**ORISSA HIGH COURT : CUTTACK**

**W.P.(C) No.446 of 2025**
**CNR No.ODHC01-093437-2024**

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

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Shaista Parween
Aged about 52 years
Wife of the deceased husband
Sarfaraz Ahmad
Residing at: Yasin Manzil
Dargahi Mohalla, Old Station Road
Raurkela, Odisha – 769 001. ... Petitioner

*-VERSUS-*

The Assistant Commissioner
GST and Central Excise
Office of the Assistant Commissioner
GST and Central Excise
Rourkela-I Division, Nayabazar
Sector-21, Rourkela
Odisha – 769 010. ... Opposite party

***Counsel appeared for the parties:***

For the Petitioner : M/s. Saswat K. Acharya,
Abhijit Agarwal,
Abhisek Agarwal and
Jaish Joshi,
Advocates

For the Opposite party : Mr. Avinash Kedia,
Junior Standing Counsel
Income Tax Department

*P R E S E N T:*

**HONOURABLE**
**DR. JUSTICE SANJEEB K PANIGRAHI**

**AND**

**HONOURABLE**
**MR. JUSTICE MURAHARI SRI RAMAN**

**Date of Hearing : 03.11.2026 :: Date of Order : 06.11.2026**

## ORDER

The Order-in-Original dated 04.05.2023 (Annexure-4) of the Assistant Commissioner of Goods and Services Tax and Central Excise, Rourkela-I Division, Rourkela raising a demand of service tax under Section 73, Section 75, Section 77 and Section 78 of Chapter-V of the Finance Act, 1994 (for convenience hereinafter be referred to as "the Act, 1994"), pertaining to Financial Year 2015-16, is assailed in the afore-noted writ petition craving to invoke extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India with the prayer(s) to grant following relief(s):

*"In view of the aforesaid facts and circumstances, it is humbly prayed that this Hon'ble Court may kindly be pleased to:*

*A. Admit this writ petition and issue appropriate writ(s) quashing the impugned order passed by the*

*opposite party dated 04.05.2023 under Annexure-4, and all such proceedings consequent thereto;*

*B. Pass such other order(s) as may be deemed just and proper in the interest of justice;*

*And for this act of kindness, the petitioner as in duty bound shall ever pray."*

***2.*** Pursuant to the Order-in-Original No.39/ACCE/ST/ RKL-1/2023, dated 4th May, 2023 (Annexure-4), the Assistant Commissioner, Raurkela-I Division, Raurkela-opposite party on 5th April, 2024 issued notice dated 05.04.2024 (Annexure-1) in the name of Sarfaraz Ahmad (since dead), the husband of petitioner (Shaista Parween) for payment of an amount of Rs.66,67,040/- and interest as applicable.

*2.1.* Enclosing death certificate issued by the Registrar, Birth and Death), Municipal Corporation, Gurugram, the petitioner intimated on 2nd August, 2024 to the authority concerned that her husband has passed away on 27th April, 2020 (See, Annexure-2). Despite such information made available to the authority-opposite party, Order-in-Original was passed on 04.05.2023 and a letter dated 05.04.2024 was issued demanding to deposit an outstanding amount arising out of said Order-in-Original with a warning "failing which necessary recovery action will be initiated" against the present petitioner under the provisions of Section 87 of the Finance Act, 1994, as amended read with Section 79 of the CGST Act, 2017.

*2.2.* Objecting to such a recourse to be initiated, questioning jurisdiction of the authority concerned the petitioner knocked the doors of this Court by way of filing the instant writ petition with prayer to quash the Order-in-Original.

***3.*** The short issue involved in this matter is whether the Assistant Commissioner of Central Goods and Services Tax and Central Excise, Rourkela-I Division, Rourkela was justified in ignoring the intimation dated 2nd August, 2024 apprising that the noticee (Sarfaraz Ahmed) had already left for heavenly abode since 27th April, 2020 and proceed to pass Order-in-Original, dated 4th May, 2023 raising demand of service tax under the provisions of Chapter-V of the Finance Act, 1994 and warned to take coercive measure against the petitioner-wife of the service provider (namely Sarfaraz Ahmed).

*3.1.* The matter was on board on 15.01.2025 and in course of hearing the issue being agitated by the Sri Abhijeet Agarwal, learned Advocate, the learned Junior Standing Counsel for the opposite party sought for accommodation to obtain instructions. The matter again appeared before this Court for hearing on 18.12.2025, when the learned Junior Standing Counsel instead of filing response, sought to argue the matter. However, necessary order could not be passed. The matter came up before this Court 03.11.2026. On the consent of

counsel for both the parties, the matter is heard for final disposal.

*3.2.* Accordingly, heard Sri Abhijeet Agarwal, learned Advocate for the petitioner and Sri Avinash Kedia, learned Junior Standing Counsel for the opposite party.

***4.*** Sri Abhijeet Agarwal, learned Advocate contended that the Order-in-Original (Annexure-4) is *non est* in the eye of law and a nullity inasmuch as the same cannot subsist as against a dead person. It is explained that in absence of any statutory provision to continue with the proceeding against a non-existing person, the proceeding must stand abated.

*4.1.* In furtherance to such submission, the learned Advocate would argue that merely because the income for the Financial Year 2015-16 was disclosed in the returns furnished under Section 139 of the Income Tax Act, 1961, it would not *ipso facto* attract service tax liability under Chapter-V of the Finance Act, 1994. The record would reveal that the initiation of proceeding contemplating fastening liability and recovery thereof under provisions of the said Act was on the basis of presumption. Thus, the *ex parte* Order-in-Original, being against a dead person, of course, without hearing, cannot be held to be tenable in the eye of law.

*4.2.* It is sought to be explained by the learned Advocate for the petitioner that Section 65 of Chapter-V of the Finance Act, 1994, enumerates the "taxable service" provided *"to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing accommodation for a continuous period of less than three months"*. The purpose of above section is to levy service tax on "taxable service" specified therein. No finding of fact is returned by the Assistant Commissioner, Central Tax, GST and Central Excise, Raurkela-I Division to demonstrate that the service provider at any time received amount towards service provided for "a continuous period of less than three months". The presumptive basis of fastening liability is discernible from the following words contained in the Order-in-Original:

*"I find that the noticee has received Rs.2,28,86,339/-only towards providing taxable service during the period 2015-16 but they appears to be declared NIL taxable value in ST-3 returns during the period."*

The authority ought to have examined whether such information of receipt available with him comes within the fold of Notification relating to Mega Exemption. It is contended that while income from services provided may attract liability under the Income Tax Act, 1961; nevertheless, service tax liability cannot be saddled *ex hypothesi* under the Finance Act, 1994, particularly in

the absence of material on record falling within the scope of charge.

*4.3.* It is articulated by the learned Advocate that unlike provisions of Section 159 of the Income Tax Act, 1961, no statutory provision is available in the Finance Act, 1994 to comprehend that the legal representatives, much less the legal heirs, can be roped into the ken of service tax. Stemming on the interpretation propounded 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* referring to a Judgment rendered by the Bombay High Court in *CIT Vrs. Ellis C. Reid, AIR 1931 Bom 333* [which was referred to with approval in *CIT Vrs. James Anderson, AIR 1964 SC 1761*], it is, thus, submitted that if the law does not explicitly provide for the liability of legal representatives, then such liability arising out of service provided by the deceased cannot be inferred or imposed by analogy, especially when a similar provision does exist in another tax law but is absent in the statute under which demand is raised by way of assessment. Highlighting the principle of *casus omissus* it is impressed upon that the Court need not venture to fill the legislative gaps.

***5.*** Sri Avinash Kedia, learned Junior Standing Counsel representing the opposite parties submitted that since there was no representation on behalf of the assessee

despite notice/intimation, the authority concerned cannot be faulted with. Finding no other alternative, he had to conclude the proceeding and has rightly determined the tax liability. Strongly objecting to entertain the writ petition, he urged that the petitioner is not remediless. The Finance Act, 1994 enables the petitioner to ventilate her grievance before the Appellate Authority under Section 85. Therefore, he fervently emphasised for relegating the petitioner to alternative remedial forum.

***6.*** The factual matrix and the arguments advanced by the counsel for the respective parties leaves sole question for consideration is whether proceeding under Section 73 of Chapter-V of the Finance Act, 1994 initiated by issue of Notice can proceed further culminating in passing of Order-in-Original in the name of the service provider-assessee on his death, notwithstanding information regarding death is intimated to the authority concerned *vide* letter dated 02.08.2024 (acknowledged by the Office to have received said letter on 05.08.2024)?

***7.*** Before delving into the merit of the matter to examine whether death of an assessee stops the clock ticking to proceed further to assess liability, *a fortiori,* to have regard to *Shabina Abraham Vrs. Collector of Central*

*Excise, (2015) 10 SCC 770*[1]. Paragraphs 32 to 34 of said reported judgment need to be quoted:

*"32. The impugned judgment in the present case has referred to Ellis C. Reid case, 1930 SCC OnLine Bom 58 = AIR 1931 Bom 333 but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short-levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court.* ***It flies in the face of first principle when it comes to taxing statutes.*** *It is therefore necessary to reiterate the law as it stands.*

*In Partington Vrs. Attorney General, (1869) LR 4 HL 100, Lord Cairns stated: (LR p. 122)*

*'**** ***If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the State, seeking to recover the tax, cannot bring the citizen within the letter of the law, the citizen is free, however apparently within the***

[1] Equivalent citation: *(2015) 34 GSTR 146 = (2015) 83 VST 450.*

***spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable, construction, certainly such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute****.'*

33. *In Cape Brandy Syndicate Vrs. IRC, (1921) 1 KB 64, Rowlatt, J. laid down: (KB p. 71)*

***'*** in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used****.'*

34. *This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in CST v. Modi Sugar Mills Ltd., AIR 1961 SC 1047 = (1961) 2 SCR 189, SCR at p. 198 = (AIR p. 1051, para 11)*

*'11. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them.* ***It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency.****' ***"*

*7.1.* Hence, what is not explicit cannot be construed to be implicit in the provisions of the statute. Rudimentary principles of taxation is reflected in *Mineral Area Development Authority Vrs. Steel Authority of India, (2024) 7 SCR 1549* [nine-Judge Bench of the Hon'ble Supreme Court of India] with the following observations:

> *"182. Conceptually, a tax has four elements—*
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> *(i) the nature of the tax which prescribes the taxable event attracting the levy;*
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> *(ii) the person who is liable to pay tax;*
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> *(iii) the rate at which the tax is paid; and*
>
> *(iv) the measure or value to which the rate will be applied for computing the liability.*
>
> *[Govind Saran Ganga Saran Vrs. CST, (1985) Supp. SCC 205 (6); Mathuram Agrawal Vrs. State of M.P., (1999) 8 SCC 667 (12); Union of India Vrs. Mohit Minerals (P) Ltd., (2022) 10 SCC 700 (97)].*
>
> *183. The subject matter of taxation has been exhaustively enunciated in the Union and State Lists in the Seventh Schedule of the Constitution. [Chhotabhai Jethabhai Patel and Co. Vrs. Union of India, (1962) Supp 2 SCR 1 (68)].*
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> *The occurrence of the taxable event creates or attracts the liability to tax. [Goodyear India Ltd. Vrs. State of Haryana (1990) 2 SCC 71]. For example, In re Sea Customs Act, S.20(2), (1964) 3 SCR 787 (23) this Court held that in the case of excise duties, the*

*taxable event is the manufacture of goods and the duty is not directly on the goods but the manufacture thereof. Thus, the activity of the manufacture of goods attracts the liability for the levy of excise duties.*

184. *The incidence of taxation pertains to the manner in which the burden of tax would fall on a person. [Godfrey Phillips India Ltd Vrs. State of UP, (2005) 2 SCC 515 (47)].*

*The incidence of tax was exemplified by the decision of this Court in State of Karnataka Vrs. Drive-In Enterprise, (2001) 2 SCR 378 = (2001) 4 SCC 60 (13).*

*While dealing with the validity of an entertainment tax imposed by the State of Karnataka, it was held that since an entertainment necessarily requires a person who is entertained, the incidence of the tax is on the persons entertained. The incidence of tax is relatable to the person who bears the ultimate burden of the tax.*

185. *The subject matter of Entry 50 of List II is "taxes on mineral rights." As discussed in the above segment, 'mineral rights' is a comprehensive term to mean the bundle of rights with respect to minerals. The taxable event under Entry 50 of List II would relate to the exercise of mineral rights.*

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188. *The taxable event with respect to taxes on mineral rights will be the exercise of mineral rights. The incidence of the tax on mineral rights depends upon who is exercising the right. We do not agree with the*

*respondents that the incidence of a tax on mineral rights would necessarily have to be on the owner of the land. A tax under Entry 49 of List II is not only levied on the owner of the land, but also an occupier. [See Anant Mills Co. Ltd. Vrs. State of Gujarat (1975) 2 SCC 175].*

*Similarly, a tax on mineral rights could be levied on any person who has an interest in the minerals.*

*189. The measure of tax is a matter of legislative policy. The legislature can select any measure of tax to compute liability, as long as it has a reasonable nexus with the nature of the tax. Hence, it is for the legislature to devise an appropriate measure of tax to compute the tax liability, provided the measure has a nexus with the nature of levy, that is a tax on mineral rights."*

*7.2.* Analysing from the aforesaid angle, the field of legislation for exigibility of Service Tax can be traced out to Entry 97 of List-I of Seventh Schedule appended to the Constitution of India in pursuance of Article 246 of the Constitution of India[2]. The taxable event, measure of

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[2] By dint of the Constitution (One Hundred and First Amendment) Act, 2016, the Central Goods and Services Tax Act, 2017, having been enacted came into force with effect from 01.07.2017. Section 173 and Section 174 of said Act, 2017 provide as follows:

*"173. Amendment of Act 32 of 1994.—*
*Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.*

*174. Repeal and savings.—*
*(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and*

tax and rate of tax are spelt out in Section 66 to Section 66F read with Section 67 and Section 67A. However, the term "taxable person" is defined by providing the meaning of "assessee" in Section 65(7) of the Act, 1994.

*7.3.* In *State of Telangana Vrs. Tirumala Constructions, (2023) 15 SCR 141* it is stated thus:

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*the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.*

*(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as 'such amendment' or 'amended Act', as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—*

*(a) revive anything not in force or existing at the time of such amendment or repeal; or*

*(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or*

*(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:*
*Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or*

*(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or*

*(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed; or*

*(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.*

*(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal."*

> *"3. The pre-Amendment constitutional scheme had a vision of taxation of goods and services supplied within India. Excise and customs duty and excise on manufacture were within the scope of the legislative powers of the Union Parliament[3], under the Seventh Schedule. No separate entry for Service Tax existed in the Constitution at the time it was enacted. In Tamil Nadu Kalyana Mandapam Assn. Vrs. Union of India, 2004 Supp (1) SCR 169 = (2004) 5 SCC 632 this court held that service tax as a subject matter was within the "residuary power" of the Union; nevertheless, Entry 92C was introduced into the Union List by the Constitution (88th Amendment) Act, 2004 clarifying that the Union had exclusive authority to impose a service tax. Taxation of sale and movement of goods was within the exclusive purview of the States, by Entries 52 and 54 of the State List (List II of the VIIth Schedule to the Constitution). The delineation of Union and State taxation powers through the Union and State Lists of the Seventh Schedule was precise and clear, leaving little room for any overlap in the kind of taxes that the Union could impose and those that a State could levy. The "Concurrent List" (or List III of the VIIth Schedule) contained no taxing entries, signifying that the constitutional scheme for taxation was to apportion two distinct, exclusive spheres of taxation for the Union and the States."*

*7.4.* With the above perspective of law, this Court now proceeds to examine the issue involved in the instant case.

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[3] Entries 83 and 84, List I, Seventh Schedule of the Constitution of India.

*7.5.* From the above factual matrix, which remained uncontroverted by the learned Junior Standing Counsel, it surfaced that it was within the knowledge of the Assistant Commissioner of Goods and Service Tax and Central Excise, Raurkela-I Division on the date of passing the Order-in-Original, dated 04.05.2023 that the assessee-Sarfaraz Ahmed expired on 27th April, 2020; yet he has also directed a dead person to discharge outstanding liability by letter dated 05.04.2024. Law is well settled that if a proceeding is initiated against a dead person, it should be treated as a nullity. In the instant case, during the course of proceeding under Section 73 of the Act, 1994, the assessee, an individual proprietor, is dead, and such death was on account of natural cause, but not manoeuvred one.

*7.6.* Section 65(7) of the Act, 1994 defines the term "assessee" to mean "a *person* liable to pay the service tax and includes *his agent*".

*7.7.* In the case at hand service provider, namely Sarfaraz Ahmed, is the person liable to pay the service tax. The terms "person" and "agent" are not defined in Chapter-V of the Finance Act, 1994. To understand the connotation of the words not defined in the statute, the Hon'ble Supreme Court of India in *MSCO Pvt. Ltd. Vrs. Union of India, (1985) 1 SCR 1146* laid down the following as a guiding principle:

*"The expression 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment' etc., But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it.* ***It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject.*** *Craies on Statute Law (6th Edn.) says thus and page 164:*

*'In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. 'It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone.', Macbeth Vrs. Chislet, (1910) A.C. 220, 223.'*

***When the word to be construed is used in a taxing statute or a notification issued thereunder it should be understood in its commercial sense."***

7.8. In the case of *Collector of Customs, Bombay Vrs. Swastic Woollens Pvt. Ltd., (1988) Supp. 2 SCR 370* the observation made is as follows:

*"We are of the opinion that when no statutory definition is provided in respect of an item in the Customs Act or the Central Excises Act, the trade understanding, meaning*

*thereby the understanding in the opinion of those who deal with the goods in question is the safest guide."*

7.9. In *Union of India Vrs. G.S. Chatha Rice Mills, (2020) 14 SCR 571* it has been laid down as follows:

> *"44. In Kolhapur Canesugar Works Ltd. Vrs. Union of India (UOI), AIR 2000 SC 811, Constitution Bench of this Court had to decide, inter alia, if Rules 10 and 10-a of the Central Excise Rules could be considered a 'Central Act' as defined in Section 3(7) of the General Clauses Act. This decision of the Court, albeit subsequently questioned for its interpretation of 'repeal' through omission [which does not have a bearing on the issue at hand], was not assailed for its interpretation of "Central Act" within the General Clauses Act. Speaking through Justice D.P. Mohapatra, this Court answered the question of whether the aforesaid Rules constituted a 'Central Act' in the negative, in the following terms:*
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> > *'32.* ***When the term Central Act or Regulation or Rule is used in that Act reference has to be made to the definition of that term in the statute. It is not possible nor permissible to give a meaning to any of the terms different from the definition. It is manifest that each term has a distinct and separate meaning attributed to it for the purpose of the Act. Therefore, when the question to be considered is whether a particular provision of the Act applies in a case then the clear and unambiguous language of that provision has to be given its true meaning and import.*** *The Full Bench has equated a 'rule' with 'statute'. In our*

*considered view this is impermissible in view of the specific provisions in the Act. When the Legislature by clear and unambiguous language has extended the provision of Section 6 to cases of repeal of a 'Central Act' or 'Regulation', it is not possible to apply the provision to a case of repeal of a 'Rule'. The position will not be different even if the rule has been framed by virtue of the power vested under an enactment; it remains a 'rule' and takes its colour from the definition of the term in the Act (General Clauses Act).' ***"*

*7.10.* In *Concise Law Dictionary, by P.G. Osborn, published by Sweet and Maxwell, 1927,* the term "agent" is described as a person employed to act on behalf of another. An act of an agent, done within the scope of his authority, binds his principal. There are four kinds of agents—

*(1)* Universal.—

Appointed to act for the principal in all matters, *e.g.*, where a party gives another a universal power of attorney.

*(2)* General.—

Appointed to act in transactions of a class, e.g., a banker, solicitor. The scope of authority of such agent is the authority usually possessed by such agents, unless notice is given to third parties of some limitation.

*(3)* Special.—

Appointed for one particular purpose. The agent's scope of authority is the actual authority given to him.

*(4)* Agent of necessity.—

A person, who in urgent circumstances acts for the benefit of another, there being no opportunity of communicating with that other.

*7.11.* To conceive the meaning of "agent", if one turns to Section 182 of the Contract Act, the term "agent" has been defined as being a person employed to do any act for another, or to represent another in dealings with a third person. Section 186 lays down that the authority of the agent may be expressed or implied. Section 187 lays down that an authority is said to be expressed when it is given by the words spoken or written, while it is implied when it is to be inferred from the circumstances of the case and things spoken or written or the ordinary course of dealings. It will, thus, be seen that under the Contract Act, an agent may be authorised expressly by the principal to do a particular act or his power to do such act may be implied from other circumstances. It is not the case of the opposite party that the deceased service provider engaged his legal heirs as agents in his business.

*7.12.* It may be pertinent to take note of the following observations found in *Mahavir Prasad Amrit Lal Vrs. Commissioner of Sales Tax, (1977) 39 STC 531 (All)*:

*"The word 'employee' as commonly understood in vernacular, means a servant and the present case has been argued by the parties on this footing. Now a servant is not an agent of the master for all purposes. The distinction between an agent and a servant has been considered by their Lordships of the Supreme Court in the case of Lakshminarayan Ram Gopal & Son Ltd. Vrs. Government of Hyderabad through the Commissioner of Excess Profits Tax, (1954) 25 ITR 449 (SC) = (1955) 1 SCR 393[4]. Their Lordships of the Supreme Court after referring to Halsbury's Laws of England have approved of the distinction laid down by these authorities between an agent and a servant. It will be profitable to extract the decision of the Supreme Court on this point:*

*'10. The distinction between a servant and an agent is thus indicated in Powell's Law of Ageney, at page 16:*

*(a) Generally a master can tell his servant what to do and how to do it.*

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[4] *Lakshminarayan Ram Gopal & Son Ltd. Vrs. Government of Hyderabad through the Commissioner of Excess Profits Tax, (1954) 25 ITR 449 (SC) = (1955) 1 SCR 393* has been referred to in *Singapore Airlines Ltd. Vrs. CIT, Delhi, (2022) 9 SCR 1* with the following observations:

*"21. The definition of a "principal" and an "agent" is provided under Section 182 of the Contract Act. The provision states:*

*182. "Agent" and "principal" defined.—*

*An "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".*

*22. Due to the interlinked nature of Section 194H of the Income Tax Act and Section 182 of the Contract Act, our examination will axiomatically focus upon both provisions."*

(b) *Generally a principal cannot tell his agent how to carry out his instructions.*

(c) *A servant is under more complete control than an agent,*

*and also at page 20:*

(a) *Generally, a servant is a person who not only receives instructions from his master but is subjected to his masters right to control the manner in which he carries out those instructions. An agent receives his principals instructions but is generally free to carry out those instructions according to his own discretion.*

(b) *Generally, a servant, qua servant, has no authority to make contracts on behalf of his master. Generally, the purpose of employing an agent is to authorise him to make contracts on behalf of his principal.*

(c) *Generally, an agent is paid by commission upon effecting the result which he has been instructed by his principal to achieve. Generally, a servant is paid by wages or salary.*

11. *The statement of the law contained in Halsbury's Laws of England, Hailsham Edition: Vol. 22, page 113, paragraph 192, may be referred to in this connection:*

*'The difference between the relations of master and servant and of principal and agent may be said to be this: a principal has the right to direct what work*

*the agent has to do : but a master has the further right to direct how the work is to be done.'*

*The position is further clarified in Halsbury's Laws of England, Hailsham Edition-Vol.1, at page 193, Article 345, where the positions of an agent, a servant and independent contractor are thus distinguished:*

*'An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master and is bound to conform to all reasonable orders given him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent as such is not a servant, but a servant is generally for some purposes his masters implied agent, the extent of the agency depending upon the duties or position of the servant."*

*7.13.* This Court, thus, finds that the word "agent" as found in the definition of the term "assessee" *vide* Section 65(7) of the Act, 1994, it cannot be treated as equal in status of "legal heir".

7.14. The meaning of "person" can be derived from the definition of the term ascribed to in Section 3(43) of the General Clauses Act, 1897, which reads thus:

> *"(42) "person" shall include any company or association or body of individuals, whether incorporated or not;"*

7.15. The Hon'ble Supreme Court of India in *Shabina Abraham Vrs. Collector of Central Excise and Customs, (2015) 10 SCC 770* having noted the said definition held as follows:

> *"It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, Yeshwantrao Vrs. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135 at pages 140, 141 para 18 = (1966) Suppl. SCR 419 at 429 A-B, C.A. Abraham Vrs. The Income Tax Officer, Kottayam & Another, AIR 1961 SC 609 at 612 para 6 = (1961) 2 SCR 765 at page 771, The State of Tamil Nadu Vrs. M.K. Kandaswami & Others, AIR 1975 SC 1871 (para 26) = (1975) 4 SCC 745 (para 26), Commissioner of Sales Tax, Delhi & Others Vrs. Shri Krishna Engineering Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the*

*context of construing provisions which are designed to prevent tax evasion. The question at hand is very different— it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion."*

*7.16.* To adhere to a meaning of a term not defined, Clause (121) of Section 65 of the Finance Act, 1994 provides for the following:

*"Words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the Rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:*

*Explanation.—*
*For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration:*

*Provided that the provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint."*

*7.17.* In the context of whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacturer after he is dead, in the

case of *Shabina Abraham Vrs. Collector of Central Excise and Customs, (2015) 10 SCC 770* it is held as follows:

*"26. A reading of the ratio of the majority decision contained in Murarilal Mahabir Prasad Vrs. B.R. Vad, (1975) 2 SCC 736 would lead to the conclusion that the necessary machinery provisions were already contained in the Bombay Sales Tax Act, 1953 which were good enough to bring into the tax net persons who wished to evade taxes by the expedient of dissolving a partnership firm. The fact situation in the present case is entirely different. In the present case an individual proprietor has died through natural causes and it is nobody's case that he has maneuvered his own death in order to evade excise duty. Interestingly, in the written submissions filed by revenue, revenue has argued as follows:*

*'It is pertinent to mention that in the present case, Shri George Varghese (predecessor in interest of the appellants herein) was doing business in the name of manufacturing unit namely M/s. Kerala Tyre & Rubber Company and after the death of Shri George Varghese, his legal representatives (appellants herein) might have been in possession of the plant, machinery, stock etc. and continuing the same business, but might be in some other name in order to avoid the excise duty chargeable to the previous manufacturing unit.'*

*27. It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in Murarilal's case (supra), we wish to add*

*that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in M/s. Murarilal's case (supra).*

*28. The argument that Section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing Section 11A read with the definition of "assessee" earlier in this judgment.*

***"

*7.18.* In view of Section 65(121) of Chapter-V of the Finance Act, 1994, the exposition of law in *Shabina Abraham (supra)* shall apply to the present fact-situation of the case.

*7.19.* Glance at Section 65(7) reveals that the "assessee" is a "person" and said term includes "his agent". It is also well-settled that in order to determine whether the word 'includes' has that enlarging effect. The interpretation and purport of "includes" in definition clause being referred to a three-Judge Bench of the Hon'ble Supreme

Court of India, in the case of *Ramala Sahkari Chini Mills Ltd. Vrs. Commissioner of Central Excise, Meerut-I, Meerut, Civil Appeal No. 3976 of 2007, decided on February 19, 2016* it has been held that:

*"We have heard the learned counsels for the parties. We have also read and considered the order dated 29th November, 2010 of this Court referring the matters to a larger bench for a decision on the question as to whether the definition of the term "input" in Rule 2(g) of the CENVAT Credit Rules, 2002 is to be understood to include items beyond the six items mentioned specifically in Rule 2(g). The answer to the question referred, according to us, is self-contained in the order of reference which has referred, inter alia, to a three judge bench decision of this Court in Regional Director, Employees' State Insurance Corporation Vrs. High Land Coffee Works of P.F.X. Saldanha and Sons, (1991) 3 SCC 617. There are other decisions of this Court by Coordinate Benches (three judge) on the issue which need not be adverted to specifically inasmuch as it has been clearly held in Regional Director, Employees' State Insurance Corporation (supra) that* ***the word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.*** *We answer the question referred to us in the above manner leaving it for the appropriate bench of this Court to decide on the factual parameters of the case(s) and the entitlement of the assessee(s) to CENVAT credit in the facts of each case."*

*7.20.* Three-Judge Bench of the Hon'ble Supreme Court of India in the case of *B.B. Patel Vrs. DLF Universal Ltd.*,

*(2022) 8 SCR 51* took note of decision rendered in *Philips Medical Systems (Cleveland) Inc. Vrs. Indian MRI Diagnostic & Research Ltd., (2008) 10 SCC 227.*

7.21. In *Philips Medical Systems (Cleveland) Inc. Vrs. Indian MRI Diagnostic & Research Ltd., (2008) 10 SCC 227* it has been explained as follows:

> *"24. In the original Section 36A [of the Monopolies and Restrictive Trade Practices Act, 1969] which was introduced by 1984 amendment, it was necessary to attract the provision that some injury or the unfair trade practice should have caused some loss to the consumer. By the 1991 amendment to Section 36A, the requirement to establish loss or injury to the consumer has been deleted. Also, another change brought out by the 1991 amendment was that while the original Section 36A had adopted an exhaustive definition of unfair trade practice, the 1991* ***amendment has given an inclusive and not an exhaustive definition of unfair trade practice****.*
>
> *25. However, we are of the opinion that principles of ejusdem generis and noscitur a sociis will apply to the interpretation of Section 36A as amended in 1991. Applying these well-known principles of interpretation we are of the opinion that Section 36A does not apply in a situation where goods are not sold at all. It only applies where goods in fact are sold.*
>
> ***
>
> *28. No doubt by the 1991 amendment the definition of unfair trade practice was made inclusive and not*

*exhaustive, but this does not mean that when interpreting the amended Section 36A we should disregard the object for which Section 36A was enacted. Thus in Hemens (Valuation Officer) vs. Whitsbury Farm and Stud Ltd., (1988) 1 All ER 72 (HL), in construing Section 2(3) of the Rating Act, 1971 which defines 'Livestock' to include any mammal or bird kept for the production of food or wool or for the purpose of its use in the farming of land, the word livestock was not given the wide meaning (in contradiction to deadstock) to include any animal whatsoever and was held not to extend to thorough bred horses not kept for use in the farming of land.*

*29. Similarly, in South Gujarat Roofing Tile Manufacturers Association Vrs. State of Gujarat AIR 1977 SC 90 (vide pp. 93-94) and Hindustan Aluminium Corporation Vrs. State of UP, AIR 1981 SC 1649, the inclusive definition was given a restrictive meaning. As observed by Wanchoo, J. in Vanguard Fire and General Insurance Co. Ltd., Madras Vrs. Fraser & Ross, AIR 1960 SC 971, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning; intended to be conveyed by the use of the words under the circumstances.* ***No doubt, because of the inclusive definition the meaning of the expression 'unfair trade practice' goes beyond the specific clauses mentioned in Section 36A, but that does not mean that the meaning will go beyond the very object of Section 36A.****"*

*7.22.* The Hon'ble Supreme Court of India in the case of *Thalappalam Ser. Coop. Bank Ltd. Vrs. State of Kerala,*

*(2013) 14 SCR 475* interpreted the meaning of "means and includes" in the following words:

> *"27. Legislature, in its wisdom, while defining the expression 'public authority' under Section 2(h) [of the Right to Information Act, 2005], intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions 'means and includes'.* ***When a word is defined to 'mean' something, the definition is prima facie restrictive and where the word is defined to 'include' some other thing, the definition is prima facie extensive. But when both the expressions 'means' and 'includes' are used, the categories mentioned there would exhaust themselves.*** *Meanings of the expressions 'means' and 'includes' have been explained by this Court in Delhi Development Authority Vrs. Bhola Nath Sharma (Dead) by LRs and others, (2011) 2 SCC 54, (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions."*

*7.23.* One of the legal heirs of the deceased service provider in the status of "individual" can neither be construed as a "person liable to pay service tax" nor is he/she treated to be "his agent". The proceeding under Section 73 of the Act, 1994 could not, therefore, have been completed after the death of the service provider and the Order-in-Original being issued in the name of a dead person,

namely Sarfaraz Ahmed, cannot be held to be tenable in the eye of law.

*7.24.* It is also noticed that a notice *vide* Letter dated 5th April, 2024 (Annexure-1) has come to be issued by the opposite party with the following text under the caption: "Recovery of Government Dues/Arrears":

> *"Therefore, you are requested to pay the above amount of Service Tax (including Penalty and Late Fee, if any) of Rs.66,67,040/- along with interest, as applicable within 15 (fifteen) days of receipt of this letter and submit the payment particulars to this office, failing which necessary recovery action will be initiated against you under the provisions of Section 87 of the Finance Act, 1994, as amended read with Section 79 of the CGST Act, 2017. "*

*7.25.* As the "assessee" is dead and gone, the actions contemplated under Section 87 of the Act, 1994 cannot be taken inasmuch as the Order-in-Original itself is vitiated in view of discussions made herein above and on the ratio of *Shabina Abraham (supra).* A co-ordinate Bench of this Court in the case of *Smt. Kanakatala Senapati Vrs. The Assistant Commissioner GST and Central Excise, Bhubaneswar-II Division and another, 2026 SCC OnLine Ori 156* following *Shabina Abraham (supra)* held the question in favour of the petitioner and against the opposite party-Revenue.

*7.26.* Basic allegation seems to be failure of the service provider to get himself registered, as he is allegedly to

have concealed the fact. Section 69 deals with "Registration" of service provider, which reads as follows:

> *"(1)* ***Every person liable to pay the service tax under this Chapter or the rules made thereunder*** *shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*
>
> *(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed."*

*7.27.* Said section employs the expression "person liable to pay the service tax". This makes abundantly clear that it is the "person", as defined in Section 3(42) of the General Clauses Act, 1897 and expounded by the Hon'ble Supreme Court of India in *Shabina Abraham (supra),* liable to get registered. Section 73 with the marginal heading "Recovery of service tax not levied or paid or short levied or short paid or erroneously refunded" in sub-section (1) makes it ample clear that *"where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded the Central Excise Officer may within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short levied or short paid or the person to whom*

*such tax refunded has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice"*. The stress is laid on the word "person".

*7.28.* The argument of learned Counsel that there is no explicit provision contained in Chapter-V of the Finance Act, 1994, which lays down that proceeding under Section 73 thereof could be continued against the legal heir remained uncontroverted by the learned Junior Standing Counsel. The Order-in-Original dated 04.05.2023 (Annexure-4) passed by the Assistant Commissioner, GST and Central Excise, Rourkela-I Division, Rourkela in the name of a person, who is no more, is faulted with.

***Conclusion:***

***8.*** 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.

*8.1.* 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.

*8.2.* Fact on record emerges that notwithstanding copy of certificate of death issued by the Department of Health Services, Municipal Corporation Gurugram enclosed to the letter of intimation dated 2nd August, 2024 to the Assistant Commissioner, GST and Central Excise, Rourkela-I Division regarding death of Sarfaraz Ahmed, the authority could not have discarded such vital piece of evidence (Annexure-2 series) and pass the Order-in-Original dated 04.05.2023 (Annexure-4). This Court is thus persuaded 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 5th April, 2024 indicating the demand of Rs.66,67,040/- along with interest, cannot be held to be valid.

***9.*** In view of the enunciation of law on the subject and the discussion on the facts made above, there is no scope left for this Court but to set aside Order-in-Original dated 04.05.2023 (Annexure-4) by the Assistant Commissioner, GST and Central Excise, Rourkela-I Division, Rourkela. Accordingly direction contained in

*vide* Letter dated 5th April, 2024 to discharge liability is quashed.

*9.1.* With the aforesaid observation, the writ petition is allowed.

*9.2.* As a result of disposal of the writ petition, pending Interlocutory Application(s), if any, shall stand disposed of.

*9.3.* In the circumstances there shall be no order as to costs.

**(Dr. SANJEEB K PANIGRAHI)**
**JUDGE**

**(MURAHARI SRI RAMAN)**
**JUDGE**

Signature Not Verified
Digitally Signed
Signed by: ASWINI KUMAR SETHY
Designation: Personal Assistant (Secy In-charge)
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 06-Nov-2026 15:03:11