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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment reserved on: 10.09.2026***
Judgment pronounced on: 25.09.2026
Judgment uploaded on: 25.09.2026

\# **CNR No. DLHC010336622025**

\+ W.P.(C) 7254/2025 and CM APPL. 32667/2025

JAIWANTI .....Petitioner
Through: Mr. Bharat Bhushan, Ms. Nidhi Gupta and Mr. Anuay Mishra, Advs.

versus

UNION OF INDIA & ORS. .....Respondents
Through: Mr. Raj Kumar Yadav & Ms, Preeti Gothwal, Advs. for R-1/UOI.
Ms. Monica Benjamin, SSC with Ms. Laiba Arif and Ms. Prerika Narang, Advs. for R-2 and R-4.
Ms. Vaishali Gupta, Panel Counsel (Civil) GNCTD with Ms. Rashi Aggarwal, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

ANIL KSHETARPAL, J.:

1. More than three years after the Petitioner's husband died, the Department issued a Show Cause Notice[1] to the Petitioner proposing penalties for acts allegedly committed by him during his lifetime. Through the present Writ Petition, the Petitioner challenges that

[1] For short, the 'Notice' or 'SCN'

Notice and the Order-in-Original passed pursuant to it, insofar as they proceed against her.

2. Section 93 of the Central Goods and Services Tax Act, 2017[2] provides for tax, interest or penalty being "determined after his death". The question is whether those words permit proceedings to be commenced after death, or only the completion of proceedings already commenced during the deceased's lifetime.

3. For the reasons that follow, this Court holds that Section 93 does permit proceedings to be commenced after death, provided the conditions prescribed by the provision are satisfied. Whether those conditions were satisfied when the Department proceeded against the Petitioner is a separate matter and does not depend on the existence of the statutory power under Section 93 of the Act.

4. The Petitioner also challenges the constitutional validity of Section 93(1)(b) of the CGST Act, which exposed the Petitioner to such proceedings and seeks release of ₹15,40,000/- retained by the Department. These issues fall for separate consideration.

FACTUAL MATRIX

5. The proceedings arise from an investigation conducted by the Directorate General of GST Intelligence ('DGGI') concerning alleged fraudulent availment and passing on of Input Tax Credit and refund of Integrated Goods and Services Tax on the strength of invoices without corresponding supply of goods.

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[2] For short, the 'CGST Act'

6. The Show Cause Notice attributes a role to the Petitioner's husband, late Sh. Ankit Dabas in relation to, *inter alia*, three entities, M/s P.C. International, M/s Satguru Corporation and M/s B.K. Enterprises. The present Writ petition is confined to the penalty proposed in respect of his alleged acts and the liability sought to be enforced against the Petitioner as his legal representative.

7. On 23.07.2020, the residential premises of late Sh. Ankit Dabas at Dwarka, New Delhi were searched. Cash amounting to ₹15,40,000/- was found during the search. The SCN records that the amount was voluntarily submitted by the husband of the Petitioner with the Department till completion of the investigation, as security against any tax liability which might arise or for any other purpose permitted by law. It further records that the amount was thereafter kept in a fixed deposit with the State Bank of India, R.K. Puram Branch, New Delhi. The Petitioner disputes the legality of the taking and continued retention of the said amount.

8. Sh. Ankit Dabas died on 06.05.2021. During the investigation, the Department was informed of his death through a letter dated 05.10.2021 from his cousin, Sh. Sachin Dabas, along with a copy of the death certificate. The communication also requested that any inquiry relating to late Sh. Ankit Dabas be forwarded to the Petitioner at her address in Sector-106, Gurugram, Haryana.

9. On 31.07.2024, the SCN was issued to several noticees, including the Petitioner. Insofar as the Petitioner is concerned, it proposed separate penalties under Section 122(3)(a) of the CGST Act

and the corresponding provisions referred to therein, by invoking Section 93 against her as the legal representative of her late husband. The Notice stated that the proposed penalty was in respect of the "acts and deeds of Late Sh. Ankit Dabas". It also proposed appropriation of ₹15,40,000/- towards the proposed liability.

10. The Order-in-Original dated 01.02.2025[3] records that the adjudication arose from the aforesaid SCN as well as a corrigendum dated 16.12.2024 issued by the Additional Director, DGGI Headquarters. The corrigendum has not been placed on record before this Court.

11. The Petitioner did not participate in the adjudication proceedings. She maintains that she did not receive the Notice and consequently filed no reply. The Respondents dispute this assertion and rely upon the modes of service stated to have been adopted under Section 169 of the CGST Act. The Adjudicating Authority proceeded *ex parte* against those noticees who had not responded.

12. In the operative portion of the Impugned Order, clause AD imposes a penalty of ₹1,50,000/- upon the Petitioner. The immediately succeeding clause AE, however, contains a statement that no penalty is being imposed upon the Petitioner and also contains inconsistent language concerning appropriation of ₹15,40,000/-.

SUBMISSIONS ADVANCED ON BEHALF OF THE PARTIES

13. Learned counsel representing the Petitioner submits that the

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[3] For short, the 'Impugned Order', or 'OIO'

expression "is determined after his death" occurring in Section 93(1) of the CGST Act permits only completion of proceedings which had already commenced during the lifetime of the deceased. According to him, fresh proceedings proposing a penalty for the alleged acts of late Sh. Ankit Dabas could not have been initiated against the Petitioner more than three years after his death.

14. It is further submitted that liability for aiding or abetting under Section 122(3)(a) is founded upon the personal conduct of the alleged wrongdoer. The Petitioner also relies upon Section 126(3) and contends that a legal representative cannot meaningfully answer allegations concerning matters within the personal knowledge of a person who is no longer alive. On this foundation, Section 93(1)(b) of the Act, insofar as it permits determination of a penalty after death, is also assailed as arbitrary and violative of Article 14 of the Constitution. The Petitioner additionally disputes service of the Notice and the continued retention of ₹15,40,000/- by the Department.

15. *Per contra*, Ms. Monica Benjamin, learned Senior Standing Counsel representing the Respondents, submits that Section 93 expressly contemplates determination of tax, interest or penalty after death and contains no requirement that adjudicatory proceedings must have commenced during the lifetime of the deceased. It is emphasised that the investigation had commenced during the lifetime of late Sh. Ankit Dabas and his statement had also been recorded.

16. The Respondents further contend that the penalty contemplated under Section 122 of the CGST Act is a civil liability and that

principles governing abatement of criminal proceedings are inapplicable. They dispute the plea of non-service and maintain that the SCN was served through the modes contemplated by Section 169 of the Act. An objection is also raised to the entertainment of the present Writ Petition in view of the statutory remedy of Appeal under Section 107. The Respondents also contend that the Petitioner has only approached this Court as the ordinary period of three months prescribed for filing such Appeal had already expired.

ANALYSIS AND FINDINGS

17. The objection regarding availability of an alternative statutory remedy requires a distinction to be drawn between the questions raised in the present Writ Petition. The construction of Section 93, including whether proceedings may be commenced after the death of the person whose alleged conduct gives rise to the proposed liability, is a question of law. The challenge to the constitutional validity of Section 93(1)(b) also requires consideration by this Court. In ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority***[4], the Supreme Court distinguished the maintainability of a Writ Petition from the discretion to entertain it and recognised that a pure question of law may be examined notwithstanding the availability of an alternative remedy. This Court, therefore, proceeds to examine these questions.

18. The same consideration does not require this Court to undertake an appellate examination of the Impugned Order in all respects.

[4] Civil Appeal No.5393/2010, decided on 01.02.2023

Whether the SCN was duly served, whether the material on record establishes the alleged contravention, whether the requirements of Section 93(1)(b) are satisfied on the facts, the computation of the penalty and the effect of the operative clauses of the OIO concern the individual adjudication. These are matters which can appropriately be examined in the statutory Appeal. The exercise of jurisdiction under Article 226 ought not to substitute the appellate mechanism for determination of such issues.

19. There is one further aspect concerning the availability of that remedy. The Impugned Order is dated 01.02.2025, whereas the present Writ Petition was instituted on 23.05.2025. Section 107(1) of the Act prescribes a period of three months from "communication of the decision or order" for filing an Appeal, and sub-section (4) permits the Appellate Authority, upon sufficient cause being shown, to allow it to be presented within a further period of one month. Even if, for the limited purpose of examining the chronology, the date of the Impugned Order itself is taken as the date of its communication, the present Writ Petition was instituted before expiry of that further period. The Petitioner has thereafter been prosecuting her challenge before this Court. Having regard to these circumstances, after deciding the questions of law noticed above, the Petitioner shall be relegated to the Statutory remedy of Appeal under Section 107 of the Act in respect of the remaining objections to the Order-In-Original. The Petitioner can appropriately seek condonation of delay, if any remains, after excluding the period spent in prosecuting this Writ Petition and the period of four weeks given for filing the Appeal.

20. Section 93(1) of the CGST Act, insofar as relevant, reads as follows:

> *"**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—*
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> > *(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*
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> > *(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,*
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> *whether such tax, interest or penalty has been determined before his death but has remained unpaid **or is determined after his death.**"*

(Emphasis supplied)

21. Three features of the provision are significant. First, Section 93 includes a penalty. Secondly, it contemplates a liability which is determined after the death of the person concerned. Thirdly, the nature and extent of representative liability depend upon whether clause (a) or clause (b) is attracted. Under clause (b), payment is confined to the estate of the deceased and only to the extent that the estate is capable of meeting the charge.

22. The construction urged by the Petitioner, in essence, would require the words "is determined after his death" to be read as meaning "is determined after his death in proceedings already commenced during his lifetime". The provision contains no such

qualification. Its concluding words distinguish a liability determined before death but remaining unpaid from one determined thereafter. They do not make a Notice during the deceased's lifetime a condition precedent to the latter determination.

23. The opening words "where a person, liable to pay tax, interest or penalty under this Act, dies" do not lead to a different conclusion. Those words cannot be confined to a liability already quantified before death, for the provision itself contemplates the tax, interest or penalty being determined thereafter. The underlying liability must, of course, arise from conduct attributable to the deceased under the substantive provisions of the Act. Section 93 enables that liability to be determined and, where its conditions are satisfied, enforced through the legal representative in the manner prescribed therein.

24. The fact that investigation had commenced and the statement of late Sh. Ankit Dabas had been recorded during his lifetime does not constitute the source of this power. Investigation and adjudication are distinct stages. It is unnecessary to treat the investigation itself as commencement of penalty proceedings in order to sustain a post-death determination. The authority to make a determination after death must be found in the statute itself and, in the present case, follows from Section 93. The material collected during the lifetime of the deceased may nevertheless form part of the evidentiary record in the adjudication.

25. Section 93 must at the same time be kept distinct from Section 122(3)(a) of the Act. Section 122(3)(a) applies to a person who aids or

abets any of the offences specified in clauses (i) to (xxi) of Section 122(1) and provides for a penalty which may extend to ₹25,000/-. Whether late Sh. Ankit Dabas committed the alleged acts is one question. Whether the pecuniary consequence of any such proved contravention can thereafter be enforced through Section 93 is another. Section 93 of the Act is not an independent penal provision against the legal representative.

26. Those conditions remain integral to representative liability. Clause (a) concerns a business continued after death, whereas clause (b) concerns a business which stands discontinued. In the latter situation, liability is expressly confined to the estate of the deceased and to the extent that the estate is capable of meeting the charge. Whether the requirements of clause (b) are established on the facts of the present case is distinct from the question whether proceedings may at all be commenced after death. As noticed above, the former is a matter which may appropriately be examined in the statutory Appeal.

27. In ***Shabina Abraham v. Collector of Central Excise and Customs***[5], the Supreme Court found no machinery in the applicable Excise legislation for assessment against the legal representatives of a deceased individual. A provision for recovery of sums already payable could not supply that omission. The decision requires statutory authority for determination against an estate, and it does not establish that fiscal proceedings invariably abate upon death.

28. Here, Section 93 itself provides for determination after death

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[5] (2015) 10 SCC 770

and identifies the representative and the permissible source of payment. It operates alongside the Act's adjudicatory provisions. Section 122 supplies the substantive penalty, Section 126 requires a hearing and disciplines its imposition. Explanation 1(ii) to Section 74 recognises connected proceedings against persons liable to penalty under Section 122. These provisions operate within their respective fields. The power to determine liability after death follows from Section 93 read with that scheme, rather than from a rule or a recovery provision alone.

29. The Petitioner also relies upon ***Commissioner of Income Tax v. Late Dr. K.C.G. Verghese***[6]. There, penalty proceedings under the Income Tax Act were initiated after the death of the assessee, and the Madras High Court upheld deletion of the penalty. The Court observed, *inter alia*, that no penalty proceedings had been initiated against the assessee during his lifetime and that the assessment had not been made in the hands of the legal representatives. Significantly, Section 159(2)(b) expressly permits 'any proceeding which could have been taken against the deceased if he had survived' to be taken against the legal representative. Despite that language, the Court concluded that the penalty proceedings could not be sustained. The decision undoubtedly supports the Petitioner's submission that the death of the alleged wrongdoer may have consequences for subsequent penalty proceedings.

30. The proposition cannot, however, be treated as a rule operating independently of the statutory scheme. The Allahabad High Court in

Kalawati Devi v. Income Tax Officer[7] took a different view while construing the same statutory provision of the Income Tax Act. There, the legal representative contended that she could not reasonably explain the inaccurate particulars furnished by the deceased, since the relevant facts were within his personal knowledge. The Court nevertheless held that penalty proceedings for a default committed by the deceased could be commenced or continued against the legal representatives. The Court relied upon the express legislative extension of liability to sums which the deceased would have been liable to pay had he survived.

31. This Court does not read ***Dr. Verghese*** *(supra)* as laying down a rule applicable irrespective of the statutory scheme. Section 93 of the CGST Act itself answers the question. By contemplating a penalty being "determined after his death", the provision permits liability attributable to the deceased's conduct to be adjudicated through his legal representative, subject to the conditions prescribed therein. A Show Cause Notice issued during the lifetime of the person concerned would neither establish the alleged contravention nor determine the penalty. The alleged contravention would still have to be established in adjudication. The CGST Act does not make issuance of such a notice during lifetime a condition precedent to a determination after death. This conclusion follows from the language of the provision and scheme of the CGST Act itself, without recourse to the deeming provisions contained in the Income Tax Act.

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[6] (2019) 416 ITR 155 (Mad).
[7] (1981) 21 CTR (All) 62

32. The decision of this Court in ***Lal Chand Verma v. Union of India***, W.P.(C) 8184/2023, decided on 08.01.2025, as relied upon by the Petitioner, arose in a different factual setting. The notice was issued in the deceased assessee's name despite intimation of his death, and this Court specifically noted that no notice under Section 159(2)(b) had been issued to the legal heir. Its observations must be read in that setting. Here, the SCN identifies the Petitioner and invokes Section 93 in her representative capacity. Whether the Notice was validly served is, as already noticed, a separate question.

33. The constitutional challenge requires consideration on this construction. Section 93(1)(b) must therefore be examined on the grounds of discrimination and denial of a meaningful defence as advanced by the Petitioner.

34. The provision preserves liabilities attributable to the deceased's lifetime conduct for lawful determination and satisfaction from his estate. Death creates the need for someone to represent that estate. The resulting distinction bears a direct relation to the statutory purpose. Section 93 does not deem the representative to have committed the alleged wrong, and clause (b) confines payment to the estate's capacity to meet the charge. The underlying contravention and the conditions of representative liability must still be established by the Adjudicating Authority.

35. The loss of the person possessing first-hand knowledge may seriously affect the explanation available to the representative and the weight that can fairly be attached to the evidence. Section 126(3) of

the CGST Act in fact requires an effective opportunity of hearing. The representative must receive the relied-upon material and be permitted to contest the alleged contravention, the statutory basis and the proposed amount. Inability to give a personal account of the deceased's affairs cannot be treated as an admission. The statute also preserves an Appeal against an adverse determination.

36. These safeguards answer the contention that Section 93 confers unguided power or necessarily denies a defence. A particular adjudication may fail for want of evidence or a fair opportunity. That does not establish that every determination after death must be unfair. The presumption of constitutionality and the latitude recognised for economic legislation in ***R.K. Garg v. Union of India***[8], do not exclude scrutiny under Article 14. Here, the statutory purpose, representative procedure and limitation to estate assets provide a rational basis for the provision.

37. The Petitioner's reliance upon ***Shree Meenakshi Mills Ltd. v. A.V. Visvanatha Sastri***[9], does not alter this conclusion. That decision concerned materially different procedures applied to comparable classes of tax evaders. Section 93(1)(b) does not withdraw ordinary adjudicatory safeguards from a selected class. It provides for representation after death while limiting the source of payment. On the grounds urged, the provision is neither discriminatory nor manifestly arbitrary. The constitutional challenge is accordingly rejected.

38. The conclusions reached above answer the questions

[8] (1981) 4 SCC 675

concerning the scope and constitutional validity of Section 93. Insofar as the merits of the Impugned Order are concerned, there is a fundamental uncertainty in the operative portion of the Impugned Order. Clauses AD and AE therein read as under:

> *"AD. I impose Penalty of Rs. 1,50,000/- on Mrs. Jaiwanti Dabas, w/o Late Sh. Ankit Dabas, for each instance of contravention of CGST Act, IGST Act & respective State GST Acts and rules thereof in respect of M/s P C International, M/s Satguru Corporation and M/s B.K Enterprises under provisions of Section 122 (3)(a) of the CGST Act, 2017 and corresponding provisions of respective State GST Acts, 2017 read with Section 20 of the IGST Act, 2017, for his acts and deeds detailed supra.*
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> *AE. I refrain from imposing any penalty upon Mrs. Jaiwanti Dabas, w/o Late Sh. Ankit Dabas. I order appropriation of Cash amount of Rs 15.40 Lakhs voluntarily submitted by Late Sh. Ankit Dabas with the department, should not be appropriated against the aforesaid liability."*

39. The apparent inconsistency between clauses AD and AE of the Impugned Order was not addressed by either side during the course of hearing. It would not be appropriate to make an issue which was not argued before this Court an independent ground for interfering with the Impugned Order. The questions based on facts and those touching upon the merits of the Impugned Order-In-Original ('OIO') can appropriately be examined by the Appellate Authority.

40. The claim concerning ₹15,40,000/- requires separate consideration. The Department describes the amount as voluntarily submitted pending investigation and records its placement in a fixed deposit. The Petitioner disputes that description. The Department must establish a subsisting lawful basis for the continued retention and account for the money and its earnings.

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[9] AIR 1955 SC 13

41. In ***K.M. Food Infrastructure Pvt. Ltd. v. Director General, DGGI Headquarters,*** W.P.(C) 328/2024 and W.P.(C) 363/2024, decided on 13.02.2024, this Court directed return of cash with the interest earned on fixed deposits after finding no lawful justification for its taking and retention. The factual position here differs because voluntariness is disputed. Even on the Department's account, however, a deposit pending investigation does not establish a right to indefinite retention.

42. In view of the aforesaid, rather than adjudicating the disputed factual questions concerning the taking of the money or construing clauses AD and AE in these proceedings, the appropriate course is to require the Respondents to furnish a complete account of the amount and disclose the subsisting legal authority relied upon for retaining or appropriating any part thereof. The Petitioner's claim may thereafter be considered by the competent authority by a reasoned decision, subject to the directions issued hereafter. This exercise shall not amount to rectification, review or modification of the OIO, the effect of which remains open for consideration in the statutory Appeal.

CONCLUSION AND DIRECTIONS

43. For these reasons, the contention that the Show Cause Notice dated 31.07.2024 is without jurisdiction solely because it was issued after death is rejected. The challenge to Section 93(1)(b) on the constitutional grounds urged is also rejected. These conclusions do not establish that the conditions of clause (b) are satisfied, that abetment stands proved, or that the Notice is otherwise sustainable. The lapse of

three years after death does not create a bar under Section 93, but this judgment confers no exemption from any applicable limitation requirements.

44. No finding is returned on the merits of the Petitioner's remaining objections thereto, including the service of the Notice, proof of the alleged contravention, satisfaction of the conditions prescribed by Section 93(1)(b), computation of the penalty, or the meaning and effect of clauses AD and AE of the Impugned Order. All such contentions of the parties are left open for consideration in Appeal.

45. The Petitioner is granted liberty to institute an Appeal under Section 107 of the CGST Act against the Impugned Order within a period of four weeks from today. If such Appeal is instituted within the aforesaid period, it shall be entertained and decided on merits and shall not be rejected on the ground of limitation.

46. The Appellate Authority shall examine the issues left open independently and in accordance with law, uninfluenced by any observation which may be construed as touching upon their merits. The findings in the present judgment are confined to the questions specifically decided herein concerning the interpretation and constitutional validity of Section 93 of the CGST Act.

47. Independently, within three weeks from today, the Respondents shall furnish to the Petitioner a complete account of ₹15,40,000/-, including its present status, particulars of the fixed deposit, interest earned thereon, and details of any withdrawal, appropriation, transfer

or release, together with the supporting records.

48. For every amount claimed to be lawfully retained or appropriated, the Respondents shall identify the precise statutory provision and order relied upon, the liability sought to be secured or discharged, its computation, and the basis on which it is asserted to be enforceable against the estate of late Sh. Ankit Dabas. A general reference to the Impugned Order shall not constitute sufficient compliance with this direction. If reliance is placed upon that Order, the Respondents shall explain how it is said to authorise retention or appropriation of the whole amount. They shall separately address the entitlement to return of any balance, together with the interest attributable thereto. This disclosure shall set out the Respondents' position for the Petitioner to answer and it shall neither enlarge the liability under the Impugned Order nor operate as its rectification, review or modification.

49. The Petitioner may submit her response within two weeks of receipt of the aforesaid disclosure. After affording her an opportunity of hearing, the competent authority shall pass and communicate a reasoned decision upon her claim for return of the amount within four weeks of receipt of the response. If no reply is submitted within the period granted, the decision shall be taken within four weeks of its expiry after due intimation of the hearing.

50. Any amount for which no subsisting lawful basis of retention or appropriation is established shall be released to the Petitioner, in her capacity as the legal representative of late Sh. Ankit Dabas, within two

weeks of the aforesaid decision, together with the interest actually earned thereon in the fixed deposit. Such release shall remain without prejudice to the *inter se* rights, if any, of the legal heirs or successors of late Sh. Ankit Dabas.

51. The directions concerning ₹15,40,000/- shall not be construed as determining the effect of clauses AD and AE of the Impugned Order or as authorising its rectification, review or modification. The Petitioner's right to challenge any decision passed upon her claim concerning the said amount, in accordance with law, is preserved.

52. The Writ Petition is, accordingly, disposed of in the aforesaid terms. The pending Application stands closed.

ANIL KSHETARPAL, J.

VIMAL KUMAR YADAV, J.

SEPTEMBER 25, 2026
sp/ad