GOODS AND SERVICES TAX APPELLATE TRIBUNAL

THIRUVANANTHAPURAM BENCH

Division Bench :: Court No. I

(e-Hearing)

APPEAL NO: APL/19/TVP/2026

VIJAYAN SAHADEVAN (DECEASED) **............Appellant**

Versus

THE COMMISSIONER OF KERALA STATE GST, THIRUVANANTHAPURAM **............Respondent**

Counsel for Appellant	**Counsel for Respondent**
K R Balachandran, Advocate	Mansur M I, JC, AR

CORAM:

Hon'ble Shri Subramanya Rayaprol, Vice-President

Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

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FINAL ORDER NO: 03/TVP/KERALA/2026

Date of Hearing: 7-8-2026

Date of Order: 21-8-2026

Per: Subramanya Rayaprol, Vice-President

1.0 Mr Balachandran, Ld Advocate appeared for the deceased appellant and Mr M I Mansur, Ld Joint Commissioner appeared for the respondent.

2.0 The brief facts of the case is that an assessment notice ASMT-10 dated 5-3-2020 was issued to the appellant alleging that GSTR-3B return for March 2018 was belatedly filed on 16-6-2019 instead of its due date 23-4-2019. Due to this delay in filing the said return, the Input Tax Credit availed by them amounting to Rs. 1,72,430/- was proposed to be disallowed under Section 16(4) along with a demand of Interest of Rs. 2,18,198/-. Due to the COVID-19 pandemic and lockdown, the appellant could not file the reply to the said notice. The said assessment notice culminated into GST DRC-01A dated 13-11-2020 demanding the same tax and interest. The appellant could not reply to this notice DRC-01A also due to continued illness. Further, DRC-01 dated 15-7-2021 was issued with a revised tax demand of Rs. 1,72,430/-, Interest of Rs. 1,00,340/-, Penalty of Rs. 20,000/- and additional interest of Rs. 187350/- for delay in filing of GSTR-3B returns for the period Nov-2017 to Mar-2018. The said notice was decided ex parte and an OIO DRC 07 vide No. ZJ3202220065691/2017-18 dated 15.02.2022 was issued. The appellant had filed an appeal before the First Appellate authority, and the appeals were rejected vide the impugned OIA dated 8-12-2022. Subsequently, due to continued illness the appellant died on 5-9-2024. The Ld Advocate submits a death certificate of the deceased appellant recorded as death registration no. 811/2024 dated 23-9-2024, registered with Thrikkovilvattom Grama Panchayat, Kerala.

3.0 The present appeals are filed on 26-3-2026, 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. 32APNPS6894L1ZX was cancelled suo motu wef 6-6-2023. The GST Returns were also filed only upto June-2023.

4.0 Ld Advocate appearing for the deceased appellant, represented the legal heir, and submits that the only issue in this matter is that the GST Returns for the Period Nov-2017 to March-2018 was filed belatedly. Therefore, the ITC claimed in the GSTR-3B was denied and show cause notice was issued, which was adjudicated and the first appellate authority also rejected their appeals. Ld Advocate further submits that Section 16(5) of the CGST Act/KGST Act was inserted wef 1-7-2017 which specifically relaxed the time limits and due dates and allowed the Input Tax Credit for the period 2017-18, 2018-19, 2019-20 and 2020-21, if all the GST Returns are filed upto 30-11-2021. Since they have already filed the GST Returns on or before 6-6-2019, the denial of ITC is no longer sustainable. On being asked a specific question from the Bench, whether any action was initiated under Section 93 of the CGST /KGST Act, and any such notices were issued to the legal heir after demise of the appellant from the respondent, the Ld Advocate denies having received any notice, or any such inquiry caused.

5.0 The Ld AR on the other side, submits that the Circular No. 237/31/2024-GST dated 15-10-2024 clarifies and directs the Adjudicating and Appellate Authorities, including matters pending in appeal, to take cognizance of the retrospectively inserted Section 16(5) while passing orders. The Respondent does not oppose examination of the ITC component of the demand in light of Section 16(5), subject to the reverification set out below. However, he submits that Section 16(5) operates only qua the disallowance of ITC under Section 16(4) on the ground of belated filing of returns for FY 2017-18 to FY 2020-21, and grants relief only where the return was filed on or before 30.11.2021. It does not touch, and does not provide relief against, the separate and independent demand of interest of Rs. 1,87,350/- levied under Section 50(1) for belated filing of monthly returns for November 2017, December 2017, January 2018 and March 2018. That liability arises from delay in discharge of admitted cash tax liability and is separate from the eligibility of ITC and is not affected by the outcome under Section 16(5). He also submits that the benefit of Section 16(5) cannot be extended on the strength of the Appellant's bare assertion that the return was filed on 06.06.2019. The date of filing, the return period to which it relates, and the fact that the ITC of Rs. 1,72,430/- claimed therein corresponds to the very ITC disallowed in the impugned orders, are matters of record capable of verification from the GST common portal and departmental records, and may be verified by the Jurisdictional Proper Officer before consequential relief under Section 16(5) is given effect to. This is consistent with the procedure contemplated under said circular and the special rectification mechanism notified vide Notification No. 22/2024-Central Tax, both of which envisage verification by the Proper Officer and therefore requires verification of the relevant particulars.

6.0 As regards, the fact that now the appellant has died, and the deceased appellant’s legal heir is contesting the appeals, the Ld AR submits that he does not dispute that a legal heir is competent to pursue the present proceedings. Section 93 of the CGST/SGST Act, 2017 expressly contemplates that where a person liable to pay tax, interest or penalty dies, such tax, interest or penalty shall be payable by the legal representative of the deceased, to the extent of the estate of the deceased in the hands of such legal representative that is capable of meeting the liability. It is further submitted that since the deceased himself, while alive and duly represented by counsel, had already litigated this issue on merits at the first appellate stage and did not succeed, the legal heir cannot claim a wider right to reopen concluded factual issues than what would have been available to the deceased, except to the extent of the subsequent change in law.

7.0 Heard both sides.

8.0 We find that the issue to be decided here is

(i) 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.

(ii) Whether on merits of the case, the deceased appellant is eligible for the ITC in the light of Section 16(5) of the CGST/KGST Act, inserted vide Finance Act, 2024 wef 1-7-2017, based on the available record.

9.0 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 15-7-2021
3. OIO was issued on 15-2-2022
4. OIA was issued on 8-12-2022
5. GST Registration was cancelled suo motu wef 6-6-2023
5. Appellant died on 5-9-2024
6. Present appeals before Tribunal is filed on 26-3-2026

10.0 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—*
>
> *(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.*

11.0 We find that at the time of demise of the appellant on 5-9-2024, 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 26-3-2026. The last GSTR3B filed by the appellant was for the Month of May-2023 on rch-2019 on 22-5-2024. After that no returns wer filed and the GSTIN was also cancelled. Therefore, it can be construed 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. 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 though 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 authority is unsustainable and the entire proceedings is liable to be set aside.

12.0 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 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.

13.0 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 on 6-6-2023, due to continuous illness of the appellant and discontinuance of the business. The impugned order in appeal is unsustainable in the absence of any action by the respondent under Section 93 even after 2 years from the date of death on 5-9-2024.

14.0 As regards the second issue, we find that the belatedly filed GST Returns pertains to the period 2017-18, which is covered under the newly inserted Section 16(5) which was made effective from 1-7-2017. We find that the GST Returns for the period July-2017 to Feb-2017 were filed on 31-7-2018 and for the Month of March-2018 was filed on 16-6-2019, whereas Section 16 (5) allows the taxpayer to file all the GST Returns on or before 30-11-2021 for the same period. Therefore, as per the Section 16(5), the appellant whether or not deceased, is eligible to the ITC claimed in their respective GST Returns during the period 2017-18. However, the procedure laid out for availment of ITC, in the Notification No. 22/2024–Central Tax dated 8-10-2024, came much after the death of the appellant.

15.0 We find that Section 16 (5) was inserted in the CGST / KGST Act vide Section 118 of the Finance (No. 2) Act, 2024, which reads as below:

> ***Amendment of section 16.***
>
> ***118.*** *In section 16 of the Central Goods and Services Tax Act, with effect from the 1st day of July, 2017, after sub-section (4), the following sub-sections shall be inserted, namely:—*
>
> *"(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.*

16.0 In view of the Section 16(5), we find that on merits of the case, the deceased appellant was eligible for ITC as they have filed all the GST Returns on 31-7-2018 and 6-6-2019, well before the prescribed date of 30-11-2021 under Section 16(5), for the period 2017-18. Hence, we find that the impugned OIA dated 11-11-2022 is liable to be set aside, as unsustainable.

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

(Order pronounced in open court)

Subramanya Rayaprol
Vice-President

Ramamoorthi Sriram
Member (Technical)

Dated: 21.08.2026