

TAX INFO

Dated 26.09.2022

Latest update on GST Law: **Physical verification of premise should be conducted in presence of authorized representative of the assessee by serving proper notice for verification in advance** as given in judgement by **Delhi High Court**.

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Name of Petitioner	Curil Tradex Pvt. Ltd.
Name of Respondent	The Commissioner, Delhi GST
Court	DelhiHigh Court
Date of Judgement	26.08.2022
Appeal No.	W.P.(C) 10408/2022

Brief Facts of the Case Law:

The order dated 26.04.2022 was passed by learned officer cancelling the registration of the petitioner. The cancellation of registration was founded on the show cause notice dated 12.04.2022. The show cause notice, in turn, referred to a letter dated 06.04.2022 received from the Deputy Commissioner (DC), CGST–Delhi, claiming that the firm of the petitioner is non-existent. The SCN dated 12.04.2022 mentioned that the registration stands suspended with effect from 12/04/2022. Thus, the revenue suspended the registration of the petitioner w.e.f. the date of the issuance of the show cause notice. Being aggrieved, the petitioner approached this Court by way of the instant writ petition.

Contention of the Petitioner:

The impugned order was not furnished to the petitioner. Furthermore, it has also emerged that no notice of inspection was served on the petitioner. If the proper officer opted for physical verification of the petitioner's business premises, it could only be carried out in the presence of its authorized representative. In other words, in such eventuality, a prior notice/intimation would have to be served by the proper officer as per Rule 25 of CGST Rules, 2017.

Findings and Decision of the Court:

A perusal of the record clearly demonstrates that neither was the letter dated 06.04.2022 furnished to the petitioner, nor was the petitioner given any notice of inspection as per Rule 25 of the CGST Rules, 2017. A careful perusal of the rule shows that, if after the grant of registration, the proper officer is satisfied that physical verification of the place of business of the concerned person is required, the proper officer may get such verification of the business place carried out, albeit, **in the presence of the said person**, and thereafter, have the verification report along with other documents including photographs uploaded in Form GST REG-30 on the common portal within 15 working days following the date of such verification.

In the instant case, what is not in dispute is that physical verification was carried out by the revenue, albeit, without having the petitioner's authorized representative remain present. The inspection without the presence of the petitioner's authorized representative was carried out on 13.04.2022 and the verification report was uploaded on 18.04.2022. Also, the verification report is indicative of the fact that one Mr Tej, Bahadur, a worker of the petitioner, was found at the business premises. Therefore, what emerges from these facts is that, although the inspection of the petitioner's business premises was carried out, no prior notice was given by the revenue. The person found at the site, even according to the revenue, was a worker of the

petitioner. Had the revenue given notice/intimation of the inspection, it could have been carried out in the presence of the authorized representative of the petitioner and hence lent greater authenticity and credibility to the inspection report. Be that as it may, admittedly, what the photographs reveal is that the business premises exist. Furthermore, the photographs do reveal that the premises were evidently empty.

Since the petitioner deals with scrap material, there is constant movement of material which is brought into the business premises. Thus, the photographs appended by the revenue, by themselves, would not establish that the petitioner does not carry out any business activity at the subject premises. Had the authorized representative of the petitioner been made to remain present at the business premises, the circumstances obtaining at the site could have been explained by the said representative. Besides this, the proper officer opted to have the petitioner's business premises inspected, albeit, without the presence of its authorized representative. Furthermore, a perusal of the impugned order would show that no tax or cess was due from the petitioner.

Thus, having regard to the overall circumstances obtaining in the case, the writ petition was disposed of with the following directions:

- (i) The petitioner would file an application for revocation of order of cancellation within the next 15 days.
- (ii) Once an application has been filed, the same will be adjudicated by the concerned officer within two weeks of the date of submission of the application.
- (iii) A speaking order would be passed by the concerned officer; a copy of which will be furnished to the petitioner.
- (iv) In case the order passed by the concerned officer is averse to the interests of the petitioner, the petitioner shall have liberty to take recourse to an appropriate remedy, as per law.

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