

TAX INFO

Dated 18.10.2022

Latest update on GST Law: **GST Registration cannot be cancelled by Infraction of Rule 25 of CGST Act, 2017** as given in judgement by **Delhi High Court**.

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Name of Petitioner	M/s. Balaji Enterprises
Name of Respondent	Principal Additional Director General, DGGI
Court	Delhi High Court
Date of Judgement	07.09.2022
Appeal No.	W.P.(C) 10315/2022

Brief Facts of the Case Law:

The petitioner's registration was cancelled vide order dated 04.05.2022 which was founded on the SCN dated 31.03.2022. A perusal of the SCN would reveal, that there is next to nothing stated, as to the reason why the concerned authority proposed the cancellation of registration. The concerned authority, ironically, put the onus on the petitioner to demonstrate that registration has been obtained by fraud, wilful, misstatement or suppression of facts. The concerned authority would have adverted to some broad facts, which would have demonstrated that the petitioner had employed fraud, wilful misstatement or suppression of facts, while obtaining registration. Nothing of this kind has been stated in the SCN. The petitioner was directed to file a reply to the SCN during the given timeframe i.e., seven days, and appear before the concerned authority on the given date and time.

The petitioner filed a reply dated 07.04.2022, stating that he has filed all the duly returns up to February 2022 and all the GST Liability has been properly discharged. It was further stated that registered business place was owned by the petitioner and this premises was used for office purpose for management of all the administrative and executive activity. Therefore, physical verification may be done and then drop the suspension of GSTIN.

Within less than a month, the impugned order was passed considering the reply dated 07.04.2022 stating that "Suo Moto cancellation of the taxpayer was initiated u/s 29(2) of the CGST Act 2017 as per letter dated 29.03.2022 received from DGGI, Chennai as an enquiry was pending against the taxpayer in r/o supply of spurious goods. Also, registered address of the taxpayer was physically verified by range inspector but no one was found there and door of the premises was found sealed by DGGI Chennai". A plain reading of the order would show, that the petitioner's registration was cancelled on account of an enquiry pending against the petitioner, which evidently being was carried out by DGGI, Chennai concerning supply of "spurious goods." Interestingly, the impugned order reveals, that nothing was due from the petitioner on account of tax, interest, penalty or cess.

Findings and Decision of the Court:

Clearly, the SCN did not advert to the facets, which were referred to in the impugned order, whereby the petitioner's registration has been cancelled. Although, as per the impugned order, the Range Inspector appears to have physically verified the petitioner's premises, neither was any notice given of the physical verification, nor is the report which was generated after the verification, uploaded on the portal. This was required to be done, as provided in Rule 25 of the CGST Rules. Apart from anything else, there is, certainly, an infraction of the provisions of Rule 25 of the CGST, and the impugned order has gone beyond the frame of the SCN.

Thus, the impugned order was set aside. The revenue was directed to restore the registration of the petitioner.

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