

GST IMPLICATIONS ON THE DEATH OF A PROPRIETOR



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Death of a proprietor of a business is natural phenomenon. Following options are available to the legal heir consequent upon the death of a proprietor:

Option A	To close down the business
Option B	To continue with the same business

GST implications of each of the above two options have been discussed below:

OPTION 1-TO CLOSE DOWN THE BUSINESS																			
S.No.	Details																		
1.	<p><u>Determination of return filing status of the deceased</u></p> <table border="1"> <tr> <td style="width: 30%;">If GST Log in credential is available</td> <td>The legal heir is required to visit www.gst.gov.in and navigate the following path- services tab > returns > track return status, to check the current return filing status of the deceased.</td> </tr> <tr> <td>If GST Log in credential is not available</td> <td>The legal heir is required to visit www.gst.gov.in and go to the tab Search as taxpayer. There, he is required to key in the GSTIN of the deceased and he will get the details of the jurisdiction and also the filing status.</td> </tr> </table>	If GST Log in credential is available	The legal heir is required to visit www.gst.gov.in and navigate the following path- services tab > returns > track return status , to check the current return filing status of the deceased.	If GST Log in credential is not available	The legal heir is required to visit www.gst.gov.in and go to the tab Search as taxpayer. There, he is required to key in the GSTIN of the deceased and he will get the details of the jurisdiction and also the filing status .														
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2.	<p><u>Furnishing of application for cancellation of registration of the deceased</u></p> <p>Once the return filing status is known to the legal heir, he is required to arrange the following documents, while furnishing application for cancellation of registration of the deceased:</p> <table border="1"> <tr> <td style="width: 5%;">(a)</td> <td>Death certificate / succession certificate</td> </tr> <tr> <td>(b)</td> <td>Identity proof of the deceased</td> </tr> <tr> <td>(c)</td> <td>Identity proof of the legal heir substantiating his relationship status with the deceased</td> </tr> <tr> <td>(d)</td> <td>GST Certificate of the deceased</td> </tr> <tr> <td>(e)</td> <td>Return filing status</td> </tr> <tr> <td>(f)</td> <td>Indemnity Certificate</td> </tr> <tr> <td>(g)</td> <td>Evidence of closure of the bank account of the deceased's business</td> </tr> <tr> <td>(h)</td> <td>Proof of business closure and copy of surrender of the trade licence , if applicable</td> </tr> <tr> <td>(i)</td> <td>Detail of the stock held on the date of death</td> </tr> </table> <p>In case of death of the sole proprietor, application can be made manually by the legal heir/successor before the concerned tax authorities. Thus, the legal heir can visit the proper officer for the purpose of changing the authorised signatory. On verification of the above documents, proper officer will change the authorised signatory and send a temporary link</p>	(a)	Death certificate / succession certificate	(b)	Identity proof of the deceased	(c)	Identity proof of the legal heir substantiating his relationship status with the deceased	(d)	GST Certificate of the deceased	(e)	Return filing status	(f)	Indemnity Certificate	(g)	Evidence of closure of the bank account of the deceased's business	(h)	Proof of business closure and copy of surrender of the trade licence , if applicable	(i)	Detail of the stock held on the date of death
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	<p>for updating details. Once the signatory has been changed then the process of cancellation of registration can be initiated.</p> <p>However, if the legal heir receives a SCN in respect of cancellation of the registration of the deceased, he must provide the information or documents required by the proper officer within the time specified in the SCN. For instance, he may be required to furnish a copy of surrender of the trade licence.</p>																																					
3.	<p>Reversal of input tax credit by the legal heir before furnishing application for cancellation of registration -Section 29(5) read with Rule 44</p> <p>ITC in respect of inputs held in stock or inputs contained in semi-finished and finished goods held in stock or capital goods on the day immediately preceding the date of cancellation of the registration needs to be reversed</p> <p>Manner of reversal of credit</p> <p>(a)Inputs - Higher of the following two amounts:</p> <table border="1"> <tr> <td>(i)</td> <td>Proportionate amount of credit on inputs held in stock as such inputs or inputs contained in semi-finished and finished goods held in stock on the basis of corresponding invoices [Refer Note 1 below] on which credit had been availed on such inputs ; OR</td> </tr> <tr> <td></td> <td>Note 1 : Where the tax invoices related to the inputs held in stock are not available ,the registered person shall estimate the amount to be reversed based on the prevailing market price of the goods on the effective date of cancellation of registration</td> </tr> <tr> <td>(ii)</td> <td>Output tax payable on such goods [Refer Note 2 below]</td> </tr> <tr> <td></td> <td>Note 2: The term “such goods” has not been defined statutorily. However, according to the opinion of the Author the term “such goods” shall cover :</td> </tr> <tr> <td>(a)</td> <td>Inputs held in stock as such;</td> </tr> <tr> <td>(b)</td> <td>Inputs contained in semi-finished goods; and</td> </tr> <tr> <td>(c)</td> <td>Inputs contained in finished goods</td> </tr> </table>		(i)	Proportionate amount of credit on inputs held in stock as such inputs or inputs contained in semi-finished and finished goods held in stock on the basis of corresponding invoices [Refer Note 1 below] on which credit had been availed on such inputs ; OR		Note 1 : Where the tax invoices related to the inputs held in stock are not available ,the registered person shall estimate the amount to be reversed based on the prevailing market price of the goods on the effective date of cancellation of registration	(ii)	Output tax payable on such goods [Refer Note 2 below]		Note 2: The term “such goods” has not been defined statutorily. However, according to the opinion of the Author the term “ such goods ” shall cover :	(a)	Inputs held in stock as such;	(b)	Inputs contained in semi-finished goods; and	(c)	Inputs contained in finished goods																						
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	Output tax payable on semi-finished goods	Rs. 7,200	Rs. 4,000 *10 Units *18% (Estimated sale price)																		
	Output tax payable on finished goods	Rs. 4,500	Rs. 5,000 * 5 Units * 18%																		
	(b) Capital goods/plant and machinery- Higher of the following two amounts:																				
	(i)	ITC involved in the remaining useful life in months to be computed on pro-rata basis, taking the useful life of capital goods/ plant and machinery as 5 years ; OR																			
	(ii)	Tax on the transaction value of such capital goods /plant and machinery under Section 15																			
	Example 2- Manner of reversal of ITC in respect of capital goods																				
	Anish Ltd. provides the following information:																				
	Input Tax credit availed on purchase of capital goods	Rs.1,50,000																			
	Useful life of capital goods (A)	60 months																			
	Period of usage of capital goods (B)	40 months																			
	Transaction value of capital goods	Rs. 3,00,000																			
	Effective tax rate on transaction value	18%																			
	COMPUTATION OF AMOUNT TO BE PAID BY ANISH LTD.																				
	Remaining useful life of capital goods (C) = (A) -(B)	20 months																			
	(i) ITC attributable to remaining useful life	Rs. 50,000 [Rs. 1,50,000 *20/60]																			
	(ii) Tax on the transaction value of capital goods	Rs. 54,000 [Rs. 3,00,000 * 18%]																			
	Reversal of ITC i.e. amount to be paid, being higher of (i) and (ii) above	54,000																			
4.	<u>30 day time limit for furnishing application for cancellation of registration by the legal heir</u> Application for cancellation of registration shall be submitted in FORM GST REG-16 on the common portal within a period of 30 days of of the death of the proprietor- Rule 20																				
5.	<u>Issue of order for cancellation of the registration of the deceased</u> Once the legal heir has furnished an application for cancellation of registration of the deceased, the proper officer shall issue an order in form GST REG-19 , within 30 (thirty) days from the date of submission of the application or within 30 days of the date of receipt of reply to the show-cause notice issued to him and cancel the registration, with effect from a date to be determined by him. Further, the proper officer will notify the legal heir, directing to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5) as discussed above- Rule 22(3) read with Rule 22(5)																				
6.	<u>Cancellation of registration under the SGST Act/UTGST Act deemed as cancellation of registration under the CGST Act and Vice Versa - Section 29(4)</u> The cancellation of registration under the SGST Act/ UTGST Act shall be deemed to be a cancellation of registration under the CGST Act and vice versa to avoid duplication of efforts both on the part of registered person as well as the proper officer.																				
7.	<u>Deemed suspension of GST Registration-Rule 21A(1)</u> Where a registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from the later of the following two dates: <table border="1"> <tr> <td>(a)</td> <td colspan="2">Date of submission of the application; or</td> </tr> <tr> <td>(b)</td> <td colspan="2">Date from which cancellation is sought</td> </tr> </table> In the present context, the legal heir shall apply for cancellation of registration. Example 1 <table border="1"> <tr> <td>(a)</td> <td>Date of submission of the application; or</td> <td>01.09.2020</td> </tr> <tr> <td>(b)</td> <td>Date from which cancellation is sought</td> <td>27.08.2020</td> </tr> </table> In this case , registration shall be deemed to be suspended with effect from 01.09.2020 Example 2 <table border="1"> <tr> <td>(a)</td> <td>Date of submission of the application; or</td> <td>01.09.2020</td> </tr> <tr> <td>(b)</td> <td>Date from which cancellation is sought</td> <td>07.09.2020</td> </tr> </table>			(a)	Date of submission of the application; or		(b)	Date from which cancellation is sought		(a)	Date of submission of the application; or	01.09.2020	(b)	Date from which cancellation is sought	27.08.2020	(a)	Date of submission of the application; or	01.09.2020	(b)	Date from which cancellation is sought	07.09.2020
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8.	<p><u>Final return to be furnished by the legal heir after cancellation of registration of the deceased -Section 45 read with Rule 81</u></p> <p>The legal heir shall furnish a final return in FORM GSTR-10, within later of the following two periods:</p> <table border="1"> <tr> <td>(a)</td> <td colspan="2">3 months of date of cancellation; or</td> </tr> <tr> <td>(b)</td> <td colspan="2">3 months of date of order of cancellation</td> </tr> </table> <p>Example 1</p> <table border="1"> <tr> <td>(a)</td> <td>Date of cancellation</td> <td>01.07.2020</td> </tr> <tr> <td>(b)</td> <td>Date of order of cancellation</td> <td>15.07.2020</td> </tr> </table> <p>In this case, final return is to be furnished by 14.10.2020, being later of the following dates:</p> <table border="1"> <tr> <td>(a)</td> <td>3 months from the date of cancellation</td> <td>30.09.2020</td> </tr> <tr> <td>(b)</td> <td>3 months from the date of order of cancellation</td> <td>14.10.2020</td> </tr> </table> <p>Example 2</p> <table border="1"> <tr> <td>(a)</td> <td>Date of cancellation</td> <td>01.07.2020</td> </tr> <tr> <td>(b)</td> <td>Date of order of cancellation</td> <td>25.06.2020</td> </tr> </table> <p>In this case, final return is to be furnished by 30.09.2020, being later of the following dates:</p> <table border="1"> <tr> <td>(a)</td> <td>3 months from the effective date of cancellation</td> <td>30.09.2020</td> </tr> <tr> <td>(b)</td> <td>3 months from the date of order of cancellation</td> <td>24.09.2020</td> </tr> </table> <p>It is also worth highlighting here that any amount which is payable by the deceased under the GST Acts or Rules made thereunder would be added to the output tax payable in the final return in FORM GSTR-10, if not paid at the time of the cancellation application.</p>		(a)	3 months of date of cancellation; or		(b)	3 months of date of order of cancellation		(a)	Date of cancellation	01.07.2020	(b)	Date of order of cancellation	15.07.2020	(a)	3 months from the date of cancellation	30.09.2020	(b)	3 months from the date of order of cancellation	14.10.2020	(a)	Date of cancellation	01.07.2020	(b)	Date of order of cancellation	25.06.2020	(a)	3 months from the effective date of cancellation	30.09.2020	(b)	3 months from the date of order of cancellation	24.09.2020
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10.	<u>Consequences of not furnishing final return within stipulated time by the legal heir</u>					
(i)	Issue of notice to furnish Final Return within 15 days- Section 46	If the legal heir does not furnish the final return within the stipulated time then he will become a return defaulter. Consequently, a notice shall be issued requiring him to furnish final return within 15 days from the date of service of notice.				
(ii)	Assessment of the tax liability- Section 62(1)	If legal heir still doesn't furnish the final return within given time, the proper officer may proceed to assess the tax liability of the legal heir in FORM GST ASMT 13 to the best of his judgement taking into account all the relevant material within a period of 5 years from the date specified for furnishing annual return for the financial year to which the tax not paid relates.				
(iii)	Deemed withdrawal of assessment order- Section 62(2)	Where the legal heir furnishes a valid return within 30 days of the service of the assessment order, the said assessment order shall be deemed to have been withdrawn. However, liability for payment of interest for delayed payment of tax or payment of late fee for delayed furnishing of return shall continue.				
11.	<p><u>Legal heir is liable to pay outstanding tax, interest or penalty out of the estate of the deceased -Section 73/74 read with Section 93(b)</u></p> <p>Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts to evade tax in terms of Section 73 or reasons due to fraud, wilful misrepresentation of facts or suppression of the facts in terms of Section 74, he shall serve notice on the legal heir, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest and penalty. The proper officer shall determine the amount of tax, interest and penalty due from the legal heir after considering his representation, if any.</p> <p>Furthermore, if tax is determined to be payable, then Section 93(b) provides that except as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies and if the business carried on by the person is discontinued, whether before or after his death, then the 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 the GST Acts. It is totally immaterial whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.</p>					
12.	<p><u>Adjustment of the balance in the electronic credit ledger of the deceased</u></p> <p>The balance of electronic credit ledger of the deceased can be adjusted against tax payable. However, refund of any unutilised credit cannot be claimed except in cases other than :</p> <table border="1" data-bbox="288 1547 1401 1697"> <tr> <td data-bbox="288 1547 373 1592">(i)</td> <td data-bbox="373 1547 1401 1592">Zero-rated supplies made without payment of tax;</td> </tr> <tr> <td data-bbox="288 1592 373 1697">(ii)</td> <td data-bbox="373 1592 1401 1697">Where the refund has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies(other than nil rated or fully exempt supplies)</td> </tr> </table> <p>It is reiterated here that in terms of Section 49(4) the amount availed in the electronic credit ledger may be used for making any payment towards output tax only. Thus, amount available in the electronic credit ledger cannot be used for making any payment towards interest, penalty, fines, late fee or any other amount payable under GST Acts or rules made thereunder.</p>		(i)	Zero-rated supplies made without payment of tax;	(ii)	Where the refund has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies(other than nil rated or fully exempt supplies)
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13.	<p><u>Adjustment of the balance in the electronic cash ledger of the deceased</u></p> <p>The balance of electronic cash ledger can be used for payment of tax interest, penalty, fines, late Fees or any other amount payable under the CGST Act or rules made thereunder and can be transferred by FORM PMT 09 if not available in the particular head. However, refund</p>					

	of the remaining balance in the electronic cash ledger can be claimed as “ excess cash balance in electronic cash ledger ”.
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3.	<u>30 day time limit for furnishing application for cancellation of registration by the legal heir</u> Same as mentioned against point no. 4 of first option.																								
4.	<u>Issue of order for cancellation of the registration of the deceased</u> Same as mentioned against point no. 5 of first option.																								
5.	<p><u>Submission of application for seeking fresh registration of the legal heir</u> The legal heir has to apply on the common portal for fresh registration in FORM GST REG-01 in his name along with the reason for transfer of business “due to death of the sole proprietor”. It is also pertinent to add here that the legal heir is liable to be registered with effect from the date of such succession, where a business is transferred due to the death of the proprietor.</p> <table border="1"> <thead> <tr> <th colspan="2">Documents required by legal heir for registration as sole proprietor</th> </tr> </thead> <tbody> <tr> <td>(i)</td> <td>PAN Card of the owner</td> </tr> <tr> <td>(ii)</td> <td>Aadhaar Card of the owner</td> </tr> <tr> <td>(iii)</td> <td>Photograph of the owner (in JPEG format, maximum size – 100 KB)</td> </tr> <tr> <td>(iv)</td> <td>Bank Account details - A copy of cancelled cheque or extract of passbook/bank statement (containing the first and last page) must be uploaded. (in JPEG format / PDF format, maximum size – 100 KB)</td> </tr> <tr> <td>(v)</td> <td>Address proof- Any of the following documents may be uploaded: <table border="1"> <tbody> <tr> <td>(a)</td> <td>Property tax receipt</td> </tr> <tr> <td>(b)</td> <td>Municipal Khata copy</td> </tr> <tr> <td>(c)</td> <td>Electricity bill copy</td> </tr> <tr> <td>(d)</td> <td>Ownership deed/ document (in the case of owned property)</td> </tr> <tr> <td>(e)</td> <td>Lease / rent agreement (in case of leased / rented property) – To be submitted along with (a), (b) or (c)</td> </tr> <tr> <td>(f)</td> <td>Consent letter / NOC from the owner (in case of consent arrangement or shared property) – To be submitted along with (a), (b) or (c)</td> </tr> </tbody> </table> </td> </tr> </tbody> </table>	Documents required by legal heir for registration as sole proprietor		(i)	PAN Card of the owner	(ii)	Aadhaar Card of the owner	(iii)	Photograph of the owner (in JPEG format, maximum size – 100 KB)	(iv)	Bank Account details - A copy of cancelled cheque or extract of passbook/bank statement (containing the first and last page) must be uploaded. (in JPEG format / PDF format, maximum size – 100 KB)	(v)	Address proof- Any of the following documents may be uploaded: <table border="1"> <tbody> <tr> <td>(a)</td> <td>Property tax receipt</td> </tr> <tr> <td>(b)</td> <td>Municipal Khata copy</td> </tr> <tr> <td>(c)</td> <td>Electricity bill copy</td> </tr> <tr> <td>(d)</td> <td>Ownership deed/ document (in the case of owned property)</td> </tr> <tr> <td>(e)</td> <td>Lease / rent agreement (in case of leased / rented property) – To be submitted along with (a), (b) or (c)</td> </tr> <tr> <td>(f)</td> <td>Consent letter / NOC from the owner (in case of consent arrangement or shared property) – To be submitted along with (a), (b) or (c)</td> </tr> </tbody> </table>	(a)	Property tax receipt	(b)	Municipal Khata copy	(c)	Electricity bill copy	(d)	Ownership deed/ document (in the case of owned property)	(e)	Lease / rent agreement (in case of leased / rented property) – To be submitted along with (a), (b) or (c)	(f)	Consent letter / NOC from the owner (in case of consent arrangement or shared property) – To be submitted along with (a), (b) or (c)
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6.	<p><u>Application for amendment in particulars subsequent to registration in FORM GST REG-14, if legal heir is already registered –Section 85(2)</u> If legal heir is already registered under GST, he shall apply for amendment of his certificate of registration <u>within a period of 15 days</u> of the date of death. Further, if the legal heir, being the transferee, carries on the business of the deceased, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of succession.</p>																								
7.	<p><u>Submission of declaration for transfer of ITC of the business of the deceased in FORM GST ITC-02 –Rule 41</u> The legal heir is required to furnish the details of transfer of business in FORM GST ITC-02 electronically on the common portal along with a request for transfer of unutilized tax credit. In addition, , the legal heir is required to submit a certificate issued by a practicing chartered accountant or cost accountant that the transfer of business has been done with a specific provision for the transfer of liabilities. Thus, the transfer of unutilised ITC of the deceased can be done only when the legal heir is ready to accept all the liabilities of the deceased i.e. the sundry creditors and all other liabilities owed by the deceased.</p>																								
8.	<p><u>Process of transfer of unutilised ITC</u></p> <table border="1"> <tbody> <tr> <td>(a)</td> <td>The legal heir shall furnish FORM GST ITC-02 electronically on the common portal with a request to transfer of the unutilised ITC lying in the electronic credit ledger</td> </tr> </tbody> </table>	(a)	The legal heir shall furnish FORM GST ITC-02 electronically on the common portal with a request to transfer of the unutilised ITC lying in the electronic credit ledger																						
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		of the deceased along with a certificate of a practicing chartered accountant or cost accountant.- Rule 41(1) read with Rule 41(2)	
	(b)	The legal heir shall log in to his GSTIN and accept the details furnished from the deceased's GSTIN and upon such acceptance the unutilised ITC specified in FORM GST ITC-02 shall be credited in the credit ledger of the legal heir - Rule 41(3)	
9.		<u>Cancellation of registration under the SGST Act/UTGST Act deemed as cancellation of registration under CGST Act- Section 29(4)</u> Same as mentioned against point no. 6 of first option	
10.		<u>Deemed suspension of GST Registration-Rule 21A(1)</u> Same as mentioned against point no. 7 of first option	
11.		<u>Final return to be furnished by the legal heir after cancellation of registration of the deceased -Section 45 read with Rule 81</u> Same as mentioned against point no. 8 of first option	
12.		<u>Information to be furnished in FORM GSTR-10</u> Same as mentioned against point no. 9 of first option	
13.		<u>Consequences of not furnishing final return within stipulated time by the legal heir</u> Same as mentioned against point no. 10 of first option	
14.		<u>Specific exemption to transfer of business of the deceased to the legal heir</u> Entry 2 of services exemption Notification No. 12/2017-CT(R), dated 28.06.2017 reads as under: <table border="1" data-bbox="300 913 1385 949"> <tr> <td><i>Services by way of transfer of a going concern, as a whole or an independent part thereof</i></td> </tr> </table> Resultantly, in the present context, when the business of the deceased is transferred to the legal heir, as a going concern , then the same shall fall within the ambit of above-mentioned Entry 2 and consequently exempted. Contrarily, when the business of the deceased is not transferred as a going concern, for instance , when the legal heir does not intend to take the liabilities of the deceased, tax will be levied at the applicable rate on the sale value of the assets transferred to the legal heir.	<i>Services by way of transfer of a going concern, as a whole or an independent part thereof</i>
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15		<u>Legal heir is liable to pay outstanding tax, interest or penalty out of the estate of the deceased -Sections 73/74 read with Section 93(a)</u> Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts to evade tax in terms of Section 73 or reasons due to fraud , wilful misrepresentation of facts or suppression of the facts in terms of Section 74, he shall serve notice on the legal heir, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest and penalty. The proper shall determine the amount of tax, interest and penalty due from the legal heir after considering his representation, if any. Further, if tax is determined to be payable, then Section 93(a) provides that except as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies and if the 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 the GST Acts. The legal representative or other person shall be liable in the aforesaid manner irrespective of the fact that the amount due from the taxable person has been determined before his death but has remained unpaid or is determined after his death. Further, it has been clarified by the Department vide Circular No. 96/15/2019-GST dated 28.03.2019 that the transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in case of transfer of business due to death of sole proprietor.	
16.		<u>Adjustment of the balance in the electronic cash ledger of the deceased</u> Same as mentioned against point no. 13 of first option.	
