

TAX INFO

Dated 18/04/2022

Latest update on GST Law: Information regarding **Recovery of tax, interest and penalty from petitioneris allowed in 48 installments due to his financial hardships** given in **Judgment by Gauhati High Court.**

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Name of Petitioner	M/s Veteran Facility Management Services Pvt Ltd.
Name of Respondent	The Union Of India
Court	Gauhati High Court
Date of Judgement	15.02.2022
Appeal No.	Case No. : WP(C)/795/2022

Brief Facts of the Case Law:

The petitioner is a partnership firm engaged in the business of providing security services to the outlets of the AIRCEL under a contract agreement. Under the law the petitioner firm is required to file monthly return under the GST as per the Form GSTR-1. But as because AIRCEL itself were out of business, a huge amount of payment is due to the petitioner and because of such loss in business, the petitioner could not pay the required GST dues to the department on time. In the process there is a default amounting to Rs.2,25,09,077/- for the period of April, 2018 upto September, 2021 along with applicable interest payable under Section 50(1) and penalty under Section 125 of the CGST Act, 2017. As the required tax amount had not been paid, the order of cancellation of registration dated 30.12.2020 was issued. Being aggrieved by the order of cancellation of registration, the petitioner submitted an application for revocation of cancellation but the same was also rejected by the order dated 15.04.2021. The petitioner firm express their willingness to pay the defaulted tax amount plus the interest and the penalty as may be assessed by the department but because of the precarious financial condition they are unable to pay it in one go and therefore, makes a request that the petitioner be allowed to make the necessary payments in 48 installments. A reference is made to the Circular No. 996/3/2015-CX dated 28.02.2015 which allows recovery of arrears of taxes, interest and penalty in installments. The Commissioner of GST is empowered and has the discretion of granting sanction to pay arrear of the GST in instalments upto maximum of 24 (twenty four) monthly installments and the Chief Commissioners are given the jurisdiction and authority to sanction the payment of the arrears in monthly installments greater than 24 (twenty four) upto a maximum of 36 (thirty six).

Decision of the Court:

The petitioner firm in this writ petition claims that as because the precarious financial condition it would not be possible for them to pay the entire amount due plus the interest and penalty within 36 (thirty six) installments, which is the maximum limit for the Chief commissioner and therefore, seeks to invoke the discretionary power of the Court in allowing them to pay the dues in 48 (forty-eight) installments. Although there may be an inherent power of the Court under Article 226 of the Constitution of India to use a discretion but at the same time when it is statutorily provided by the departmental authorities that the maximum permissible installments be 36 (thirty six), the Court ought not to randomly extend such installments beyond 36 (thirty six) in the guise of exercising discretionary power but at the same time, if further installments are not allowed to the petitioner firm, they would be unable to pay the tax due and it may result in a sustenance of the order of cancellation of their registration. If it is so, there would be an end of their business in the present form that they are undertaking and it would also be the end of the Department to have any tax from the petitioners in the form of the present business any further. It is directed that the amount of Rs.2,58,30,801/- plus the interest and the penalty be evaluated by the department and the said amount be equally divided by 48. Upon such determination the petitioner firm shall pay the determined monthly installments within the 7th of every month and if the petitioner firm do not comply, there shall be a periodical review by the departmental authority every month and in the event of default, the earlier order of cancellation may be revived by the department without any further reference.

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