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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 23.09.2024

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W.P.(C) 11634/2024 & CM APPL. 48366/2024**SMT. USHA GUPTA, WIFE OF LT. SH. SURINDER KUMAR
GUPTA (PROPRIETOR OF M/S. S. K. GUPTA AND CO.)**

.....Petitioner

Through: Mr Jitin Singhal, Advocate.

versus

**COMMISSIONER OF CGST, DELHI SOUTH
COMMISSIONERATE & ANR.**

.....Respondents

Through: Mr Shubham Tyagi, SSC and Ms
Navruti Ojha, Advocate.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, impugning a Show Cause Notice dated 01.08.2024 (hereafter *the impugned SCN*) issued under Section 74 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) to M/s S.K. Gupta & Co., the sole proprietorship concern of one Mr Surender Kumar Gupta.

2. The learned counsel for the petitioner states that Mr Surender Kumar Gupta had expired and the present petition has been filed by his widow.

3. Admittedly, the impugned SCN has been issued to a person who was a deceased taxpayer.



4. The learned counsel for the respondents submits that the petitioner has since been carrying on the business of her deceased husband and therefore, in terms of Section 93 of the CGST Act, the respondents are entitled to initiate the proceedings for recovery of any amount due under the relevant statute from the said concern.

5. It is settled law that the identity of the sole proprietorship concern is not different from that of a sole proprietor. In the present case, a sole proprietor of the concern – M/s S.K. Gupta & Co. – Mr Surender Kumar Gupta, has since expired and therefore, it is relevant in fact, that the impugned SCN has been issued to a non-existent person.

6. Section 93 of the CGST Act is relevant and same reads as under:-

“Section 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.

(2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

(3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

(4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a taxable person liable to pay tax, interest or penalty under this Act,--

- (a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or
- (b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or



the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.”

7. Undeniably, in a case where the person is liable to pay tax, interest and/or penalty, has expired and the business is carried on by the taxpayer’s legal representative or any other person after his demise, the said legal representative or such other person is liable to pay the due, interest or penalty as payable by the deceased taxpayer. However, the show cause notice for recovery of any such amount is required to be issued to the legal representative or such other person, who is carrying on the business of the deceased taxpayer.

8. In the present case, impugned SCN has not been issued to the legal representative of the deceased taxpayer but to the deceased taxpayer.

9. In *Unnikrishnan R & Ors v. Union of India & Ors : 2024 (7) TMI 606* the Madras High Court has held as under:-

“10. The order that has been passed against the dead person is *non-est* in law. If the petitioner is carrying on the business of the deceased person, then, the remedy is available to the Department to proceed against the petitioner under Section 93 of the TNGST Act, 2017. It appears to be that the petitioner is not carrying on the business of the deceased person.”

10. In view of the above, the impugned SCN is set aside. It is clarified that, this order will not preclude the respondents from issuing a notice to the



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legal representative or any other person, if it is found that the business of the deceased taxpayer is being carried on by the deceased taxpayer's legal representative or such other person.

11. The petition stands disposed of in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 23, 2024

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Click here to check corrigendum, if any