

TAX INFO

Dated 19/11/2022

Latest update on GST Law: **GSTIN linking of transferor and transferee cannot be denied merely for cancelling RC in FORM GST REG-29 instead of FORM GST REG-16** as given in judgement by **Rajasthan High Court**.

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Name of Petitioner	A.H. Marble Crafts
Name of Respondent	The Commissioner Tax, Goods and Services Tax
Court	Rajasthan High Court
Date of Judgement	11.10.2022
Appeal No.	D.B. Civil Writ Petition No. 16147/2019

Brief Facts of the Case Law:

The erstwhile proprietor of the firm Shri Abdul Hameed Bhati, father of the present proprietor Shri Mohammad Afzal, expired on 31.01.2018 whereupon, an intimation was forwarded to the CGST Department through a letter in hard copy. The CGST Act provides a procedure for cancellation and thereafter, transfer of registration of the dealer pursuant to the death of the proprietor of the firm. However, such process is permissible if the information regarding death of the proprietor is uploaded on common portal in FORM GST REG-16. The information regarding the death of the sole proprietor was not forwarded to the CGST Department electronically and in prescribed FORM GST REG-16 and thus, further attempts made on behalf of the firm to file the GST returns were blocked. In the meantime, a fresh registration has been acquired by the petitioner.

Being aggrieved by the non-acceptance of the prayer for cancellation and transfer of the GST registration, and the inaction of the respondent No.4 in opening the portal so as to complete the tax liability as provided under Section 93 of the CGST Act, the instant writ petition has been preferred.

Contention of the Department:

The application for cancellation of registration was made in FORM GST REG-29 and not in FORM GST REG-16 and thus, the system did not link the GSTIN of Shri Abdul Hameed Bhati (the deceased proprietor of the firm) to the GSTIN of the petitioner. The GSTIN of the transferee and the transferor were not linked only on account of the information not being provided electronically on the common portal in FORM GST REG-16.

Contention of the Petitioner:

The hyper technical stance taken by the Department has created an unnecessary hurdle in the way of the petitioner in clearing the tax liabilities of the firm. The information regarding death of the proprietor was forwarded to the Department albeit in a wrong performa and merely on this technical ground, the Department have not acted upon the same. Reference was made to **circular No.96/15/2019-GST dated 28.03.2019 issued by CBIC** in support of the contention that the legal heirs of the sole proprietor of a business can file an application for cancellation of registration electronically on common portal on account of transfer of business for any reasons including the death of the proprietor. Thereafter, the GSTIN of the transferee to whom the business had been transferred can be linked with the GSTIN of the transferor. Thus, the petitioner prays that the necessary direction deserves to be issued to the Department to open the common portal so that the petitioner can upload the requisite information in the FORM GST REG-16 and get the two accounts linked so as to facilitate the clearance of the tax liability and to avoid the anomalies.

Findings and Decision of the Court:

This absolute hyper technical ground cannot be considered valid so as to deny the petitioner from the opportunity to link the GSTIN of his father's firm with the new GSTIN number of the firm. As a matter of fact, the petitioner gave the intimation about the death of the proprietor of the firm which establishes that he is desirous of removing the anomalies and clearing off the tax liability.

Thus, the Department was directed to activate the common portal and allow the petitioner to upload the appropriate information in FORM REG16 within next 30 days. As soon as the information is provided, the GSTIN number of the transferee and the transferor shall be linked as per clause 3(b) of the Circular dated 28.03.2019.

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