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GST Demand Against a Deceased Proprietor Cannot Survive Without Section 93 Notice to the Legal Heir and Inquiry into the Inherited Estate

The GSTAT, Thiruvananthapuram Bench, in ***Vijayan Sahadevan (Deceased) v. The Commissioner of Kerala State GST, Thiruvananthapuram [Appeal No. APL/19/TVP/2026, Final Order No. 03/TVP/KERALA/2026 dated August 21, 2026]*** set aside the Order-in-Appeal confirming the demand of tax, interest and penalty raised on account of disallowance of Input Tax Credit (“ITC”) under Section 16(4) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) against a deceased proprietor, and held that where the business of the proprietor stood discontinued and the Department neither issued any notice to the legal heir nor caused any inquiry into the estate of the deceased as mandated by Section 93(1)(b) of the CGST Act, the Department has no case to recover any of the dues from the deceased or his legal heir. The Tribunal further held that, on merits, the ITC was in any event admissible under the retrospectively inserted Section 16(5) of the CGST Act, as the returns for FY 2017-18 had been filed well before November 30, 2021.

Facts:

Vijayan Sahadevan (“**the Appellant**”), a sole proprietor registered under GST in Kerala, was issued Form GST ASMT-10 dated March 05, 2020 by the Commissioner of Kerala State GST, Thiruvananthapuram (“**the Respondent**”) alleging that the return in Form GSTR-3B for March 2018 had been filed belatedly on June 16, 2019 and, consequently, proposing to disallow the ITC of Rs. 1,72,430/- availed therein under Section 16(4) of the CGST Act along with interest of Rs. 2,18,198/-. Owing to the COVID-19 pandemic and lockdown, the Appellant could not file a reply to the said notice.

The proceedings culminated in an intimation in Form GST DRC-01A dated November 13, 2020 and, thereafter, a Show Cause Notice in Form GST DRC-01 dated July 15, 2021 (“**the SCN**”) raising a revised demand of tax of Rs. 1,72,430/-, interest of Rs. 1,00,340/-, penalty of Rs.

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20,000/- and an additional interest of Rs. 1,87,350/- under Section 50(1) of the CGST Act for delayed filing of returns for the period November 2017 to March 2018. The Appellant, who was suffering from continued illness, could not respond, and the SCN was adjudicated ex parte vide Order-in-Original in Form GST DRC-07 dated February 15, 2022 (**"the OIO"**). The appeal filed against the OIO was rejected by the First Appellate Authority vide Order-in-Appeal dated December 08, 2022 (**"the Impugned Order"**).

Subsequently, the GST registration of the Appellant was cancelled suo motu with effect from June 06, 2023, the last return having been filed for May 2023, and the Appellant died on September 05, 2024 due to continued illness. The present appeal was filed before the Tribunal on March 26, 2026, within the extended period of limitation, by the son of the Appellant in his capacity as legal heir (**"the Legal Heir"**).

The Legal Heir contended that the only issue in the matter was the belated filing of returns for November 2017 to March 2018, and that Section 16(5) of the CGST Act, inserted retrospectively w.e.f. July 01, 2017, relaxed the time limit prescribed under Section 16(4) and permitted ITC for FY 2017-18 to FY 2020-21 where the returns were filed up to November 30, 2021. Since the returns had admittedly been filed on or before June 16, 2019, the denial of ITC was no longer sustainable. On a specific query from the Bench, it was further submitted that no action had been initiated and no notice had been issued to the Legal Heir under Section 93 of the CGST Act after the demise of the Appellant.

The Respondent did not oppose examination of the ITC component of the demand in light of Section 16(5), subject to verification of the date of filing and the correlation of the ITC by the Jurisdictional Proper Officer, in terms of Circular No. 237/31/2024-GST dated October 15, 2024 and the special rectification procedure notified vide Notification No. 22/2024-Central Tax dated October 08, 2024. It was, however, contended that Section 16(5) operates only qua the disallowance of ITC under Section 16(4) and does not touch the separate and independent demand of interest of Rs. 1,87,350/- under Section 50(1) for delayed discharge of admitted

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cash tax liability. As regards the demise of the Appellant, the Respondent conceded that the Legal Heir was competent to pursue the appeal, and submitted that Section 93 of the CGST Act renders the legal representative liable to the extent of the estate of the deceased in his hands; further, since the Appellant had himself litigated the issue on merits during his lifetime, the Legal Heir could not claim a wider right to reopen concluded factual issues except to the extent of the subsequent change in law.

Issues:

1. Whether the Respondent has followed the procedure envisaged under Section 93(1)(b) of the CGST Act on the demise of the proprietor whose business stood discontinued, by issuing notice to the Legal Heir and inquiring into the estate of the deceased Appellant?
2. Whether, on merits, the deceased Appellant is eligible for the ITC in light of Section 16(5) of the CGST Act inserted vide the Finance (No. 2) Act, 2024 with retrospective effect from July 01, 2017?

Held:

The GST Appellate Tribunal, Thiruvananthapuram Bench, in ***Appeal No. APL/19/TVP/2026, Final Order No. 03/TVP/KERALA/2026*** held as under:

- **Observed that**, on the demise of a proprietor, the proprietorship concern also comes to an end. The GSTIN of the Appellant was cancelled w.e.f. June 06, 2023, the last return was filed for May 2023 and no business was thereafter conducted in the name of the Appellant. Hence, the business of the deceased was not continued in any manner and the case fell squarely within Section 93(1)(b) of the CGST Act.
- **Noted that**, under Section 93(1)(b), the legal representative is liable to pay the tax, interest or penalty due from the deceased only out of the estate of the deceased and to the extent the estate is capable of meeting the charge. However, the Respondent made

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no effort to ascertain whether any such estate of the deceased existed, nor was any notice sent to the Legal Heir for recovery of the dues. In the absence of any process under Section 93(1)(b), the Respondent has no case to recover any of the dues from the deceased Appellant or from the estate in the hands of the Legal Heir.

- **Observed that**, Section 93 of the CGST Act, read with Sections 73, 74 and 74A, authorises post-death initiation of assessment and recovery proceedings against a legal heir, the expression “person chargeable with tax” not being confined to the registered taxable person. However, in a discontinued business, recovery is confined to the inherited estate, and where the adjudication fails to examine whether the heirs continued the business or whether an estate is available for recovery, the statutory basis for the liability remains unaddressed.
- **Noted that**, various High Courts and the Hon'ble Supreme Court have time and again held that no proceedings can be conducted against a deceased person, and relied upon the decisions of the Hon'ble Andhra Pradesh, Rajasthan, Orissa, Karnataka, Madras, Jharkhand and Allahabad High Courts holding that tax dues may be pursued against a legal representative only through fresh proceedings which comply with the requirements of notice, hearing and a reasoned order, within the limits of the estate.
- **Held that**, no notice was issued to the Legal Heir and no inquiry was caused regarding the inherited estate of the deceased Appellant, even when the GST registration had been cancelled on June 06, 2023 on account of the continuous illness of the Appellant and discontinuance of the business. In the absence of any action by the Respondent under Section 93 even after two years from the date of death, the Impugned Order is unsustainable and the entire proceedings are liable to be set aside.
- **Held that**, on merits, the returns for July 2017 to February 2018 were filed on July 31, 2018 and the return for March 2018 was filed on June 16, 2019, well before the outer date of November 30, 2021 prescribed under Section 16(5). Therefore, the Appellant,

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whether or not deceased, was eligible for the ITC claimed in the returns for FY 2017-18. The procedure for availment laid down in Notification No. 22/2024-Central Tax dated October 08, 2024 came much after the death of the Appellant.

- **Accordingly**, set aside the Impugned Order and allowed the appeals with consequential relief.

Our Comments:

Relevant provisions

Section 93 of the CGST Act is a special provision fixing liability to pay tax, interest or penalty in certain cases. Sub-section (1) thereof, which was invoked in the present case, reads as under:

“(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.”

The provision draws a clear line between two situations. Where the business is continued by the legal representative or any other person, clause (a) fastens an unlimited liability on such successor. Where the business is discontinued, whether before or after the death, clause (b) confines the liability of the legal representative to the estate of the deceased and only to the

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extent the estate is capable of meeting the charge. It follows that, in a clause (b) case, the existence and extent of the inherited estate is the very foundation of the liability, and an adjudication that does not examine this question has, as the Tribunal put it, left the statutory basis of the liability unaddressed.

Section 93 is pari materia with Section 159 of the Income-tax Act, 1961, but with one material difference. Section 159(2) of the Income-tax Act contains an express deeming fiction under which any proceeding taken against the deceased before his death is deemed to have been taken against the legal representative and may be continued from the stage at which it stood, and Section 159(3) deems the legal representative to be an assessee. Section 93 of the CGST Act contains no such fiction; it merely fixes liability. This is precisely why the High Courts have uniformly insisted that a show cause notice and adjudication under Sections 73/74 must be directed to a living and correctly identified legal representative after notice and hearing, and that participation by an authorised representative cannot cure the defect.

The cognate provisions are Section 29(1)(a) of the CGST Act, which contemplates cancellation of registration where the business has been discontinued, transferred fully for any reason including death of the proprietor, and Circular No. 96/15/2019-GST dated March 28, 2019, which clarifies that on the death of a sole proprietor the legal heir is to apply for cancellation in Form GST REG-16 citing "death of proprietor" as the reason, that a successor continuing the business must obtain a fresh registration and may transfer the unutilised ITC in Form GST ITC-02, and that such successor is liable under Section 93(1)(a) for the dues of the deceased.

On the second issue, Section 16(5) of the CGST Act was inserted by Section 118 of the Finance (No. 2) Act, 2024 with retrospective effect from July 01, 2017 and brought into force from September 27, 2024 vide Notification No. 17/2024-Central Tax dated September 27, 2024. It carves out an exception to the time limit in Section 16(4) for invoices and debit notes pertaining to FY 2017-18 to FY 2020-21, provided the ITC is availed in a return under Section 39 filed up to November 30, 2021. Section 150 of the Finance (No. 2) Act, 2024 denies refund of

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tax already paid or ITC already reversed on account of Section 16(4). Notification No. 22/2024-Central Tax dated October 08, 2024 prescribes a special procedure under Section 148 for rectification of orders confirming demand for wrong availment of ITC on account of Section 16(4), where no appeal has been filed, on an application made within six months of the notification. Circular No. 237/31/2024-GST dated October 15, 2024 clarifies, inter alia, that where proceedings are pending before an adjudicating or appellate authority, such authority shall take cognizance of Section 16(5) and pass orders accordingly. The Tribunal has rightly applied this Circular and granted relief on merits in a pending appeal.

Analysis of the ruling

The ruling is notable for extending the settled High Court position to a situation where the adjudication and the first appeal had both been concluded during the lifetime of the proprietor. In most of the decisions relied upon by the Tribunal, the show cause notice or the order was itself issued after the death of the proprietor and was therefore non est. Here, by contrast, the OIO dated February 15, 2022 and the Impugned Order dated December 08, 2022 were passed when the Appellant was alive and represented by counsel. Section 93(1)(b) expressly covers tax “determined before his death but has remained unpaid”, and the Respondent could argue that a pre-death determination is valid and that only the recovery leg required compliance with Section 93. The Tribunal has nonetheless set aside the Impugned Order itself for want of any post-death action under Section 93, which is a wider proposition than the High Court ratios strictly support and may be tested in appeal under Section 117 of the CGST Act. That said, the Tribunal has independently allowed the appeal on merits under Section 16(5), and the outcome therefore rests on a firm second footing.

Two further aspects deserve attention. First, the Respondent had specifically contended that the interest of Rs. 1,87,350/- under Section 50(1) for delayed discharge of admitted cash tax liability is independent of the ITC dispute and is untouched by Section 16(5). The Tribunal did not separately deal with this contention, since the entire proceedings were set aside for non-

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compliance with Section 93. Taxpayers should not read the ruling as holding that Section 16(5) extinguishes interest under Section 50(1). In an ordinary case, relief under Section 16(5) will restore the ITC, but interest on the net cash liability discharged belatedly will continue to be payable in terms of the proviso to Section 50(1). Second, none of the High Courts, nor the Tribunal, has held that the liability of the deceased stands extinguished on death. The Hon'ble Orissa, Rajasthan and Jharkhand High Courts expressly left the Department free to initiate fresh proceedings against the legal representative in accordance with law. The real constraint is limitation under Sections 73(10), 74(10) and 74A, which continues to run notwithstanding the death of the taxable person; for FY 2017-18, that period has long expired.

Pari materia judgments

The Tribunal relied on a consistent line of High Court decisions, which now form a settled body of law on proceedings against deceased proprietors under GST:

- *SSS Agro Foods v. The Assistant Commissioner (ST), Kakinada* [2026 (8) TMI 899 – Andhra Pradesh High Court] – an assessment issued after death is non est as it is directed at a person incapable of being proceeded against; fresh proceedings must be initiated against the legal representative after notice and hearing, and recovery remains limited to the estate.
- *Chotu Devi, Ajmer v. Union of India* [2026 (8) TMI 308 – Rajasthan High Court] – Section 93 does not dispense with procedural safeguards; an adverse assessment requires independent notice and an opportunity of hearing to the legal representative and a reasoned order.
- *M/s. J.S. Enterprisers v. The Superintendent, Central GST and CX Division, Cuttack-I* [2026 (7) TMI 1524 – Orissa High Court] – notice to a living and correctly identified person is a foundational jurisdictional requirement, and participation by an authorised representative cannot cure the defect.

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- *BKR Services Pvt. Ltd. v. State of Karnataka* [2026 (8) TMI 774 – Karnataka High Court] – the dues of a deceased proprietor cannot be recovered from a distinct private limited company through recovery proceedings; liability must be assessed under Section 93(1) (a) or (b).
- *V. Damayanti v. The Superintendent of GST and Central Excise, Madurai* [2026 (6) TMI 1093 – Madras High Court] – Section 93 read with Sections 73, 74 and 74A authorises post-death initiation of proceedings against the legal heir; in a discontinued business recovery is confined to the inherited estate.
- *M/s. S.B. Enterprises v. Directorate General of GST Intelligence* [2026 (6) TMI 790 – Jharkhand High Court] – an order-in-original passed against a deceased sole proprietor without first taking steps against the legal representative was quashed.
- *M/s. P.B. Sethi Plastics v. State of U.P.* [2026 (2) TMI 390 – Allahabad High Court] – the jurisdictional defect goes to the root of the matter and cannot be cured by rejecting the appeal on limitation; the appellate authority must address the foundational objection.
- *Rajvanti Devi v. State of U.P.* [2026 (2) TMI 164 – Allahabad High Court], *Sambul Shahid v. State of U.P.* [2025 (12) TMI 937 – Allahabad High Court] and *Shubhangi Gupta v. State of U.P.* [2025 (9) TMI 595 – Allahabad High Court] – show cause notices and determinations issued in the name of a deceased proprietor are void; Section 93 does not authorise determination of liability against a dead person and any notice must be directed to the legal representative.

The same view was taken earlier by the Hon'ble Allahabad High Court in **Amit Kumar Sethia (Deceased) v. State of U.P. [Writ Tax No. 917 of 2025]**, holding that a show cause notice and order under Section 73 against a dead person is a nullity. The principle is well entrenched in direct tax jurisprudence as well, where notices under Section 148 of the Income-tax Act issued to a deceased assessee have been held to be unenforceable in law by the Hon'ble Delhi High

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Court in *Savita Kapila v. ACIT* [W.P.(C) No. 3258 of 2020 dated July 16, 2020] and *Rajender Kumar Sehgal v. ITO* [(2019) 101 taxmann.com 233 (Delhi)], and by the Hon'ble Madras High Court in *Alamelu Veerappan v. ITO* [(2018) 95 taxmann.com 155 (Madras)].

Contrary view

A qualification is found in the income-tax decisions of the Hon'ble Supreme Court in ***Estate of Late Rangalal Jajodia v. CIT* [(1971) 79 ITR 505 (SC)]** and ***CIT v. Jai Prakash Singh* [(1996) 3 SCC 525]**, which held that an assessment framed without notice to all the legal representatives is an irregularity capable of being cured by remand and not a nullity. Those decisions, however, turned on the express deeming provisions of Section 159 of the Income-tax Act and its predecessor, which have no counterpart in Section 93 of the CGST Act, and the GST courts have consistently treated the absence of notice to the legal representative as a jurisdictional defect. It is also relevant that the Tribunal here did not remand the matter for fresh proceedings, unlike the Hon'ble Orissa and Rajasthan High Courts which permitted the Department to proceed afresh against the legal representative; the Department may seek to rely on this distinction and on the words "determined before his death" in Section 93(1)(b) in any further challenge.

Way forward

For legal heirs, the ruling underscores the importance of promptly intimating the death of a proprietor to the jurisdictional officer along with the death certificate, applying for cancellation in Form GST REG-16 where the business is not continued, or obtaining fresh registration and transferring the ITC in Form GST ITC-02 where it is, keeping in mind that a successor who continues the business is fully liable under Section 93(1)(a). Any notice or order uploaded on the portal of the deceased without notice to the legal heir, and any recovery attempted without ascertaining the estate, is open to challenge. For the Department, the ruling is a clear direction that the death of a taxable person triggers a fresh obligation to identify the legal representative, issue notice, examine whether the business was continued, bring the inherited

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estate on record and pass a reasoned order, failing which the demand cannot be recovered. Where an ITC demand under Section 16(4) for FY 2017-18 to FY 2020-21 is pending in appeal, the ruling also reiterates that the appellate forum is bound to give effect to Section 16(5) in terms of Circular No. 237/31/2024-GST.

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