Chief Justice's Court

Case :- WRIT TAX No. - 2109 of 2025

Petitioner :- Devendra Kumar Singh (Deceased)
Respondent :- State of U.P. and another
Counsel for Petitioner :- Ajay Kumar Yadav, Ashish Bansal, Siddharth Yadav
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 31.07.2024 passed under Section 73(9) of the Goods and Services Tax Act, 2017 (for short 'the Act') wherein a demand of Rs. 3,85,947/- has been raised in the name of Devendra Kumar Singh.

2. The petitioner Harsh Vardhan Singh, son of deceased Devendra Kumar Singh has filed the petition *inter alia* with the submissions that Devendra Kumar Singh had died on 01.05.2021 and on account of his death, the GST registration of the proprietorship firm M/s Devendra Kumar Singh, which was in the name of deceased Devendra Kumar Singh was cancelled with effect from 01.04.2021 by order dated 27.05.2021. Whereafter a show cause notice dated 08.05.2024 was issued in the name of deceased Devendra Kumar Singh under Section 73 of the Act, followed by reminder dated 22.06.2024, 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 31.07.2024 raising demand against the deceased.

3. Submissions have been made that once the Department was well

aware of the fact that Devendra Kumar Singh, 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 Devendra Kumar Singh, 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, whether such tax, interest or penalty has been determined before his 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.

10. Consequently, the writ petition is **allowed**. The order dated 31.07.2024 (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 :- 8.5.2025
Sazia

(Kshitij Shailendra, J) (Arun Bhansali, C.J.)