



सत्यमेव जयते

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



DIN: 20230864SW000000BDEE

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1525/2023-APPEAL/hbmb
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-69/2023-24  
 दिनांक Date : 31-07-2023 जारी करने की तारीख Date of Issue 14.08.2023  
 आयुक्त (अपील) द्वारा पारित  
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST-06/D-VI/O&A/167/Mahashankar/AM/2022-23  
 दिनांक: 14.08.2023, issued by The Assistant Commissioner, CGST, Division-VI,  
 Ahmedabad North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Pramila Mahashankar Dave Widow of Late Mahashankar D. Dave, 12,  
 Amidhara Bunglow, Bopal, Ahmedabad - 380058.

2. Respondent

The Assistant Commissioner, CGST, Division-VI, Ahmedabad North 7<sup>th</sup>  
 Floor, B.D. Patel House, Naranpura, Ahmedabad - 380014

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

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

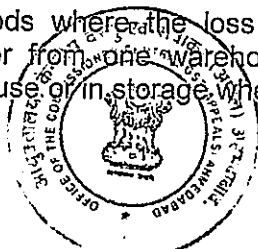
भारत सरकार का पुनरीक्षण आवेदन :  
 Revision application to Government of India :

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

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

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

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



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।
- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.
- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

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

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

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

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

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

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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



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

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

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

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

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

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

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

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

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

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

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

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

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

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



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Pramila Mahashankar Dave, Widow of Late Mahashankar D. Dave, 12, Amidhara Bunglow, Bopal, Ahmedabad – 380058 (hereinafter referred to as “the appellant”) against Order-in-Original No. GST-06/D-VI/O&A/167/Mahashankar/AM/2022-23 dated 24.08.2022 (hereinafter referred to as “the impugned order”) passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. ACLPD5718P. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that the appellant had earned an income of Rs. 12,45,250/- during the FY 2014-15, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit relevant documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST-06/04-619/O&A/Mahashankar/2020-21 dated 28.09.2020 demanding Service Tax amounting to Rs. 1,53,912/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,53,912/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15. Further (i) Penalty of Rs. 1,53,912/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 2,000/- was imposed on the appellant under Section 77 of the Finance Act, 1994 for failure to apply for Service Tax Registration; and (iii) Penalty / late fees of Rs. 40,000/- was imposed on the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 for not furnishing service tax returns.



3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, along with an application for condonation of delay, inter alia, on the following grounds:

- The appellant i.e. Late Mahashanker D. Dave was serving as City Civil & Sessions Judge and after retirement, he was appointed as Chairman/ President/ Judicial Member in various Tribunals and Appellate Authority by Government of Gujarat. The appellant passed away on 03/11/2021.
- During F.Y. 2014-15, the Late Mahashanker D. Dave was appointed as a sole Arbitrator and or in a panel of Arbitrators in an Arbitral Tribunal to adjudicate various claims and disputes as referred to the Hon'ble High Court of Gujarat under Arbitration and Conciliation Act. During the FY 2014-15, Late Mahashanker D. Dave had received the sum of Rs.12,45,250/- as professional fees acting in capacity of Sole Arbitrator and or in a panel of arbitrators in Arbitral Tribunal to adjudicate the various claims and dispute as referred to the Hon'ble high court of Gujarat under Arbitration and Conciliation act. The said income is exempted from Service Tax as per Notification No.25/2012 – Service Tax, dated 20 June, 2012 and Notification No. 30/2012 - Service Tax dated 20 June, 2012, which states that "Services Provided by an Arbitral Tribunal is exempted from the payment of services tax" hence he did not take the registration number under service tax during the year under consideration.
- In view of the above stated notification Late Mahashanker D. Dave falling in the category of "Sole Arbitrator-or a panel of Arbitrators", was not liable to be charged with the service tax in respect of the services provided by him as a Arbitral Tribunal during the F.Y.2014-15.
- Late Mahashanker D. Dave was in receipt of the first notice dated 31/07/2020 asking the explanation regarding the short payment/ nonpayment of service tax for F.Y.2014-15. However, during the year 2020 and 2021, Late Mahashanker D. Dave was suffering from the Kidney disease so he had to visit the hospital frequently and he got admitted to hospital during that year. Hence, because of his illness and bad health condition, Mahashanker D. Dave was not able to provide the Reply to the above notice. After that, another show cause cum - Demand Notice dated 28.09.2020, was issued demanding the service tax to the tune of Rs.1,53,912/- to Mahashanker D. Dave. However, the Health condition of Mahashanker D. Dave had still not improved at that time so he was not able to submit the reply in time against the above notice.



- As the health condition of Mahashanker D. Dave was deteriorating day by day due to kidney related disease, he got admitted to hospital for several times in 2021. After long illness and hospitalization, Mahashanker D. Dave expired on 03/11/2021.
- Thereafter, on 19/01/2022, another letter was issued by the Assistant Commissioner, COST, Division-VI, Ahmedabad whereby he had fixed the personal hearing on 01/02/2022. However, at that time Mahashanker D. Dave had already expired and hence Premila Mahashanker Dave, i.e. widow of Late Mahashanker D. Dave being a senior-citizen, replied to the above notice on 29/01/2022 giving the detailed Reply along with the necessary evidences in connection with the notice issued by the Assistant Commissioner dated 31/07/2020, 29/07/2020 and 19/01/2022 by speed post as well as physically to the office of Assistant commissioner, Division-VI, Ahmedabad North and got the same acknowledged. However, it seems that The Assistant Commissioner, Division-VI, Ahmedabad North has not considered the reply dated 29.01.2022 filed by widow of late Shri Mahashanker D. Dave despite of its receipt by Assistant Commissioner, Division-VI, Ahmedabad North.
- The appellant submitted that the adjudicating authority has erred in demanding services tax of Rs.1,53,912/- levied on value declared in ITR of Rs.12,45,250/- during the F.Y.2014-15 under section-73(2) of the Finance Act,1994 without considering reply submitted on 29/01/2022 by the widow/ Representative of the Deceased Mahashanker D. Dave against the notice issued on 19/01/2022. In view of the above, the appellant have requested to set aside the impugned order.

4. Further, on going through the appeal memorandum, it is noticed that the impugned order was issued on 24.08.2022 and received by the appellant on 28.11.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 24.02.2023, i.e. after a delay of 27 days from the last date of filing of appeal. The appellant in their application of condonation of delay submitted that she is widow of Late Mahashanker D. Dave and she was unable file appeal as her health was not goods due to her age and there was some other issue with server to file appeal and generate the challan. The appellant requested to condone the delay.

4.1 Personal hearing in the case was held on 31.07.2023. Shri Arjun Akruwala, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal. He submitted that Mahashankar D. Dave was City Civil and Sessions Judge and after retirement he was appointed as Chairman / President of Tax Tribunal and subsequently appointed as sole arbitrator in Arbitral Tribunal of Government of Gujarat and his services are exempted. Further, the Mahashanker D. Dave has expired on 17.11.2021



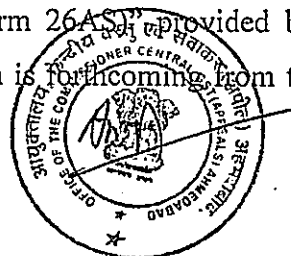
and his death certificate is attached. The impugned order in show cause notice have been issued after his death. Further, the show cause notice, in respect of FY 2014-15 first half, has been issued after more than five years. In view of the above, he requested to set aside the impugned order.

4.2 Before taking up the issue on merits, I have decided the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condoned the delay of 27 days and ordered for taken up the appeal for decision on merits.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, submission made during the course of hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. It is observed that the main contentions of the appellant are that (i) Late Mahashanker D. Dave falling in the category of "Sole Arbitrator-or a panel of Arbitrators", was not liable to be charged with the service tax in respect of the services provided by him as a Arbitral Tribunal during the FY 2014-15 as per Notification No. 25/2012-ST dated 20.06.2012 and Notification No. 30/2012-ST dated 20.06.2012; (ii) Mahashanker D. Dave was passed away on 03/11/2021 i.e. before issuance of the impugned order. It is also observed that, the adjudicating authority has confirmed the demand of service tax in the impugned order passed ex-parte, without considering the reply dated 28.01.2022, received by the office of the adjudicating authority on 01.02.2022, filed by Pramila Mahashankar Dave, Widow of Late Mahashankar D. Dave.

7. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" or "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS) provided by the Income Tax Department, no other cogent reason or justification is for incoming from the SCN for raising



the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

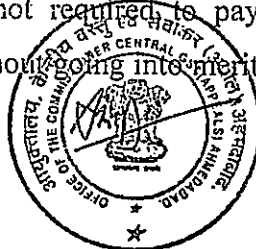
*"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*

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

7.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a proper ground for raising of demand of service tax.

8. The appellant have also submitted Death Certificate No. 045276 dated 17.11.2021 issued by the SubRegistrar (Birth & Death), Ahmedabad Municipal Corporation, Ahmedabad and also submitted that Shri Mahashanker D. Dave expired on 03.11.2021. The appellant also submitted that they have filed detailed reply along with all details death certificate to the adjudicating authority, however, the adjudicating authority has not considered the same and issued impugned order passed, ex-parte, and confirming the demand of service tax and imposing penalty. I find that the act of the adjudicating authority is not justifiable and hence, the impugned order passed by him in breach of the natural justice and not tenable in eyes of law.

9. I also find that the appellant has requested to drop the proceedings as Mahashanker D. Dave expired on 03.11.2021 and he was also not required to pay service tax as Sole Arbitrator-or a panel of Arbitrators. Therefore, without going into merits of the case further, I





find that as per Death Certificate issued by the competent authority, Mahashanker D. Dave expired on 03.11.2021. It is settled legal position that in case of death of proprietor of a proprietary concern, all proceedings regarding investigation, inquiry, assessment etc. are deemed to be concluded. In this regard, I find that in catena of judgments, it has been held that proceedings are ceased after the Death of Proprietor of the firm and also recovery proceedings initiated after the Death of Proprietor, could not be made. In support of above legal stand, I rely upon the Hon'ble Tribunal's decision in the case of **D. Matai Vs. Collector of Central Excise, Mumbai [2000 (126) ELT 1264 (Tribunal)]**, wherein similar view was held by the Tribunal. Relevant portion of the said judgment is reproduced here:-

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



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

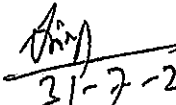
- Hari Prashad Chhapolia (Dead) [2008 (227) ELT 345 (SC)]
- Shabina Abraham [2015 (322) ELT 372 (SC)]
- Gaurav Agarwal [2017 (354) ELT 476 (Bom.)]
- Bhuwan Chandra Tiwari [2015 (320) ELT 123 (Uttarakhand)]
- Shree Ambika Steel Industries [2013 (288) ELT 420 (Tri. - Del.)]
- Anwar Karim Kar [2009 (233)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

9.2 In the present case, I find that the impugned order was issued to Mahashanker D. Dave, who was individual and having income as professional fees acting in capacity of Sole Arbitrator and or in a panel of arbitrators in Arbitral Tribunal to adjudicate the various claims and dispute as referred to the Hon'ble high court of Gujarat under Arbitration and Conciliation act, who died on 03.11.2021. Therefore, relying on above cited judgments, I find that proceedings initiated vide impugned order are liable to be ceased after death of Mahashanker D. Dave.


10. In view of above, I hold that the impugned order passed by the adjudicating authority in respect of income received by the appellant during the FY 2014-15, is not legal and proper and deserves to be set aside as enumerated above. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

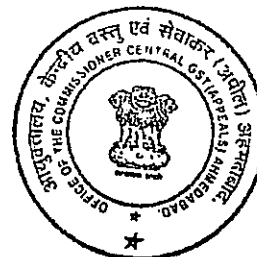
The appeal filed by the appellant stands disposed of in above terms.

  
31-7-2023  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Attested

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

Date : 31-7-2023



**By RPAD / SPEED POST**

To,

M/s. Pramila Mahashankar Dave,  
Widow of Late Mahashankar D. Dave,  
12, Amidhara Bunglow, Bopal,  
Ahmedabad – 380058

Appellant

The Assistant Commissioner,  
CGST Division-VI,  
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST Division-VI, Ahmedabad North
- ✓ 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North  
(for uploading the OIA)
- 5) Guard File
- 6) PA file



