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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.)