GOODS AND SERVICES TAX APPELLATE TRIBUNAL
THIRUVANANTHAPURAM BENCH
Division Bench : Court No I

APPEAL NO : APL/18/TVP/2026
(hearing in hybrid mode)

[arising out of OIA No. GSTA (KLM) 164/2022 dated 26-11-2022 passed by Joint Commissioner (Appeals), Keralam State GST, Kollam]

BEN MEDICALS .....Appellant

VERSUS

THE COMMISSIONER OF KERALA STATE GST .....Respondent

for Appellant
K R Balachandran, Advocate

for Respondent
Mansur MI, AR

CORAM : Hon'ble Shri Subramanya Rayaprol, Vice-President
Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

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FINAL ORDER NO : 14/TVP/KERALAM/2026

Date of Hearing: 10-9-2026
Date of Order: 30-10-2026

Per: Subramanya Rayaprol, Vice-President

1.0 Mr K R Balachandran, Ld Advocate appeared for the appellants. Mr Mansur MI, Ld Joint Commissioner appeared as AR for the respondents.

2.0 Ld Advocate submits that the appellant is a proprietorship firm, and the Proprietor Mr Walter Joseph, died on 17-12-2022. The said appellant / proprietor was carrying on business as a dealer in pharmaceuticals and was holding GSTIN 32ADNPJ8914C1ZP. The returns for FY 2017-18 were scrutinized and Form GST ASMT-10 dated 05.03.2020 was issued and alleged excess availment and utilisation of ITC of Rs.1,12,264/-. The

ASMT-10 itself records that the allegation arose from comparison of GSTR-3B with GSTR-2A. They had submitted a reply dated 03.11.2020, explaining that the mismatch occurred because the suppliers had reported the supplies as B2C instead of B2B, with the result that the invoices did not appear in the recipient's GSTR-2A. He further specifically asserted that the purchases were genuine, invoices were available and the tax relating to the purchases had been paid to the Government by the suppliers. He also places reliance on the judgement of this Tribunal in the case of Vijayan Sahadevan vs Commissioner of Kerala GST cited in 2026 (8) TMI 1362 - GSTAT THIRUVANANTHAPURAM. He also submitted a death certificate of the proprietor. The business was discontinued after his death and the GST registration was also cancelled w.e.f 1-4-2023. He prays that the appeals may be allowed.

3.0 The Ld AR for the Revenue (State), submits that he has made a detailed pointwise written submission on 7-9-2026. He submits that the Appellant's ground based on Circular No. 183/15/2022-GST is factually misconceived, the Circular being dated 27-12-2022 — subsequent to both the Order-in-Original (27-06-2022) and the impugned Order-in-Appeal (26-11-2022). In any event, the burden to prove eligibility to ITC, including reconciliation of the GSTR-2A/GSTR-3B difference, lies squarely on the Appellant under Section 155 of the CGST/SGST Act, 2017. Such burden can only be discharged through an invoice-wise reconciliation statement — correlating the Appellant's GSTR-2A, the supplier-wise/invoice-wise purchase ledger, and the underlying tax invoices — which has not been furnished by the Appellant at any stage; and such invoice-wise reconciliation was never placed on record by the Appellant either at the reply stage (FORM GST DRC-06 dated 10-09-2021) or at the first-appeal stage, despite adequate opportunity, and none accompanies the present Second Appeal

either; and JCTVPM/1362/2026-B4 I/339671/2026. He further submits that the order in Vijayan Sahadevan (Deceased) v. Commissioner of Kerala State GST [Final Order No. 03/TVP/Kerala/2026 dated 21-08-2026] is factually and legally distinguishable — the present Second Appeal being filed by the legal heir himself, and the demand arising under Section 16(2)(c) rather than Section 16(4)/16(5) — and does not assist the Appellant; The impugned Order-in-Appeal, having correctly applied the law and having already extended verifiable relief, does not warrant interference. He further prays to dismiss the Appeal and uphold the impugned Order-in-Appeal.

4.0 We have heard both sides in detail.

5.0 We find that the present appeals are filed on 26-2-2026, by the son of the deceased appellant, who claims to be the legal heir, and in such capacity, he has signed and submitted the present appeals before us. The GST Registration No. 32ADNPJ8914C1ZP was cancelled for non-continuation of business w.e.f 1-4-2023. The GST Returns were also filed only up to March-2023.

6.0 We find that the issue to be decided here is

Whether the Respondent has properly followed the procedure envisaged under Section 93 (1) (b) of the CGST/KGST Act, on demise of the proprietor-appellant when business is discontinued, by issuing notice to the legal heir for the estate of the deceased appellant.

7.0 With regard to the first issue, the chronology of the events is as below:

1. Assessment Order ASMT-10 was issued on 5-3-2020

2. SCN DRC-01 was issued on 30-7-2021

3. OIO was issued on 27-6-2022

4. OIA was issued on 26-11-2022

5. GST Registration was cancelled wef 1-4-2023

5. Appellant-Proprietor died on 17-12-2022

6. Present appeals before Tribunal is filed on 12-6-2026

8.0 We find that on demise of the Proprietor, the Proprietorship Firm also comes to an end. As per the prescribed procedure, the GSTIN 32APNPS6894L1ZX of the deceased appellant was cancelled wef 6-6-2023. Hence, there was no further business conducted in the name of the deceased appellant. The Section 93 (1) of the CGST/KGST Act reads as,

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–

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(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.

9.0 We find that at the time of demise of the appellant on 7-12-2022, the matter was still under the appeal period as the appeals could have been filed before the GSTAT on or before 30-6-2026 which was further extended to 31-7-2026. The appeal was therefore filed by the legal heir of the appellant before this Tribunal on 12-6-2026. The last GSTR3B filed by the appellant was for the Month of March-2023 on 21-4-2023. After that no returns were filed and the GSTIN was also cancelled, as there was no business continued. Therefore, it is on record that the business of the deceased was not continued in anyway. As per Section 93 (1) (b), the liability if any arising out of the present matter, the legal representative / legal heir 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.

10.0 But in the present case, we find that there is no effort made to find whether there was any such estate of the deceased, nor any notice was sent to the legal heir for recovery of the dues. In the absence of any process done by the Respondent under Section 93 (1) (b) of the CGST/KGST Act, the respondent department has no case to recover any of the dues from the deceased appellant, even through the estate of the legal heir. We find that time and again various High Courts and Hon'ble Supreme Court has also held that no proceedings can be conducted against a deceased person. Section 93 of the CGST Act authorises post-death initiation of assessment and recovery proceedings against a legal heir where the taxable person has died and the business has been discontinued. The provision is read with Sections 73, 74 and 74A to mean that tax, interest or penalty may be determined after death, including by issuing notice after the taxpayer's demise, the term "person chargeable with tax" is not limited to the registered taxable person. Recovery against the legal heir is permissible, but in a discontinued business it is confined to the inherited estate. The respondent has not brought into record any inherited estate of the deceased appellant. Where adjudication fails to examine whether heirs continued the business or whether an estate is available for recovery, the statutory basis for liability remains unaddressed. As such there is no legal proceedings against the Legal Heir or Legal Representative under Section 93, the order of the first appellate

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authority is unsustainable and the entire proceedings are liable to be set aside.

11.0 We find that our contention is supported by the various settled positions of law as below:

(i) In the case of SSS Agro Foods Versus The Assistant Commissioner ST, Kakinada cited in 2026 (8) TMI 899 – AP High Court it is held that the Assessment proceedings cannot validly continue against a deceased proprietor. An assessment issued after death is non est because it is directed at a person incapable of being proceeded against, and the required opportunity of personal hearing is not met. Although Section 93 permits recovery of tax dues from the deceased person's business or estate, fresh assessment proceedings must be initiated against the appropriate legal representative or person carrying on the business after notice and hearing. Any recovery remains limited to the deceased proprietor's estate, and a consequential rejection of the statutory appeal is invalid.

(ii) In the case of Chotu Devi, Ajmer Versus Union Of India cited in 2026 (8) TMI 308 – Rajasthan High Court, it is held that a legal representative may be liable for a deceased sole proprietor's tax, interest and penalty only from the deceased's estate, where the business is discontinued and liability is determined before or after death. That statutory liability does not remove procedural safeguards: an adverse assessment requires independent notice and an opportunity of hearing for the legal representative, and the order must state relevant facts and reasons. Assessment orders issued without these safeguards are vitiated. Tax dues may therefore be pursued against the legal representative only through fresh proceedings that comply with notice, hearing and reasoned-order requirements, within the limits of the estate."

(iii) In the case of M/s. J.S. Enterprisers Versus The Superintendent Central GST and Cx Division Cuttack-I Cuttack cited in 2026 (7) TMI 1524 – Orissa HC it is held that GST liability

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proceedings under Section 73 cannot be initiated or concluded against a deceased sole proprietor where the authorities knew of the death but did not issue notice to the legal representative. Section 93 imposes liability on legal representatives or persons continuing the business, but does not authorise adjudication in the deceased person's name. Notice to a living and correctly identified person is a foundational jurisdictional requirement, and participation by an authorised representative cannot cure this defect. The show cause notice and consequential order were non est and quashed, with fresh proceedings permitted against the legal representative in accordance with law.

(iv) In the case of BKR Services Pvt Ltd & Santosh Kumar Rudraswamy vs Satte of Karnataka cited in 2026 (8) TMI 774 – Karnataka HC, it is held that GST recovery for a deceased proprietor's liabilities cannot be enforced against a separate private limited company merely through recovery proceedings, because the company is legally distinct from the proprietary concern. Liability of legal representatives or the deceased person's estate must be assessed under section 93(1)(a) or section 93(1)(b) of the CGST/KGST framework.

(v) In the case of V. Damayanti, W/o. Late V. Vasudevan (Proprietor, M/s. Vasu Chemicals) Versus The Superintendent of GST and Central Excise, Madurai cited in 2026 (6) TMI 1093 – Madras HC it is held that, Section 93 of the CGST Act authorises post-death initiation of assessment and recovery proceedings against a legal heir where the taxable person has died and the business has been discontinued. The provision is read with Sections 73, 74 and 74A to mean that tax, interest or penalty may be determined after death, including by issuing notice after the taxpayer's demise; the term "person chargeable with tax" is not limited to the registered taxable person. Recovery against the legal heir is permissible, but in a discontinued business it is confined to the inherited estate.

(vi) In the case of M/s. S.B. Enterprises Versus Directorate General of GST Intelligence

cited in 2026 (6) TMI 790 – Jharkhand HC it is held that the proceedings against a deceased sole proprietor require notice to the legal representative before continuation of tax action. An order-in-original passed against a deceased sole proprietor was treated as legally vulnerable and was quashed. The HC held that proceedings against a proprietary concern could not continue against a dead proprietor without first taking steps against the legal representative, at least by issuing notice if the department intended to proceed further. The Court did not decide the disputed question of whether death had been specifically intimated, but noted that an earlier order in similar proceedings had already stayed further action after the same objection was raised. The respondents were left free to pursue their claims in accordance with law against the petitioner's estate or legal representative."

(vii) In the case of M/s P.B. Sethi Plastics Versus State of U.P. cited in 2026 (2) TMI 390 – Allahabad HC, it is held that, Assessment and recovery proceedings under Section 73 could not validly be initiated and concluded against a deceased sole proprietor, because tax liability against a dead person must be pursued, if at all, against the legal representative after due notice and opportunity to respond. The jurisdictional defect went to the root of the matter and could not be cured by treating the appeal as barred by limitation. The appellate authority was required to address that foundational objection rather than reject the appeal solely on delay. Proceedings against the deceased proprietor were therefore unsustainable, and the limitation-based appellate order was set aside.

(viii) In the case of Rajvanti Devi Versus State of U.P. 2026 (2) TMI 164 – Allahabad HC, show cause notices and tax determinations issued to a deceased proprietor were held invalid because statutory liability attaches to the legal representative; the provision governing post death liability requires issuance of notice to the legal representative and an opportunity to respond, and a determination made against the deceased without serving the legal representative cannot be sustained. The HC allowed the writ and set aside the determination made after the proprietor's death for failure to comply with the notice requirement under the

relevant GST provision.

(ix) In the case of Sambul Shahid Versus State Of U.P. cited in 2025 (12) TMI 937 – Allahabad HC, Hon'ble HC quashed the order passed u/s 73 of the U.P. GST Act, holding that proceedings initiated and concluded in the name of a deceased sole proprietor are void. Interpreting Section 93, the Court held that while the provision governs liability of legal representatives for tax, interest or penalty after the proprietor's death, it does not authorize determination of such liability against a dead person. It is mandatory that any show cause notice and adjudication be directed to the legal representative. As the notice and determination were issued solely against the deceased, the impugned proceedings were declared unsustainable and the petition allowed.

(x) In the case of Shubhangi Gupta vs State of UP, cited in 2025 (9) TMI 595 – Allahabad HC it is held that the show cause notice and subsequent order under Section 74 unsustainable because the proceedings were initiated against a deceased person after authorities had been informed of the death and the notices were uploaded without bringing them to the notice of the legal heirs. The Court found proceedings against a deceased person impermissible and that authorities should have proceeded properly against the legal representatives. The SCN and ex parte orders, including the cancellation action, were quashed and set aside; petition allowed.

(xi) In the case of Vijayan Sahadevan Vs The Commissioner of Keralam State GST cited in 2026 (8) TMI 1362 – GSTAT, this Tribunal has taken a view that GST recovery from a deceased proprietor's legal representative is permissible under Section 93(1)(b) only through proceedings directed at that representative and only against the inherited estate, limited to its capacity to meet the liability. Where the business has discontinued, registration is cancelled, and no notice, proceedings, or inquiry identifies the inherited estate, recovery lacks a statutory basis.

12.0 We find that no notice was issued to the legal heir, no inquiry was caused regarding the inherited estate of the deceased appellant, even when the GST Registration was cancelled w.e.f. 1-4-2023, and business was discontinued. The impugned order in appeal is unsustainable in the absence of any action by the respondent under Section 93 even after more than 3 years from the date of death on 17-12-2022.

13.0 We find that on merits of the case, the deceased appellant was eligible for ITC as they have filed all the certificates issued by the suppliers, who have certified that they have paid the GST on the invoices and only due to mistake in filing GST Return GSTR1 they have shown such invoices in B2C instead of B2B. This aspect is not countered by the Revenue (State), and we do not find any reasons not to believe it. It is not at all disputed that the suppliers have paid the tax and the appellant was always eligible for ITC, even during his lifetime.

14.0 Therefore, to answer the question, we find that the *Respondent has NOT properly followed the procedure envisaged under Section 93 (1) (b) of the CGST/KGST Act, on demise of the proprietor-appellant when business is discontinued, by issuing notice to the legal heir for the estate of the deceased appellant.* Hence, the entire proceedings against the deceased taxpayer is illegal and without jurisdiction, and thus rendered NULL & VOID.

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15.0 In view of the above, we find that the impugned OIA dated 26-11-2022 is liable to be quashed and set aside, as unsustainable and without jurisdiction. We pass the following order:

ORDER

The impugned OIA dated 26-11-2022 is quashed and set aside and the appeals are allowed with consequential relief.

(Order pronounced in open court)

Subramanya Rayaprol
Vice-President

Ramamoorthi Sriram
Member (Technical)

Dated: 30-10-2026

GST APPELLATE TRIBUNAL
जीएसटी अपीलीय अधिकरण
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