

Court No. - 3

Case :- WRIT TAX No. - 2959 of 2025

Petitioner :- Samban Pharma (Prop.) Late Satish Kumar Shukla

Respondent :- Deputy Commissioner And Another

Counsel for Petitioner :- Amit Biswas, Nitin Kumar
Kesarwani, Shubhanjali Gupta

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 17.04.2024 passed under Section 73(9) of the Goods and Services Tax Act, 2017 ('Act') wherein a demand of Rs. 18,09,116.65/- has been raised in the name of petitioner.

2. Mr. Siddharth Shukla, son of late Satish Kumar Shukla, has filed the present petition inter alia with the submissions that his father Satish Kumar Shukla was proprietor of petitioner firm and had died on 18.03.2023 and show cause notice dated 28.12.2023 was issued in the name of petitioner firm under Section 73 of the Act, which was uploaded on 'Additional Notices and Orders' Tab of the portal and thus, the show cause notice remained unanswered, which resulted in passing of the order dated 17.04.2024 raising demand against the petitioner firm.

3. Submission has been made that once the proprietor of the petitioner firm had already died, there was no occasion for issuing a show cause notice in the name of petitioner firm and the proceedings initiated by the department 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, 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 and determination of tax have been made after the death of the proprietor of the petitioner 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 17.04.2024 (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 :- 7.7.2025

K.Tiwari

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