



2026:AHC:24505

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 357 of 2026

M/S P.B. Sethi Plastics

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Pooja Talwar
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Ms. Pooja Talwar, learned counsel for the writ petitioner and Sri Ravi Shankar Pandey, learned Standing Counsel for the State.

2. A statement has been made by Sri Ravi Shankar, learned Standing Counsel has made a statement that he is well equipped with the instructions and is in a position to argue the case. He does not propose to file any counter affidavit and he further submits that the writ petition be decided on the basis of the documents available on record.

3. With the consent of the parties, the writ petition is being decided at the fresh stage.

4. The case of the writ petitioner is that there happened to be a firm by the name of P.B. Sethi Plastics, which was registered under U.P. GSTIN No.09ACEPS78501ZB. The proprietor of the firm was Buldeo Raj Sethi. However, he expired on 21.07.2020. According to the writ petitioner, who happens to be the legal heir, who has preferred the present writ petitioner through an authorized representative Sri Sunil Kumar, a show cause notice was issued to the sole proprietorship firm on 21.09.2023 and thereafter on 20.12.2023, an order came to be passed by the second respondent, Deputy Commissioner State Tax, Khand-12, Kanpur under Section 73 of the U.P. Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017. Thereafter an appeal came to be preferred by the legal heir of the writ petitioner against the order dated 20.12.2023 before the third respondent, Addl. Commissioner Grade 2 (Appeals), Range-III, State Tax, Kanpur, which came to be rejected on 26.06.2025 being barred by limitation.

5. Questioning the original order as well as the appellate order, the present writ petition has been preferred.

6. Learned counsel for the writ petitioner has sought to argue that the impugned proceedings lodged under Section 73 of the Act against the sole proprietor Buldeo Raj Sethi cannot be sustained in the eyes of law, particularly when the firm P.B. Sethi Plastics was a sole proprietorship firm and Buldeo Raj Sethi was the sole proprietor, who expired on 21.07.2020 and proceedings under Section 73 of the Act came to be lodged against the dead person, being Buldeo Raj Sethi, the sole proprietor of the firm M/s P.B. Sethi Plastics. Submission is that the proceedings could not have been initiated against the dead persons, as a show cause notice ought to have been issued and proceedings ought to have been conducted against the legal heirs. Reliance has also been placed upon a judgment of Division Bench of this Court in ***Amit Kumar Sethia vs. State of U.P. and another, Writ Tax No.917 of 2025***, decided on 02.04.2025, wherein the provisions of Section 93 of the Act was considered. Further submission is that since Buldeo Raj Sethi, the sole proprietor of the firm in question had expired on 21.07.2020 and the GST registration was cancelled and business was transferred on 31.07.2020 vide application filed with ARN AA091020029190X dated 06.10.2020, then it was humanly not possible for the writ petitioner being the legal heir to have any knowledge about the proceedings under Section 73 of the Act conducted against the deceased in that regard. Thus, the appellate authority in rejecting the appeal preferred by the writ petitioner against the order passed under Section 73 of the Act on delay had committed patent error of law, particularly when the writ petitioner/ appellant had taken a specific ground that he could gather knowledge about the passing of the order under Section 73 of the Act on 10.03.2025 and appeal came to be preferred on 10.06.2025.

7. Learned Standing Counsel on the basis of the instructions so received by him has submitted that the order passed by the original authority and appellate authority cannot be said to be illegal. Submission is that though the proceedings under Section 73 of the Act stood initiated against the dead person, but the writ petitioner being the legal heir ought to have gathered the knowledge in due diligence in that regard and in view of the provisions contained under Section 93 of the Act, the legal heir is entitled to make good the tax or penalty so imposed.

8. I have heard the submissions so made across the Bar and perused the records carefully.

9. Facts are not in issue. It is not in issue that the firm P.B. Sethi Plastics, is a sole proprietorship firm, whose sole proprietor is Buldeo Raj Sethi. It is also not in dispute and rather admitted to the parties that Buldeo Raj Shethi, the sole proprietor of the firm, expired on 21.07.2020 and post death of the erstwhile sole proprietor Buldeo Raj Sethi on 21.07.2020, the application was made on behalf of the sole proprietor that the GST of the firm be surrendered and cancelled and the order came to be passed on 07.10.2020. It is also not in dispute that the proceedings under Section 73 of the Act came to be initiated against the sole proprietorship firm, whose sole proprietor was the deceased Buldeo Raj Sethi, while issuing the show cause notice dated 21.09.2023 and the order under Section 73 of the Act came to be passed by the original authority on 20.12.2023. The appeal came to be filed questioning the order passed under Section 73 of the Act dated 20.12.2023 before the appellate authority, which came to be rejected on 26.06.2025 by the appellate authority.

10. A bare look of the memo of appeal which is Annexure-5 at page 50 of the paper-book, relevant extract at page-52, would go to show that the legal heir who had preferred the appeal had taken a ground that for the very first time, the order dated 20.12.2023, came into the knowledge of the appellant on 10.03.2025 and thereafter, the appeal came to be preferred against the order dated 20.12.2023, which has been rejected. In para-9 of the writ petition, a specific averment has been made that an application came to be filed for cancellation of the registration, which was in the name of Buldeo Raj Sethi (since deceased), who happened to be the sole proprietor and an order came to be passed on 07.10.2020. Meaning thereby that even otherwise, it was not humanly possible that even on due diligence, the writ petitioner should have obtained knowledge about passing of the order under Section 73 of the Act on 20.12.2023, particularly when, GST registration was cancelled. More so, the issue is on a larger aspect. Whether the proceedings emanating from the issuance of show cause notice dated 21.09.2023 and passing of an order under Section 73 of the Act could have been passed on 20.12.2023 against a dead person or not. The said issue is no more res integra. As the Division Bench of this Court in ***Amit Kumar Sethiya (supra)*** had the occasion to consider the said aspect, and it was held as under: -

"5. We have considered the submissions made by counsel for the parties and have perused the material available on record.

6. Undisputed facts are that the show cause notice, reminders and determination of tax have been made after the death of the proprietor of the firm. Provisions of Section 93 of the Act, insofar as relevant, reads as under:

"93. Special provisions regarding liability to pay tax, interest or penalty in certain cases:

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a person, liable to pay tax, interest or penalty under this Act, dies, then -

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death."

7. A perusal of the above provision would reveal that the same only deals with the liability to pay tax, interest or penalty in a case where the business is continued after the death, by the legal representative or where the business is discontinued, however, the provision does not deal with the fact as to whether the determination at all can take place against a deceased person and the said provision cannot and does not authorise the determination to be made against a dead person and recovery thereof from the legal representative.

8. Once the provision deals with the liability of a legal representative on account of death of the proprietor of the firm, it is sine qua non that the legal representative is issued a show cause notice and after seeking response from the legal representative, the determination should take place.

9. In view thereof, the determination made in the present case wherein the show cause notice was issued and the determination was made against the dead person without issuing notice to the legal representative, cannot be sustained.

10. Consequently, the writ petition is allowed. The order dated 17.11.2023 (Annexure-1 to the writ petition) is quashed and set aside. The respondents would be free to take appropriate proceedings in accordance with law."

11. Since the entire proceedings under Section 73 of the Act was initiated against a dead person, then the legal issue so raised by the writ petitioner in the appeal has not been considered while dismissing the appeal on limitation, thus the order impugned cannot be sustained.

12. Accordingly, the writ petition is being decided in the following terms:-

(a) The order dated 20.12.2023 passed by Deputy Commissioner State Tax,

Khand-12, Kanpur under Section 73 of the U.P. Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017 for financial year 2017-18 and the order dated 26.06.2025 passed by Addl. Commissioner Grade-2 (Appeals), Range III, State Tax Kanpur rejecting the Appeal No.AD0906250317330 Financial Year 2017-18 are set aside.

(b) The setting aside of the orders would not preclude the respondents to take appropriate proceedings in accordance with law.

13. With the aforesaid observations, the writ petition stands **disposed of**

February 4, 2026

N.S.Rathour

(Vikas Budhwar,J.)

