

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 16147/2019

A.H. Marble Crafts, Through Proprietor Mohammad Afzal S/o Deceased Abdul Hameed Bhati, By Caste Muslim, Aged About 34 Years, R/o Mohammadiya Masjid, Gunwati Road, Makarana, District Nagaur (Raj.).

----Petitioner

Versus

1. The Commissioner Tax, Goods And Services Tax, G-105 Road No. 05, New Industrial Area, Jodhpur (Raj.).
2. Assistant Commissioner Tax Officer, Goods And Services Tax, Makarana (Raj.).
3. Superintendent, Goods And Services Tax, Range-Xv, Makarana (Raj.).
4. Goods And Services Tax Network, East Wing, 4Th Floor, World Mark-1, Aero City, New Delhi.

----Respondents

For Petitioner(s)	:	Mr. Lokesh Mathur
For Respondent(s)	:	Mr. Kuldeep Vaishnav

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE KULDEEP MATHUR**

Order

11/10/2022

The petitioner firm has approached this Court by way of this writ petition seeking to assail the inaction of the respondent No.4 in opening the portal qua the petitioner so as to allow it to complete the tax liability under Section 93 of the CGST Act, 2017.

Brief facts relevant and germane for disposal of the writ petition are noted hereinbelow :-

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 respondent 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. It appears that 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.

The respondents have submitted a reply wherein, the averments made by the petitioner are controverted on the ground that 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 herein.

Learned counsel Shri Lokesh Mathur representing the petitioner, vehemently submitted that the hypertechnical stance taken by the respondents has created an unnecessary hurdle in the way of the petitioner in clearing the tax liabilities qua the firm.

He urged that information regarding death of the proprietor was forwarded to the respondents albeit in a wrong performa and merely on this technical ground, the respondents have not acted upon the same. Reference is made to circular No.96/15/2019-GST dated 28.03.2019 issued by CBIT and the clause 3(b) thereof, which reads as below:-

“3. (b) Cancellation of registration on account of death of the proprietor: Clause (a) of sub-section (1) of section 29 of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as “death of sole proprietor”. The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.”

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. He thus urges that the necessary direction deserves to be issued to the respondents 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.

Learned counsel Shri Kuldeep Vaishnav appearing for the respondents, is not in a position to dispute the fact that 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.

We feel that this absolute hypertechnical 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 fact establishes his bonafides that he is desirous of removing the anomalies and clearing off the tax liability.

In wake of the discussion made herein above, the respondents are directed to activate the common portal and allow the petitioner to upload the appropriate information in FORM REG-16 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.

The writ petition is allowed in these terms.

No order as to costs.

(KULDEEP MATHUR),J

(SANDEEP MEHTA),J

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