

TAX INFO

Dated 22.10.2022

Latest update on GST Law: **SCN must be speaking and clear with regard to the allegations/details** as given in judgement by **Bombay High Court**.

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Name of Petitioner	Archana Textile Corporation
Name of Respondent	The State of Maharashtra
Court	Bombay High Court
Date of Judgement	21.09.2022
Appeal No.	WRIT PETITION NO. 11022 OF 2022

Brief Facts of the Case Law:

The SCN dated 5th November 2019 was issued without any of the allegations and without any details. An Assessment Order dated 31stDecember 2021 was issued with observations and allegations about fake invoices and fake forms have been made against petitioner. Therefore, the order has been passed without giving an opportunity to petitioner to effectively deal with the allegations and therefore the order passed is contrary to the principles of natural justice.

Findings and Decision of the Court:

The show cause notice dated 5th November 2019 is a bald show cause notice. The show cause notice does not contain any details of any sale or claims or deductions which petitioner has incorrectly made or claimed or recorded in an incorrect manner. The details were provided only when petitioner attended personal hearing on 11th November 2019.

It was the duty of the Department to have given all the details to petitioner. The procedure adopted is totally incorrect. Every show cause notice issued by Department in future shall contain every detail required to effectively respond to the show cause notice. This is a direction that Department shall follow without fail. It is mandatory to give the details. In the impugned order Department has commented even on those terms/sales details of which were not provided during the personal hearing. This is a serious lapse.

Thus, the impugned order along with show cause notice was quashed and set aside. Department may issue a fresh show cause notice to petitioner containing every detail by which Department feels tax is sought to be evaded by not recording or recording in an incorrect manner or petitioner has claimed or deducted incorrectly. Such a show cause notice shall be issued within two weeks of receiving a copy of this order. Petitioner shall file detailed reply within two weeks of receiving the show cause notice. Department may then pass final assessment order within eight weeks of receiving reply after giving personal hearing to petitioner. The assessment order shall contain all reasons for arriving at the findings there in and if the Assessing Officer does not agree with petitioner's contentions, detailed reasons as to why he disagrees shall also be given in the Assessment Order.

Author's view:- presently state is issuing notices in ASMT-10 in casual manner without specific pointing out of queries in the notices. In my view such notice may be replied asking specific query with calculation of proposed demand and quoting the aforesaid judgement in reply, it will help the taxpayers.

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