

TAX INFO

S. No. 36 Dated 08.06.2023

Latest update on GST Law: **Penalty for late filing of GST returns cannot be levied on the assessee if his application for revocation of RC was rejected without any valid reason** as given in judgement by **Delhi High Court**.

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Name of Petitioner	M/s. Bhagwati Trading Co.
Name of Respondent	Union of India
Authority	Delhi High Court
Date of Judgement	24.03.2023
Appeal No.	W.P.(C) 10363/2022

Brief Facts of the Case Law:

The petitioner had not filed its GST returns for a period of more than six months, resulting in the Department issuing a SCN dated 13.12.2019. On receipt of the SCN, it had filed its GST returns and cured the reason for which the cancellation of its GSTIN registration was proposed. The Department passed an order dated 29.07.2020, cancelling the petitioner's registration with effect from 29.07.2020.

The petitioner filed an application on 16.10.2020, seeking revocation of the said order dated 29.07.2020. The Department issued a SCN proposing to reject the petitioner's application for revocation of the cancellation of the GSTIN registration. The said SCN dated 27.10.2020 did not disclose any reason for the rejection of the petitioner's application for revocation of the cancellation of the GSTIN registration. Thereafter, the petitioner's application for revocation of the cancellation of the GSTIN registration was rejected by an order dated 14.12.2020 for the sole reason that the petitioner had not responded to the SCN dated 27.10.2020.

The petitioner appealed against the said order before the appellate authority and succeeded. Despite the fact that the appellate authority had directed that the petitioner's GSTIN registration be restored, the petitioner's registration was not restored immediately and was restored on 22.04.2022.

Thus, it is the petitioner's case that it could not file its returns prior to that date. The controversy in the present petition relates to levy of penalty for late filing of the GST returns, for the period the petitioner was disabled from doing so, on account of cancellation of its GSTIN registration.

Findings and Decision of the Court:

The order dated 14.12.2020; rejecting the petitioner's application for revocation of cancellation of GSTIN registration is unsustainable. It provides no reason as to why the petitioner's application was rejected. As stated above, the only reason is that the petitioner had not responded to the SCN dated 27.10.2020. It is hard to accept that there could be any meaningful response to the said SCN as it sets out no reason at all for proposing to reject the petitioner's application for revocation of cancellation. It is also noticed that the petitioner had already complied with the requirement of filing the returns on the date when the order cancelling its registration was passed and, therefore, the said order was unsustainable.

Thus, the Court held that from the date of the petitioner filing an application for revocation of its cancellation, that is, 16.10.2020, the petitioner cannot be held responsible for not filing its returns during the period when the registration stood cancelled. Thus, for the purpose of calculating any penalty for the late filing of the returns, the period, 16.10.2020 to 22.04.2022 shall be excluded.

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