

TAX INFO

Dated 30/11/2022

Latest update on GST Law: **Rejection of GST registration revocation application without considering fact is unsustainable** as given in judgement by **Calcutta High Court**.
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Name of Petitioner	Swarupa Ghosh
Name of Respondent	The Assistant Commissioner of State Tax
Authority	Calcutta High Court
Date of Judgement	22.09.2022
Appeal No.	M.A.T. No.791 of 2022

Brief Facts of the Case Law:

The first SCN was issued on 23rd August, 2021 proposing to cancel the registration on the ground that there was a contravention of Section 29(12)(a) of the GST Act, 2017. The petitioner submitted her reply and thereafter an order of cancellation was passed on 1st September, 2021 which was devoid of reasons. The appellant filed an application for revocation of the said order and by an order dated 3rd November, 2021 and the registration was restored. At that point of time, the appellant proposed to shift the place of business and therefore, submitted an application on 3rd November, 2021 for cancellation of the registration. Various documents were sought for by the department. However, by order dated 25th November, 2021, the authority rejected the application filed by the appellant for cancellation of registration as balance sheet and profit and loss account was not submitted as per the notice. On the same date, i.e. on 25th November, 2021, the second notice for cancellation of the registration was issued on the allegation that the appellant had obtained registration by means of fraud and wilful misstatement or suppression of facts. However, no adverse report was appended to the said SCN. The appellant submitted her reply on 2nd December, 2021 requesting that the necessary documents should be provided to the appellant to enable her to submit her appropriate rebuttal. On the hearing fixed on 7th December, 2021, the appellant appeared but the authority failed to provide any document; however, dropped the proceedings for cancellation of registration. Thereafter on 21st December, 2021 once again, the appellant received another SCN for cancellation of registration for contravention of Section 29(2)(a) of the Act. Though the said notice states an adverse report was separately attached, but no attachment was there to the said notice. This was pointed out by the appellant by representation dated 27th December, 2021. Thereafter, on 28th December, 2021, an adverse report was received and the appellant sent an email requesting for time to submit reply. Thereafter, without affording any opportunity, the registration was cancelled on the very same date. The appellant filed an application for revocation of such an order on 17th January, 2022. Thereafter, a show cause notice was issued on 16th February, 2022 for which a detailed reply was submitted by the appellant on 19th February, 2022. However, the said application was rejected by an order dated 21st March, 2022.

Findings and Decision of the Court:

The order passed by the authority cancelling the application for revocation was devoid of reasons. None of the grounds raised by the appellant has been dealt with. It was not clear as to why the department has been dragging the appellant for such a long period, i.e. from August, 2021. If, according to the Department, there was any adverse material, then a proper show cause notice should have been given to the appellant and her objection should have been invited and further affording an opportunity of personal hearing, a speaking order should have been passed.

In the instant case there has been total violation of principles of natural justice, the order of rejection of the revocation application is a non-speaking order without considering the vital facts, hence, such an order dated 21st March, 2022 was set aside and the matter was remanded to the original authority. The original authority was directed to issue a comprehensive SCN to the appellant clearly mentioning as to what is the allegation against the appellant. The appellant should be granted not less than 15 days' time to submit her reply. Thereafter, the authority shall afford an opportunity of personal hearing to the appellant or her authorised representative, hear the submissions and take note of the documents and other details, which the appellant may furnish and thereafter proceed to pass a speaking order on merit and in accordance with law.

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