

# TAX INFO

S. No. 20 Dated 21.02.2023

Latest update on GST Law: **RC cancellation order quashed as the response to the SCN was not considered by the authorities** as given in judgement by **Delhi High Court**.

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<b>Name of Petitioner</b>	M/s.Rakesh Enterprises
<b>Name of Respondent</b>	The Principal Commissioner Central Goods and Services Tax
<b>Authority</b>	Delhi High Court
<b>Date of Judgement</b>	09.02.2023
<b>Appeal No.</b>	W.P.(C) 14250/2022

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

An order dated 28.12.2020 was passed whereby the petitioner's registration was cancelled in furtherance of the proceedings commenced by SCN dated 15.12.2020 for defaulting in filing the returns for more than 6 months. The petitioner replied to the said SCN vide a reply dated 24.12.2020 and the order dated 28.12.2020 expressly recorded that it has reference to the reply dated 24.12.2020 but the Department contended that there was no response from Petitioner. There is no dispute that the petitioner has filed its returns belatedly and also paid the tax and penalty in accordance with the Act.

## **Contention of the Petitioner:**

It was decided by the Madras High Court in "TVL. Suguna CutpieceCenter vs. Appellate Deputy Commissioner (GST)", in the context of petition where GST registration of dealer had been cancelled and they had not availed of the alternate remedy seeking revocation of the cancellation orders within the time that it is not the intention of the authorities to debar and de-recognise assessee from coming back into the GST fold.

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

No useful purpose will be served by keeping these petitioners out of the bounds of GST regime. The purpose of GST registration is only to ensure just tax gets collected on supplies of goods or service or both and is paid to the exchequer. Keeping these petitioners outside the bounds of the GST regime is a self-defeating move as no tax will get paid on the supplies of these petitioners. May be, organised companies who comply with the requirement of GST enactments may not give business with these petitioners. However, by keeping the petitioners out of the bounds of GST law, purpose of the Act will not be achieved. It will also not mean that the petitioners will not do business i.e., of either supplying goods or service in the unorganised sector. They will still do their business, may be surreptitiously and clandestinely. They may perhaps not get opportunity to supply goods or services to established players. They may still supply to smaller players who may not be keen on GST compliance by the petitioners. By not allowing the petitioners to revive their registration is to derecognise a whole lot of entrepreneurs and to not to collect GST at all from them. It will only strain the system, as these petitioners will continue to carry on their business and supply goods and service and end up not paying the GST under the respective GST enactments. It will lead to loss of revenue to the Government which is not intended when these enactments were enacted. Thus, the impugned order is liable to be quashed. It is not necessary for this Court to examine whether the time period as stipulated under Section 30 of the Act for filing the revocation application is mandatory in this case. This is because it is apparent that the impugned order dated 28.12.2020, cancelling the petitioner's registration is unsustainable as the petitioner's response to the SCN is not considered. Thus, the impugned order dated 28.12.2020 was set aside. Consequently, the Department is directed to restore the petitioner's Registration.

**Suresh Aggarwal, Advocate**

**Compliance & Litigation under GST**

**Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085**

**Phone: 91-9810032846; 011 - 45131427**

**Email: sureshagg@gmail.com**

**Website: <http://www.sureshtaxation.com>**