

Court No. - 40

Case :- WRIT TAX No. - 1728 of 2025

Petitioner :- Satendra Kumar

Respondent :- State Of U.P., And 2 Others

Counsel for Petitioner :- Praveen Kumar, Vaibhav Singh

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

1. Heard learned counsel appearing on behalf of the parties.
2. In the present writ petition, the following prayers have been made by the petitioner:-

"i) issue a writ, order or direction in the nature of certiorari quashing impugned show cause notice dated 12.09.2022, passed by respondent no.3, u/s 74 of the Act Annexure No.8.)

ii) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 10.03.2023, passed u/s 74 of the CGST/UPGST Act by respondent no.3 for the tax period May, 2018 to September, 2018 (Annexure No.9).

iii). issue any other suitable writ, order or direction which the Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

3. Facts reveals that the petitioner is son of Mr. Surendra Kumar who was the proprietor of the S.K. Industry. Mr. Surendra Kumar died on February 17, 2021. Subsequent to his death, wife of Mr. Surendra Kumar made an application before the Proper Officer for cancellation of the registration which was cancelled on July 29, 2022. In spite of having knowledge of the same, the authorities issued a show cause notice dated September 12, 2022, and thereafter, passed an *ex parte* order dated March 10, 2023, under Section 74 of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act').

4. It is clear from the facts that the show cause notice and order both were uploaded on the portal and the same, was accordingly, not known to the legal heirs of the

proprietor of the firm. The wife of Mr. Surendra Kumar has also expired and the writ petitioner, who is the son of Mr. Surendra Kumar, has filed this writ petition challenging the show cause notice and order on the ground that the same were passed against a person who was deceased. Furthermore, since information had been provided to the authorities with regard to death of the deceased person, the very initiation of the show cause notice was bad in law.

5. Learned counsel appearing on behalf of the petitioner has relied upon a Division Bench judgment of this Court presided over by Hon'ble The Chief Justice in the matter of **Amit Kumar Sethia (Deceased) vs. State of U.P. and another, Writ Tax No.917 of 2025 (decided on April 2, 2025 [Neutral Citation No. - 2025:AHC:45317-DB])** in support of his case. The relevant paragraphs of the said judgments are provided below:-

"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 17.11.2023 (Annexure-1 to the writ petition) is quashed and set aside. The respondents would be free to take appropriate proceedings in accordance with law."

6. In light of the above settled principle of law, it is inherent that proceedings cannot be initiated against a person who is deceased. Thus, proceedings cannot be initiated against the legal heirs of the deceased or against the estate of the deceased. However, it was open to the authorities to proceed in proper manner against the legal representative/heirs of the deceased proprietor and having failed to do so, the entire proceedings initiated from the stage of show cause notice is bad in law.

7. Following the principles laid in the judgement of **Amit Kumar Sethia (Deceased) (supra)**, we are of the view that the entire show cause notice and the impugned order passed under Section 74 of the Act cannot sustain. Accordingly, the show cause notice dated September 12, 2022 and impugned order dated March 10, 2023 are quashed and set aside with liberty to the respondent authorities to proceed against the petitioner in accordance with law, if so advised.

8. With the above observations, the writ petition is allowed.

Order Date :- 21.4.2025

Dev

(Dr. Y. K. Srivastava,J.) (Shekhar B. Saraf,J.)