IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.36221 of 2026

CNR No.ODHC010853592026

Santosh Kumar Pradhan (son of deceased Biswambhar Pradhan) .... ***Petitioner***

Mr. Diganta Das, Advocate

-Versus-

The Chief Commissioner, CGST & Central Excise and Customs, Odisha, Bhubaneswar and another .... ***Opposite Parties***

Mr. Mukesh Agarwal, Junior Standing Counsel

CORAM:

HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

AND

HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

Order No. **04.11.2026**

01.

1. This matter is taken up through hybrid arrangement.

2. The petitioner being the legal heir (son) of deceased Biswambhar Pradhan while assailing the Order-in-original dated 25th June, 2024 passed under Sections 73, 77 and 78 of Chapter-V of Finance Act, 1994 by the Assistant Commissioner, GST and Central Excise, Bhubaneswar-II Division pertaining to the Financial Year 2014-15, questioned the issue of demand-*cum*-show-cause notice dated 11th November, 2019 issued by the said authority in

the present writ petition for grant of the following prayer(s):

"In the facts and circumstances stated above, this Hon'ble Court would graciously be pleased to admit this writ application and issue:

(a) Rule NISI calling upon the Opp. Parties to show cause as to why the impugned Order-In-Original No.AC/GST & CX DIVN/B-II/ST-218/2024 dated 25.06.2024 (Annexure-2) shall not be set aside/quashed;

(b) And if the O.Ps fail to show cause or show insufficient cause, make the said Rule absolute by issuing a WRIT in the nature of Certiorari quashing the impugned Order-In-Original No.AC/GST & CX DIVN/B-II/ST-218/2024 dated 25.06.2024 (Annexure-2), as being void ab initio, having been passed against a deceased person without impleading his legal heirs, never validly served, and passed beyond the mandatory period prescribed under Section 73(4B) of the Finance Act, 1994;

(c) Issue a Writ in the nature of Mandamus directing the Opposite Parties not to take any coercive action against the petitioner or the estate of the deceased, including recovery of the disputed service tax demand of Rs.12,19,224/-, interest and penalties, during the pendency of this Writ Petition;

(d) Issue any appropriate writ(s)/direction(s)/order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

And for which act of your kindness, the petitioner shall remain ever pray as in duty bound."

3. It is submitted by Sri Diganta Das, learned counsel appearing for the petitioner that the demand-*cum*-show-cause notice being issued in the name of Biswambhar Pradhan, which culminated in passing of Order-in-original on 25th June, 2024 against said Biswambhar Pradhan, Odagaon is invalid, inoperative and without jurisdiction, inasmuch as the notice issued and the order passed were against a dead person. He relied on a Coordinate Bench of this Case Court in the case of *Smt. Kanakalata Senapati vrs. The Assistant Commissioner, GST and Central Excise, Bhubaneswar-II Division, 2026 SCC OnLine Ori 156*.

4. Sri Mukesh Agarwal, learned Junior Standing Counsel appearing for the opposite parties being supplied with copy of the aforesaid judgment, upon perusal, submitted that the present issue raised by the learned counsel for the petitioner is governed by the aforesaid judgment of this Court in the case of *Kanakalata Senapati (supra)*.

5. Heard Sri Diganta Das, learned counsel appearing for the petitioner and Sri Mukesh Agarwal, learned Junior Standing Counsel appearing for the opposite parties.

6. Perused the record. On perusal of copy of Certificate of Death issued by the Registrar, Births and Deaths, Gamharimunda CHC of Tahasil: Banapur, District: Khordha, it is manifest that Biswambhar Pradhan, son of Bhubaneswar Pradhan expired on 5th January, 2022.

Scrutiny of both the demand-*cum*-show-cause notice dated 11th November, 2019 (Annexure-1) and Order-in-Original dated 25th June, 2024 (Annexure-3), it emanates that the same were issued and framed in the name of Biswambhar Pradhan.

7. This Court in the case of *Kanakalata Senapati (supra)* in an identical fact-situation, held as follows:

> *"10. It is, thus, deduced from the above discussions that "legal heir" cannot fall within ken of Section 65(7) of Chapter-V of the Finance Act, 1994 so as to proceed further to determine service tax under Section 73 of said Act after the death of service provider. In other words, on the death of the service provider, in absence of statutory provision empowering the authority to continue further, the proceeding under Section 73 would abate.*
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> *10.1. In the light of legal position set forth by the Hon'ble Supreme Court of India in the case of Shabina Abraham Vrs. Collector of Central Excise and Customs, (2015) 10 SCC 770, that in absence of provision to continue with the proceeding after the death of service provider, it is, hence, held the Order-in-Original could not be passed against the dead person.*
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> *10.2. Fact on record vide copy of certificate of death issued by the Department of Health and Family Welfare (Annexure-3) and intimation of the legal heir of Atal Bihari Senapati to the Assistant Commissioner, GST and Central Excise, Bhubaneswar-II Division submitted on 05.06.2024 (Annexure-4) and the Order-in-Original dated 30.08.2024 (Annexure-5) persuades this Court to hold that the contemplated action for initiation of recovery proceeding*

under Section 87 of Chapter-V of the Finance Act, 1994 vide Letter dated 30.05.2025 indicating the demand of Rs.17,92,354/- and penalty of Rs.18,12,354/-, cannot be held to be valid.

11. *In view of the enunciation of law on the subject and the discussion on facts made above, there is no scope left for this Court but to set aside Order-in-Original dated 30.08.2024 (Annexure-5) by the Assistant Commissioner, GST and Central Excise, Bhubaneswar-II Division, Bhubaneswar as also in consequence thereto the direction contained in the Letter dated 30.05.2025 (Annexure-6).”*

8. In view of the aforesaid discussion and legal perspicuity, there is no scope left for this Court, but to set aside the impugned Order-in-Original (Annexure-3) and quash the impugned demand-*cum*-show-cause notice (Annexure-1), which are framed and issued against a person, who is dead since 5th January, 2022.

9. With the aforesaid observation, this writ petition succeeds and accordingly disposed of. As a result of disposal of the writ petition, pending Interlocutory Application(s), if any, shall stand disposed of.

(Dr. Sanjeeb K Panigrahi)
Judge

(Murahari Sri Raman)
Judge

Signature Not Verified
Digitally Signed
Signed by: LAXMIKANT MOHAPATRA
Designation: Senior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 05-Nov-2026 18:30:46

MRS/Laxmikant