Neutral Citation No. - 2025:AHC:129834-DB

Court No. - 3

Case :- WRIT TAX No. - 3558 of 2025

Petitioner :- M/S Shakti Industries
Respondent :- State Of Uttar Pradesh And 2 Others
Counsel for Petitioner :- Lokesh Mittal,Vishnu Kesarwani
Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.
Hon'ble Praveen Kumar Giri,J.

1. This petition is directed against order dated 08.12.2023 passedunder Section 73(9) of the Goods and Services Tax Act, 2017 (for short 'the Act') wherein a demand of Rs.15,89,179.16/- has been raised in the name of Rajesh.

2. The petitioner Arti Agarwal, wife of deceased Rajesh Agarwalhas filed the petition *inter alia* with the submissions that Rajesh had died on 9.10.2018 and on account of his death, the GST registration of the proprietorship firm M/s Shakti Industries, which was in the name of deceased Rajesh, was cancelled with effect from 26.03.2021 by order dated 7.4.2021. Whereafter a show cause notice dated 27.9.2023 was issued in the name of deceased Rajesh under Section 73 of the Act. However, as the same was 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 08.12.2023 raising demand against the deceased.

3. Submissions have been made that once the Department was wellaware of the fact that Rajesh, 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 Anita, 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 orderimpugned 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 theparties and have perused the material available on record.

6. Undisputed facts are that the show cause notice, reminders anddetermination 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 deathby 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, whetherbefore 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 sameonly 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 legalrepresentative 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 casewherein 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 dated8.12.2023 (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 :- 1.8.2025
Dev

(Praveen Kumar Giri J.) **(Shekhar B. Saraf, J.)**