IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 32732 OF 2024 (T-RES)

BETWEEN:

SMT. THANUJA GURUPRASAD RAO,
W/O. LATE GURUPRASAD KODIBETTU RAO,
AGED ABOUT 46 YEARS,
R/AT B 2-31/31, FLAT NO. 604,
6TH FLOOR, BLUBERRY HILLS,
ABHIMAN HEIGHTS,
MANGALORE KONCHADY,
DAKSHINA KANNADA - 575 008.

M/S. LINES N CURVES,
THE PROPRIETORSHIP FIRM,
ERSTWHILE PROPRIETOR
SHRI. GURUPRASAD KODIBETTU RAO,
SINCE DEAD REPRESENTED BY HIS WIFE,
SMT. THANUJA GURUPRASAD RAO

…PETITIONER

(BY SRI. NIKHIL VASISHTA, S. DHANUSH, ADVOCATES FOR
SRI. P. B. HARISH, ADVOCATE)

Digitally signed by CHANDANA B M
Location: High Court of Karnataka

AND:

COMMERCIAL TAXES OFFICER,
4TH FLOOR, ROOM NO. 402,
VANIJYA THERIGE BHAVANA,
MAIDAN ROAD,
MANGALORE - 575 001.

…RESPONDENT

(BY SMT. JYOTI M. MARADI, HCGP)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT OF APPROPRIATE NATURE TO CALL FOR THE RECORDS OF THE CASE AND AFTER SCRUTINIZING THE SAME, TO SET ASIDE AND QUASH THE

IMPUGNED ORDER NO CTO/LGSTO-262/ADJ/2024-25 DATED 22.07.2024 IN FORM GST DRC-07 BEARING REFERENCE NO ZD290724077301A DATED 23.07.2024 RECEIVED ON 15.10.2024 VIDE ANNEXURE-A ISSUED BY RESPONDENT AND ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks for the following reliefs:

"a. Issue a Writ of Certiorari or any other Writ or Order or direction of appropriate nature to call for the records of the case and after scrutinizing the same, to set aside and quash the impugned Order No.:CTO/LGSTO-262/ADJ/2024-25 dated 22.07.2024 in Form GST DRC-07 bearing reference No:ZD290724077301A dated 23.07.2024 received on 15.10.2024 vide ANNEXURE-A issued by Respondent;

b. Issue a Writ of Certiorari or any other Writ or Order or direction of appropriate nature to call for the records of the case and after scrutinizing the same, to strike down and quash the three Show Cause Notices issued under Section 73 of the 'CGST Act 2017' vide Show cause notice: Ref No: CTO/LGSTO-262/DRC-01/A.No: 2255/2023-24 dated 16.04.2024 in Form GST DRC-01 bearing Reference No: ZD2904240408069 dated 17.04.2024 vide ANNEXURE-B issued by Respondent;

c. *Pass any other order or orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the present case."*

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record will indicate that the petitioner is the wife of one Late Guruprasad Kodibettu Rao, who was the proprietor of the proprietary concern M/s. Lines N Curves curves. On 12.12.2022, the aforesaid Guruprasad Kodibettu Rao having expired, the petitioner submitted an application for cancellation of The GST registration standing in the name of her husband, Guruprasad Kodibettu Rao, pursuant to which cancellation of registration order dated 04.08.2023 was passed with effect from 31.07.2023. Subsequently, the respondent issued notice in Form ASMT-10 under Section 61 of the KGST/CGST Act, dated 22.11.2023, which was followed by an intimation in Form DRC-01A dated 15.03.2024 and a show cause notice dated 16.04.2024 under Section 73 of the CGST/KGST Act in Form DRC 01, all of which were addressed to the deceased, Guruprasad Kodibettu Rao and not to the petitioner. Subsequently, even the

personal intimation letters dated 08.05.2024, 06.06.2024 and 19.06.2024 were also addressed by the respondent -Department to the deceased Guruprasad Kodibettu Rao, which culminated in the impugned order dated 22.07.2024, without bringing the petitioner on record as the legal representative of the deceased , Guruprasad Kodibettu Rao. It is the specific contention of the petitioner that having regard to the aforesaid proceedings initiated against her deceased husband subsequent to cancellation of his GST registration without bringing the petitioner on record as his legal representative, the impugned proceedings and order against the deceased Guruprasad Kodibettu Rao are null, *non est* and *void ab initio* and the same deserves to be set aside.

4. Per contra, learned HCGP does not dispute that the petitioner's husband, Guruprasad Kodibettu Rao expired on 12.12.2022 and submits that appropriate orders may be passed by this Court in the present petition in the light of the decision of the Delhi High Court in the case of ***Usha Gupta Vs. Commissioner of CGST - W.P.(C).No.11634/2024 and C.M. Appl.No.48366/2024, dated 23.09.2024*** and in the light of the decisionof the Madras High Court in the case of ***Unnikrishnan R. Vs. Union of India -***

W.P.(MD) No.12464/2024 and W.M.P.(MD)Nos.11068, 11073 & 11079 of 2024, dated 12.06.2024.

5. In the case of ***Usha Gupta (supra),*** the Delhi High Court held as under:

> *"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 Swrender Kumar Gupta, has since expired and therefore, it is relevant in fact, that the impugned SCN has been issued to a non-existent person.*
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> *6. Section 93 of the CGST Act is relevant and same reads as under:-*
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>> *"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 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."

6. In the case of ***Unnikrishnan R. (supra),*** the Madras High Court held as under:

""9. There is no dispute that the dealer Mr.Radhakrishnan Pillai has died on 11.10.2017 and that the petitioner is one of his legal heirs/legal representatives along with his mother R.Sujatha aged about 62 years, his sister Sreelekshmi aged about 33 years and his grand-mother Nalinakshi Amma aged about 84 years.

10. The order that has been passed against the dead person is nonest 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.

11. Be that as it may, since the impugned order has been passed against the dead person, the impugned order is quashed by directing the respondents to issue a common notice to the petitioner representing the interest of the other legal heirs/legal representatives of the deceased dealer Mr.Radhakrishnan Pillai, within a period of 30 days from the date of receipt of a copy of this order and thereafter proceed in the manner known to law, in case the petitioner is carrying on the business of the deceased dealer Mr.Radhakrishnan Pillai."

7. As can be seen from the aforesaid judgment, any proceedings/order against the petitioner's dead husband, would be rendered nullity, *non est* and *void ab initio* and the entire

proceedings including the impugned order deserve to be quashed, reserving liberty in favour of the respondents to take appropriate steps in accordance with law.

8. In the result, I pass the following:

ORDER

(i) The petition is allowed.

(ii) The impugned order dated 23.07.2024 at Annexure-A and the impugned show cause notice and the summary of show cause notice dated 16.04.2025 and 17.04.2025 at Annexure-B, passed/issued by the respondent, are hereby quashed.

(iii) Liberty is reserved in favour of the respondents to take appropriate steps and proceed further in accordance with law.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC
List No.: 2 Sl No.: 40