

TAX INFO

Dated 09/12/2022

Latest update on GST Law: **RC Cancellation order must Indicate Reasons for the same in order as given in judgement by Allahabad High Court.**

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Name of Petitioner	Om Prakash Mishra
Name of Respondent	State Of U.P.
Court	Allahabad High Court
Date of Judgement	06.09.2022
Appeal No.	WRIT TAX No. - 100 of 2022

Brief Facts of the Case Law:

The order dated 15.03.2019 was passed cancelling the registration of the petitioner's firm and the appellate order dated 29.03.2022 was passed dismissing the appeal as being beyond the period prescribed for filing of appeal under section 107(4) of the CGST Act.

Contention of the Petitioner:

The order of cancelling the registration under section 29 of the Act was without issuance of any show cause notice. Even otherwise, the mandate of section 29 is to pass an order after giving an opportunity of hearing, which was not given, inasmuch as it records that no one has appeared for hearing. Thus, the order passed is wholly arbitrary and does not reflect any application of mind. The reasoning is a heart and soul of any administrative or a quasi-judicial order, which is absent from the plain reading of the order dated 15.03.2019. The order dated 15.03.2019 suffers from the voice of non-observance of the principle of natural justice. It was incumbent upon the Department to have given a hearing. Even otherwise, it was incumbent upon the authority to have recorded the reasons for passing the order, which is absent in the order dated 15.03.2019 and the said order being in clear violation of the principle of natural justice. The appeal preferred by the petitioner was beyond the prescribed period of limitation as wife of the petitioner had suffered a heart attack and within a week thereafter the petitioner also suffered a heart attack and were undergoing the medical treatment and the medical certificates to that effect were on record. Also, all the papers with regard to the registration of the Firm were with the authorized representative of the petitioner who unfortunately also died without giving any information about the case to the petitioner.

Findings and Decision of the Court:

A perusal of the order dated 15.03.2019 makes it clear that no reasons whatsoever have been recorded while passing the order of cancellation of the registration of the petitioner's firm. The order clearly being without any reason cannot be accepted to be an order in accordance with law. It is essential that every administrative authority or a quasi-judicial authority should indicate the reasons, whatsoever, brief they may be before passing an order of the nature which has been done by the authority. The order passed dated 15.03.2019 has a very harsh consequences and the same being without any reason whatsoever, fails to satisfy the test of a judicial order and suffers from the voice of violation of Article 14 of the Constitution of India. Thus, the order dated 15.03.2019 was set aside with direction to the petitioner to file his response to the show cause notice before the Department who shall pass fresh order after giving an opportunity of hearing to the petitioner. The appellate order, although not interfered with, was also set aside.

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