



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलीफैक्स 07926305136



DIN: 20230264SW000000E5BD

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1325/2022-APPEAL / 2026-30

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-141/2022-23
दिनांक Date : 01-02-2023 जारी करने की तारीख Date of Issue 03.02.2023आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)ग Arising out of Order-In-Original No. CGST/WT07/RAJ/69/2022-23 दिनांक: 28.04.2022,
issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Dineshbhai Jaydevbhai Panchal,
 Legal heir of Late Jaydevbhai Panchal,
 A/18, Satgurukrupa Apartment,
 Nr. Ramapir Tekro, Navavadaj,
 Ahmedabad-380013

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
 North , 4th Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश को प्रति यथास्थिति
 नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application,
 as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त
 धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सक्षिद, भारत सरकार, वित्त
 मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसाध मार्ग, नई दिल्ली : 110001 को की जानी
 चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision
 Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building,
 Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the
 following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में
 या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में पाए
 वह किसी कारखाने में या किसी भण्डागार में माल को प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a
 warehouse or to another factory or from one warehouse to another during the course of
 processing of the goods in a warehouse or in a warehouse whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिफ़्ट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो क्यूटी क्रेडिट मान्य की गई है और ऐसे आवेदन जो इस धारा एवं नियम के मुलायिक आयुक्त अपील के द्वारा पारित हो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-6 में दो प्रतियों में प्रेषित आवेदन के प्रति आवेदन प्रेषित दिनांक से तीन मास के भीतर मूल-आवेदन एवं अपील आवेदन की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता डू. या मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्यात की के भुगतान के सबूत के साथ टीआर-6 खातान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-6 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उल्लेख कम हो तो रुपये 200/- कीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की जीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) एकतल्लिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (विस्टेट) की परिचय क्षेत्रीय पीठिका, अहमदाबाद में 2^म माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali, Asarwa, Giridhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान चर्चुत ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक छी एक प्रति पर ₹6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को निबंधन करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील को मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 85 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनैट क्रेडिट की राशि;
- (iii) सेनैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

→ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व जमा बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 85 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपीलीय प्राधिकरण के समझौते शुल्क अथवा शुल्क या दण्ड विवादित हो तो मॉन किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब केवल के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



ORDER-IN-APPEAL

The present appeal has been filed by Shri Dineshbhai Jaydevbhai Panchal, Legal heir of Late Jaydevbhai Panchal, A/18, Satgurukrupa Apartment, Nr. Ramapir Tekro, Navavadaj, Ahmedabad - 380013 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WT07/RAJ/69/2022-23 dated 28.04.2022 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the Jaydevbhai Panchal was holding PAN No. ACJPP1573E. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that the appellant had earned an income of Rs. 11,98,445/- during the FY 2014-15, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. CGST/AR-V/Div-VII/A/bad-North/TPD UR/65/20-21 dated 27.09.2020 demanding Service Tax amounting to Rs. 1,48,128/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2015-16 to FY 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 27,168/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15 and remaining amount of demand was dropped. Further (i) Penalty of Rs. 27,168/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) & Section 77(1)(c) of the Finance Act, 1994 for not submitting documents to the department, when called for; and (iii) Penalty of Rs. 10,000/- was imposed on appellant under Section 77(2) of the Finance Act, 1994.



3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

- Late Jaydevbhai Panchal was engaged in the business of working as a welder and fabricator. He used to receive multiple work orders from big corporate companies such as Arvind Limited for which he used to supply both material and labour. He passed away on 20.08.2021 due to heart attack (copy of death certificate attached) and thereby his son, i.e. Mr. Dinesh Jaydevbhai Panchal is his authorised representative and therefore is the appellant in this appeal.
- The death of the Jaydevbhai Panchal had already caused severe pain and unrest in the entire family. The adjudicating authority had initiated the recovery proceedings of Service Tax liability during a time when the entire family was in a phase of deep grief and sorrow. Such personal loss was a major reason for the legal heir, i.e. the appellant for being unable to attend the personal hearings or respond to Departmental notices on a regular basis.
- The impugned Order was passed in relation to a dead person, i.e. Jaydevbhai Panchal and that the appellant, being the legal heir of Jaydevbhai Panchal has no statutory obligation to intimate death of Jaydevbhai Panchal. In this regard, he relied on the following case laws:
 - i. Allamelu Vecrapan [2018 (6) TM/ 760 - Madras High Court], wherein it has been held that the legal heirs are under no statutory obligation to intimate the death of the assessee to the Revenue.
 - ii. Dharamraj vs Income Tax Officer [W.P.(C) 9227/2021 dated 17.01.2022], wherein it was held that a notice issued to a dead person is null and void and all consequent proceedings/orders, including the assessment order and the subsequent notices, being equally tainted, are liable to be set aside.
- In view of the above facts of the matter they requested to set aside the impugned order.
- During Financial Year 2014-15, the total turnover as per the books of accounts was Rs. 27,93,425/- out of which material sales was Rs.25,73,625/- and labour service amount was Rs. 2,19,800/-. As the labour service amount is less than the minimum threshold limit required to obtain mandatory service tax registration, he had not obtained service tax registration. He was engaged in the aforementioned business since more than 25 years and in not even a single Financial Year has the turnover of him exceeded the threshold limit prescribed for obtaining mandatory registration under Service Tax regime. Thus, as the service income had never exceeded the threshold limit for



obtaining mandatory registration under the Service Tax Act, he had not obtained Service Tax registration.

- It is submitted that he was an individual with a reasonable annual income during the time when he was carrying out his business of welding and fabricating. From the inception of his business, he had no mala fide intentions of carrying out any fraudulent transactions or activities related to his business. He used to duly discharge any statutory liability as and when it had arose during the entire tenure. As he had neither had any mala fide intention nor had any intention to suppress any facts to evade payment of Service Tax, therefore, the adjudicating authority erred in invoking the extended period of limitation.
 - When the amount of Service Tax is not outstanding, interest cannot be levied under provisions of Section 75 of the Finance Act, 1944.
 - In the present factual matrix, he has neither had any mala fide intentions nor had suppressed any facts by way of fraud, collusion or wilful mis-statement and therefore imposition of penalty equivalent to the amount of service tax demand is arbitrary and illegal.
 - There has been no contravention of any legal provisions by him therefore, imposition of penalty of Rs.10,000/- each under provisions of Section 77(1)(a), 77(1)(c) and 77(2) is totally unconstitutional, arbitrary and illegal.
 - On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.
4. Personal hearing in the case was held on 24.01.2023. Shri Hirak Shah, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He stated that the order was passed against dead person and produce death certificate. He submitted copies of VAT registration and related documents. He relied upon the case law of CESTAT, Ahmedabad in case of Forward Resources Pvt. Ltd. Vs. CCE & ST, Surat-I in Service Tax Appeal No. 10024 of 2020.
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and



circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. The adjudicating authority had confirmed the demand observing that out of the total income of Rs. 27,93,425/-, sale of material amounts to Rs. 25,73,625/- and the trading of goods is a service specified under Negative list of services as per Section 66D(e) of the Finance Act, 1994 and the appellant is not liable to pay service tax on trading or sale of goods income. With regards to the remaining income of Rs. 2,19,800/- received by the appellant as labour service income, the adjudicating authority held that as the appellant has not submitted any documents of FY 2013-14, which is necessary for ascertain of SSI exemption benefit, the appellant is liable to pay service tax on labour income of Rs. 2,19,800/- for the FY 2014-15.

7. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" or "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the notices."

7.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax Department, without even specifying the category of service in respect of which service tax



is sought to be levied and collected. This, in my considered view, is not a proper ground for raising of demand of service tax.

8. It is further observed that the adjudicating authority, while confirming service tax demand, held that the activity undertaken by the appellant were classifiable under the category of "Manpower Recruitment or Supply Agency" defined under Section 65(105)(k) of the Finance Act, 1994. However, I find that the provisions under Section 65(105) of the Finance Act, 1994 has been replaced by negative list based service tax regime vide Notification No. 20/2012-ST dated 05.06.2012, made applicable w.e.f. 01.07.2012. Hence, the adjudicating authority has confirmed the demand under the provisions prevalent before 01.07.2012, which were not in existence for the period of demand pertaining to FY 2014-15. I find that, on this count also, the confirmation of demand by the adjudicating authority not sustainable.

9. I also find that the demand pertains to F.Y. 2014- 15 and even by invoking the extended period of limitation, the SCN could have been issued by 25.10.2019 for demanding service tax for the first half of 2014-15. However, the SCN has been issued on 27.09.2020. Therefore, the demand in respect of the period from April, 2014 to September, 2014 is barred by limitation. In my considered view, the demand on this count also not sustainable for the period from April, 2014 to September, 2014 as, the same is barred by limitation.

10. I also find that the adjudicating authority has scheduled personal hearing by specifying 3 (three) different dates i.e. 14.02.2022, 16.02.2022 and 18.02.2022 in the single letter / notice and has considered the same as three opportunities. As per Section 33A(2) of the Central Excise Act, 1944, as made applicable to Service Tax vide Section 83 of the Finance Act, 1994, when a personal hearing is fixed, it is open to a party to seek time by showing sufficient cause and in such case, the adjudicating authority may grant time and adjourn the personal hearing by recording the reason in writing. Not more than three such adjournments can be granted. Since such adjournments are limited to three, the hearing would be required to be fixed on each such occasion and on every occasion when time is sought and sufficient cause is made out, the case would be adjourned to another date. However, the adjudicating authority is required to give one date a time and record his reasons for granting adjournment on each occasion. It is not permissible for the adjudicating authority to issue one consolidated notice fixing three dates of hearing, whether or not the party asks for time, as has been done in the present case. In view of the above, I find that the adjudicating authority was required to give adequate and ample opportunity to the appellant for personal hearing and it is only thereafter, the impugned order was required to be passed. Thus, it is held that the impugned order passed by the adjudicating authority is clearly in breach of the principles of natural justice.

The legal heir of the appellant, son of Late Jaydevbhai Panchal, also submitted Death Certificate No. D202110541411 dated 06.09.2010 issued by the Registrar (Birth & Death),



Ahmedabad Municipal Corporation, Ahmedabad and also submitted that Shri Jaydevbhai Panchal expired on 27.08.2021 and during a time when the entire family was in a phase of deep grief and sorrow, he was unable to attend the personal hearings or respond to Departmental notices.

12. I also find that the appellant has requested to drop the proceedings as Jaydevbhai Panchal expired on 20.08.2021 and he was sole proprietor of the business. Therefore, without going into merits of the case further, I find that as per Death Certificate issued by the competent authority, Jaydevbhai Panchal expired on 20.08.2021. It is settled legal position that in case of death of proprietor of a proprietary concern, all proceedings regarding investigation, inquiry, assessment etc. are deemed to be concluded. In this regard, I find that in catena of judgments, it has been held that proceedings are ceased after the Death of Proprietor of the firm and also recovery proceedings initiated after the Death of Proprietor, could not be made. In support of above legal stand, I rely upon the Hon'ble Tribunal's decision in the case of **D. Matai Vs. Collector of Central Excise, Mumbai [2000 (126) ELT 1264 (Tribunal)]**, wherein similar view was held by the Tribunal. Relevant portion of the said judgment is reproduced here:-

"5. In this case the duty is demanded from M/s. Poonam Industries and penalty is also imposed under Rule 173Q on M/s. Poonam Industries. M/s. Poonam Industries was sole proprietary concern of Shri G.S. Matai, who expired on 7-5-1984. The present appellant is the legal heir of Shri G.S. Matai. Show cause notice dated 27-10-1986 was issued to M/s. Poonam Industries and to present appellant. The contention of the present appellant is that Shri G.S. Matai expired on 7-5-1984, therefore, the sole proprietary concern, M/s. Poonam Industries also ceased to exist on or after 7-5-1984. Therefore, no proceedings can be initiated against the said firm. The Hon'ble Supreme Court in the case of State of Punjab v. Jullundur Vegetables Syndicate (supra) held that in the absence of any provision under the Act or under the Rules, no proceedings of assessment can be commenced on the dissolved firm. The Hon'ble Supreme Court, further, held that even the proceedings initiated before the dissolution of the firm cannot sustain. In the present case, we find there is no such provision in the Central Excise Act or under the Rules. The revenue relied upon the decisions of the Hon'ble High Courts in the case of Satya Prakash v. Union of India & Ors (supra) and Bhagwan Devi Banka & Ors v. R.B. Sinha & Ors. (supra). In both the cases, the assessment orders were passed during the life time of the proprietor. Therefore, the recovery proceedings were initiated after the death of proprietor and the Hon'ble High Courts held that recovery can be made from the L. Rs". In the present case, as the admitted position is that show cause notice was issued on 27-10-1986 i.e. after the death of Shri G.S. Matai, sole proprietor of M/s. Poonam Industries therefore, in view



of the decision of the Hon'ble Supreme Court in the case of State of Punjab v. Jullundur Vegetable Syndicate (supra), we find merit in the arguments of the appellant. We, therefore, set aside the impugned order and allow the appeal."

12.1 I further find that similar views have been taken in the following case laws:

- > Hart Prashad Chhapolia (Dead) [2008 (227) ELT 345 (SC)]
- > Shabina Abraham [2015 (322) ELT 372 (SC)]
- > Gaurav Agarwal [2017 (354) ELT 476 (Bom.)]
- > Bhuvan Chandra Tiwari [2015 (320) ELT 123 (Uttarakhand)]
- > Shree Ambika Steel Industries [2013 (288) ELT 420 (Tr. - Del.)]
- > Anwar Karim Kar [2009 (233) ELT 498 (Tr. - Mumbai)]
- > Manmohan Kaur Sehgal [2018 (363) ELT 258 (Tr. - Delhi)]
- > Usman Suleiman Darvesh [2017 (358) ELT 1014 (Tr. - Bang.)]
- > Bharati Mulechand Chheda [2016 (336) ELT 93 (Tr. - Mum.)]
- > Tokyo Industries [2003 (161) ELT 772 (Tr.-Chennai)]

12.2 In the present case, I find that the impugned order was issued to Jaydevbhai Ranchal, who was individual and proprietor of the firm and, who died on 20.08.2021. Therefore, relying on above cited judgments, I find that proceedings initiated vide impugned order are liable to be

13. In view of above, I hold that the impugned order passed by the adjudicating authority in respect of income received by the appellant for providing labour service during the FY 2014-15, is not legal and proper and deserves to be set aside on various counts as enumerated above.

14. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

15. अर्पित खातें द्वारा खाते की राशि अर्पित कर तिथि पर तिथिगत अर्पित कर तिथि से तिथिगत अर्पित है।
The appeal filed by the appellant stands disposed of in above terms.

(Akhillesh Kumar)
Commissioner
(Appeals)

Date : 01.02.2023



(R. C. Maniyar)
Superintendent (Appeals),
CGST, Ahmedabad

(Handwritten signature)

Attested



- 6) PA file
5) Guard File

- Copy to :
1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad North
3) The Deputy Commissioner, CGST, Division VII, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

Ahmedabad North
CGST, Division-VII,
The Deputy Commissioner,
Respondent

Ahmedabad - 380013
Mr. Ramapri Tekro, Navvada,
A/18, Saigurukrupa Apartment,
Legal heir of Late Jaydevbhai Panchal,
Shri Dineshbhai Jaydevbhai Panchal,
To,
Appellant

BY RPAD / SPEED POST

