

Chief Justice's Court

Case :- WRIT TAX No. - 2032 of 2025

Petitioner :- M/s Agarwal Khilona Bazar

Respondent :- State of U.P. and another

Counsel for Petitioner :- Divyanshu Pandey, Utkarsh Malviya

Counsel for Respondent :- Ankur Agarwal (S.C.)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This petition is directed against order dated 12.04.2024 passed under Section 73(9) of the Goods and Services Tax Act, 2017 (for short 'the Act') wherein a demand of Rs. 3,09,243/- has been raised in the name of Kamini Agarwal.

2. The petitioner Vishnu Agarwal, husband of deceased Kamini Agarwal has filed the petition *inter alia* with the submissions that Kamini Agarwal had died on 22.07.2020 and on account of her death, the GST registration of the proprietorship firm M/s Agarwal Khilona Bazar, which was in the name of deceased Kamini Agarwal, was cancelled with effect from 08.09.2022 by order dated 16.01.2023. Whereafter a show cause notice dated 23.12.2023 was issued in the name of deceased Kamini Agarwal under Section 73 of the Act, however, as the same were uploaded on the portal and the GST registration had already been cancelled, there was no occasion for the petitioner to have accessed the said portal, the show cause notice remained unanswered which resulted in passing of the order dated 12.04.2024 raising demand against the deceased.

3. Submissions have been made that once the Department was well aware of the fact that Kamini Agarwal, proprietor of the firm has

already died and the registration of the firm has already been cancelled, there was no occasion for issuing a show cause notice in the name of the deceased and as the proceedings have been conducted in the name of the deceased Kamini Agarwal, the same are void ab initio and, therefore, the order impugned deserves to be quashed and set aside.

4. Learned counsel for the respondents supported the order impugned with the aid of provisions of Section 93 of the Act. Submissions have been made that under the provisions of Section 93, the recovery can be made from the legal representatives even after the determination has been made after the death of the proprietor of the firm.

5. We have considered the submissions made by counsel for the parties and have perused the material available on record.

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:

"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,

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.

10. Consequently, the writ petition is **allowed**. The order dated 12.04.2024 (Annexure-1 to the writ petition) is quashed and set aside. The respondents would be free to take appropriate proceedings in accordance with law.

Order Date :- 13.5.2025

RK/AKShukla

(Kshitij Shailendra, J)

(Arun Bhansali, CJ)