

TAX INFO

Dated 26/08/2022

Latest update on GST Law: **HC imposed cost of Rs. 50,000/- for arbitrary GST registration cancellation** as given in judgement by **Allahabad High Court**.

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Name of Petitioner	Drs Wood Products
Name of Respondent	State Of U.P.
Court	Allahabad High Court
Date of Judgement	5.8.2022
Appeal No.	WRIT - C No. - 21692 of 2021

Brief Facts of the Case Law:

The petitioner is a partnership firm carrying on business of manufacture and trading of Veneer and claim to be carrying out the business from the registered place of business as registered with the GST Authorities and are paying taxes. A SCN dated 08.05.2020 was issued whereby it was alleged that the taxpayer was found Non-functioning/Not Existing at the Principal Place of Business, and subsequently an order came to be passed on 22.05.2020. The petitioner while trying to upload his E-Way Bill came to know that the registration of the petitioner has been cancelled on 08.05.2020, as such, the petitioner moved an application for revocation of the order dated 08.05.2020. In response to the said application, a SCN was again issued on 13.06.2020 stating that the application for revocation is liable to be rejected as the firm was properly issued show cause notice vide ref number ZA090520010436Y, no satisfactory explanation was received within prescribed time."In response to the SCN, the petitioner moved an application seeking 15 days extension of time to give a reply in view of the marriage of the daughter of the petitioner scheduled on 24.06.2020. Without considering the said application, an order came to be passed on 15.07.2020, rejecting the application for revocation of cancellation of the registration. Aggrieved against the said order, an appeal was filed under Section 107 of the Act before the Appellate Authority. The Appellate Authority dismissed the appeal recording that an inspection was carried out on 20.05.2020 in respect of the premises of the petitioner and on the site in question, no activity pertaining to the firm was found. It also records that the partner of the firm Shri Arun Jindal was called on phone but he could not give any clear reply. It was also recorded that in the said inspection at the given place of business, no stocks or commercial activity was found and the partners of the firm did not co-operate in the inspection. It also records that in the inspection report another firm in the name of M/s Star Enterprises, with another GST number was found working and, on the spot, the owner of the firm Mr. Imran was found and on the said place the said firm M/s Star Enterprises was found to be working. Thus, the Appellate Authority formed an opinion that the firm was got registered only with a view to help in evasion of taxation.

Contention of the Petitioner:

That the SCN is bereft of any facts on the basis of which the petitioner was called upon to file a reply. The SCN is meant to put the assessee on guard and to give a reply in respect of alleged charges against him, whereas in the present case the SCN was totally silent with regard to the averments contained or reply to be made against the petitioner. The SCN which led to the initial cancellation of the registration was never served upon the petitioner and in any case, if the petitioner had applied for revocation of cancellation of registration in terms of the mandate of Section 30 of the Act, it was incumbent upon the Assessing Authority to have passed an order considering the larger mandate of Section 30 of the Act, which has not been done. The Appellate Authority has erred in dismissing the appeal on the grounds, which are totally extraneous to the proceedings as inspection report dated 20.03.2020 were neither the basis of the SCN nor were ever supplied to the petitioner nor was the petitioner ever confronted to give reply and response to the said inquiry.

Findings and Decision of the Court:

A perusal of the SCN at the first instance clearly depicts the opaqueness of the allegations levelled against the petitioner, which were only to the ground that 'tax payer found non-functioning/non-existing at the principal place of business'. The said SCN did not propose to rely upon any report or any inquiry conducted to form the opinion and on what basis was the allegation levelled that the tax payer was found non-functioning; it does not indicate as to when the inspection was carried. A vague SCN without any allegation or proposed evidence against the petitioner, clearly is violative of principles of administrative justice.

Cancellation of registration is a serious consequence affecting the fundamental rights of carrying business and in a casual manner in which the SCN has been issued clearly demonstrates the need for the State to give the quasi-adjudicatory function to persons who have judicially trained mind, which on the face of it is absent in the present case. The SCN issued after the petitioner had filed an application for revoking the cancellation of registration also speaks of lack of judicial training by the quasi-adjudicatory authorities under the GST Act as it merely shows that no satisfactory explanation was received within the prescribed time. It is also not clear as to why the request of the petitioner to adjourn the matter because of the marriage of his daughter was not even considered prior to passing of the rejection order dated 15.07.2020.

The petitioner in the ground of appeal and in the written argument filed in support of the appeal had extensively stated and produced evidence to support and contend that the commercial activity was being carried out by the petitioner, however, the same have not been touched upon by the Appellate Authority while deciding the appeal. The Appellate Authority has gone on a further tangent by placing reliance upon an inspection report, which was neither confronted to the petitioner nor was ever part of the record based upon which the orders have been passed. This case clearly highlights the manner in which the quasi-judicial authorities and the appellate authorities are working under the GST Act. The manner of disposal as is present in the present case can neither be appreciated nor accepted.

There is no hesitation in recording that the said authorities while passing the order impugned have miserably failed to act in the light of the spirit of the GST Act.

Thus, the orders impugned dated 18.01.2021 and 15.07.2020 cannot be sustained and were set aside. The registration of the petitioner shall be renewed.

In the present case, the arbitrary exercise of power cancelling the registration in the manner in which it has been done has not only adversely affected the petitioner, but has also adversely affected the revenues that could have flown to the coffers of GST in case the petitioner was permitted to carry out the commercial activities. The actions are clearly not in consonance with the ease of doing business, which is being promoted at all levels. For the manner in which the petitioner has been harassed since 20.05.2020, the State Government is liable to pay a cost of Rs.50,000/- to the petitioner. The said cost of Rs.50,000/- shall be paid to the petitioner within a period of two months, failing with the petitioner shall be entitled to file a contempt petition.

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>