

TAX INFO

Dated 28/09/2022

Latest update on GST Law: **SCN without containing the reasons for cancellation of RC is invalid** as given in judgement by **Delhi High Court**.

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Name of Petitioner	Pratibha-Mosinzstroi Consortium
Name of Respondent	The Commissioner, Delhi GST
Court	Delhi High Court
Date of Judgement	15.09.2022
Appeal No.	W.P.(C) 7289/2022 and CM APPL. 22349/2022

Brief Facts of the Case Law:

In the SCN issued to the petitioner on 08.07.2021, no reasons were furnished for the cancellation of registration. A subsequent SCN was issued on 17.11.2021 whereby the petitioner for the first time came to know that the revenue had cancelled the registration on the ground that the company was found not to be in existence, when inspection was carried out on 05.07.2021. This aspect of the matter, that is, an inspection was carried out on 05.07.2021 was not put to the petitioner, when SCN dated 08.07.2021 was issued. Although the petitioner claims, that it had submitted a reply dated 23.11.2021; evidently, the same was not uploaded on the designated portal. The reply was uploaded on the website of the revenue. In the appeal preferred by the petitioner, information was submitted, which included the fact that the company had relocated itself. However, in the impugned order dated 22.02.2022 passed by the Joint Commissioner, CGST-I, Delhi there was no discussion with regard to assertions made in that behalf by the petitioner.

Findings and Decision of the Court:

Given these facets, the impugned order cannot be sustained for the following reasons:

- (i) Firstly, the SCN dated 08.07.2021 gave no clue whatsoever, as to what was the infraction committed by the petitioner.
- (ii) Secondly, although inspection of the company's premises was carried out on 05.07.2021, it did not find mention in the SCN dated 08.07.2021. Besides this, no notice of physical inspection was given. The concerned authority, having exercised this option under Rule 25 of the CGST Rules, 2017, it had to give notice keeping in view the judgement dated **26.04.2022, passed in W.P (C) 8451/2021, titled Micro Focus Software Solutions India Pvt Ltd. vs. Union of India & judgement dated 26.08.2022, passed in W.P (C) 10408/2022, titled Curil Tradex Pvt. Ltd. vs The Commissioner, Delhi.**
- (iii) Thirdly, another SCN dated 17.11.2021 was issued, which is not contemplated under the CGST Act, 2017
- (iv) Fourthly, the order dated 22.02.2022 passed by the Joint Commissioner, Central Goods and Service Tax, Appeals-I, Delhi is bereft of reasons. The order does not deal with the information given by the company as regards its relocation.

In sum, the entire proceedings, right up to the stage of passing of the order-in-appeal was legally flawed. Accordingly, the impugned order was set aside. However, in the meanwhile, the registration of the petitioner shall be restored.

Furthermore, on account of the cancellation of registration of the petitioner, the petitioner could not file returns. The last return was filed in August, 2021. Thus, further four weeks are granted to the petitioner to file the returns, for the relevant period. For the petitioner to file the returns, the designated portal concerning the petitioner will have to be activated by the revenue within forty-eight hours of the receipt of a copy of the instant judgment. On account of the actions of the revenue, no interest or penalty will be levied on account of delay in filing the pending returns.

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