

# TAX INFO

Dated 25.10.2022

Latest update on GST Law: SC's suo moto extension of limitation period is applicable even for condonation period in filing of a GST Appeal as given in judgement by Delhi High Court.

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<b>Name of Petitioner</b>	Railsys Engineers Private Limited
<b>Name of Respondent</b>	The Additional Commissioner of CGST (Appeals-II)
<b>Court</b>	Delhi High Court
<b>Date of Judgement</b>	21.07.2022
<b>Appeal No.</b>	W.P.(C) 4712/2022

## **Brief Facts of the Case Law:**

The show-cause notice (SCN) dated 29.10.2019 and the order dated 25.11.2019 was passed by the Department cancelling the petitioners' registration. The appellate order dated 28.06.2021 was passed founded on the ground that the appeal was instituted beyond the prescribed period of limitation.

## **Contention of the Petitioner:**

1. Firstly, the limitation period stood extended by various orders passed by the Supreme Court in *Suo Motu W.P.(C.) No.3/2020*.
2. Secondly, the SCN dated 29.10.2019, on which the order cancelling the registration was premised is an unsigned order which directed the appearance of the petitioners' authorized representative on 04.11.2019, without indicating the venue at which the proceedings would be conducted.
3. Thirdly, the order cancelling registration dated 25.11.2019, suffers from the same defect as the SCN, i.e., it did not bear the signatures of the concerned authority.
4. Lastly, Rule 68 of the CGST Rules, 2017 required the Revenue to issue a notice to the petitioners concerning the non-filing of returns for the period in issue, having regard to the fact that up until February 2019, the petitioners had been regularly filing its returns.

The period during which the petitioners did not file their return, spans between February 2019 and November 2019. Therefore, before taking recourse to the draconian powers conferred on the Revenue under Rule 22 of the 2017 Rules, notice under Rule 68 ought to have been issued, concerning the infraction in not filing returns for the aforementioned period. The petitioner has also filed their returns, with late fee on 30.04.2021.

## **Contention of the Department:**

The conduct of the petitioners is such that no relief should be granted to them by this Court as returns for the continuous period of six months, were not filed by the petitioners and therefore, the SCN was issued regarding the cancellation of the registration. As regards the Order-in-Appeal, the period of non-filing the returns being prior to Covid-19 kicking in, the orders passed by the Supreme Court in *Suo Motu Writ Petition No.3/2020*, will not be applicable in the petitioners' case.

## **Findings and Decision of the Court:**

The impugned order cancelling the registration is dated 25.11.2019. The period of limitation prescribed for filing the appeal under Section 107 of the CGST Act, 2017 is three months, which is amenable to extension by the period of one month by the Commissioner on sufficient cause being shown. The prescribed period of limitation would thus, end on 24.02.2020, with a one-month leeway available to the Commissioner to extend the period of limitation. The condonable period of one month, in this instance, would end on 24.03.2020. It is common knowledge that Covid-19 restrictions were triggered in this country in and about 23.03.2020. Therefore, as per the order passed by the Supreme Court, it is clear that extension of limitation applied even to the condonable period, and not just to the prescribed period of limitation under Section 107 of the Act. Therefore, clearly, the impugned Order-in-Appeal dated 28.06.2021 is contrary to the directions issued by the Supreme Court, and therefore, deserves to be set aside. Also, at the least, the Revenue should have appended digital signatures on the SCN and the above-mentioned order, as it has grave implications for the assessee. Accordingly, the impugned Order-in-Appeal dated 28.06.2021 was set aside. Consequently, the appeal preferred by the petitioners was restored.

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