Office,
   Soorappa Naicken Chavadi,
   Cuddalore, Tamil Nadu – 607002.

2. The Assessment Unit
   Income Tax Department Faceless
   Assessment, New Delhi.

Respondent(s)

PRAYER: Appeal under Clause 15 of the Letters Patent to set aside the order dated 27.10.2025 in W.P.No.39793 of 2025 and allow the writ appeal.

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For Appellant(s): Mr. Venkataraman Sundareswaran

For Respondent(s): Ms.C.P.Priya
Senior Standing Counsel
for Income Tax Department

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

Assailing the order dated 27.10.2025 passed by the learned Single Judge in W.P.No.39793 of 2025, the unsuccessful writ petitioner has filed this writ appeal.

2. The appellant, by way of the writ petition, challenged the order dated 31.03.2024 passed under Section 148A(d) of the Income Tax Act, 1961; the Assessment Order dated 17.02.2025; and the notice of demand dated 17.02.2025 issued under Section 156 of the Act, mainly on the ground that the same have been passed and issued against a person, who died on 4.1.2024.

3. The learned Single Judge, vide the order impugned dated 27.10.2025, held that the mandate of Section 159(1) of the Act

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makes it clear that when a person dies, his legal representative is liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased and, therefore, it is not open for the appellant to plead that the assessment proceedings were initiated after the death of the deceased on 04.1.2024, without notice to the appellant or other legal representatives, as there are no records to indicate that after the assessee died on 4.1.2024, the appellant took steps to inform the department about the death of the deceased assessee. The learned Single Judge, though rejected the challenge to the jurisdiction of the respondents to issue the proceedings impugned in the writ petition, quashed the same and remitted the matter to the first respondent to pass fresh order on merits after affording an opportunity to the appellant to explain his case.

4.1. Learned counsel for the appellant submitted that the notice issued after the death of the assessee, followed by orders, is non-est in eye of law. He further submitted that unless the proceedings are initiated on the legal heir under Section 159(2) of

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the Act within the period of limitation, all the consequential entire proceedings abates.

4.2. It is further submitted that the second respondent had dropped the penalty proceedings initiated under Section 270A of the Act vide order dated 2.8.2025 as the assessee had died, however, they have failed to exercise such diligence while issuing other proceedings and orders.

4.3. In support of the aforesaid submissions, learned counsel for the appellant placed heavy reliance on a decision of the Madhya Pradesh High Court in *Meet Lalwani v. Income-tax Officer and another*[1].

5. Learned counsel for the respondents reiterated the submissions made before the learned Single Judge and justified the order impugned passed by the learned Single Judge.

1 *(2025) 483 ITR 172 (MP)*

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6. In the case on hand, it is beyond any cavil that the impugned proceedings were drawn against a person who died on 4.1.2024.

7. Considering an identical issue, in *Meet Lalwani* (supra), a Division Bench of the Madhya Pradesh High Court, in which myself was a member, after referring to a series of judgments of various High Courts observed that the notice and all consequential proceedings issued to a dead person are null and void. The relevant portion of the said judgment reads as under:

> *"12. It has been observed by the Delhi High Court in the case of Savita Kapila v. Asst. CIT [(2020) 426 ITR 502 (Delhi)] as under (page 512 of 426 ITR):*
>
> > *"… In the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the Income-tax Department…*
> >
> > *Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the Revenue."*

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13. The Madras High Court in the case of Alamelu Veerappan v. ITO [(2018) 12 ITR-OL 95 (Mad); 2018 SCC OnLine Mad 13593.] has observed as under (page 100 of 12 ITR-OL):

> *"… Nothing has been placed before this court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee to take steps to cancel the Permanent Account Number registration."*

14. Similar view has been taken by the High Court of Bombay in Sumit Balkrishna Gupta v. Asst. CIT [(2019) 414 ITR 292 (Bom)] wherein it has been observed as under (page 295 of 414 ITR):

> *"7. The issue of a notice under section 148 of the Act is a foundation for reopening of assessment. The sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the dead person is also not protected either by provisions of section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name*

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of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from section 148 of the Act, which requires that before a proceeding can be taken up for reassessment, a notice must be served upon the assessee. The assessee on whom the notice must be sent must be a living person, i.e., legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, section 292B of the Act cannot be invoked to correct a foundational/substantial error as it is meant so as to meet the jurisdictional requirement."

15. In view of the above and that various High Courts have observed that the notice issued to a dead person for reopening of assessment of a dead person is null and void, this court holds that the notice and all consequential proceedings arising therefrom in the name of the deceased assessee are not sustainable."

8. We are in complete agreement with the submission made by learned counsel for the appellant on the basis of the aforesaid decision that the Department cannot issue notice and the consequential proceedings, impugned in the writ petition, to a dead person. That apart, it is also held therein that proceedings under

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Section 159 of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and continuation of proceedings against the legal heirs was permitted. In the case on hand, admittedly, the proceedings have been initiated after the demise of the assessee.

In such view of the matter, the writ appeal is allowed and the order passed by the learned Single Judge is set aside. As a consequence, the writ petition is allowed and the order dated 31.03.2024 passed under Section 148A(d) of the Income Tax Act, 1961; the Assessment Order dated 17.02.2025; and the notice of demand dated 17.2.2025 issued under Section 156 of the Act are set aside. There shall be no order as to costs. Consequently, interim application stands closed.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)
23.03.2026

Index : Yes
Neutral Citation : Yes
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To:

1. The Income Tax Officer, Ward 2
   1st Floor Cuddalore Income Tax Office,
   Soorappa Naicken Chavadi,
   Cuddalore, Tamil Nadu – 607002.

2. The Assessment Unit
   Income Tax Department Faceless
   Assessment, New Delhi.

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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

WA No.529 of 2026

23.03.2026

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