

TAX INFO

Dated 28/12/2022

Latest update on GST Law: **GST Assessment order passed without issuing SCN for Assessment Period is invalid** as given in judgement by **Tripura High Court**.

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Name of Petitioner	OPC Assets Solutions Pvt. Ltd.
Name of Respondent	The State of Tripura
Court	Tripura High Court
Date of Judgement	31.08.2021
Appeal No.	WP(C) No.399/2021

Brief Facts of the Case Law:

The Petitioner is engaged in the business of providing goods on rental basis to its customers across the country including in the State of Tripura. For the purpose of its business the petitioner enters into a rental agreement with the customers and provides capital goods and machinery to such customers on lease. In the State of Tripura, the petitioner had provided such goods to M/s Reliance Retail Limited, Tripura (RRL, for short). On 06.09.2020 the petitioner received a notice under Section 61 of the CGST Act pointing out certain discrepancies in the returns furnished by the petitioner. The petitioner made a detailed representation in response to the said notice under a communication dated 16.01.2021. In the meantime, a notice dated 06.12.2020 was issued for cancellation of the registration. On 10.03.2021, a SCN was issued for recovery of unpaid tax and penalty for financial year 2018-19. The petitioner replied to the show-cause notices resisting the demands and contending that the input tax credit was correctly availed. On 23.04.2021, the Superintendent of Taxes issued the order of cancellation of registration of the petitioner and also issued separate orders confirming the tax and penalty demands against the petitioner for the tax periods 2017-18 till 2020-21. Aggrieved by this, this writ petition was preferred.

Contention of the Petitioner:

The SCN was issued only for one year whereas the Superintendent of Taxes passed five separate orders for different tax periods which was wholly impermissible. The entire order is passed without following the principles of natural justice. The Superintendent has relied on materials, documents and judgments and never discussed with the petitioner.

Without any further show-cause notice he could not have assessed the petitioner for remaining years and imposed penalties. His stand that once notice is issued for a particular tax period; no notice is necessary for other tax periods stems from utter ignorance of law. This fundamental breach is sufficient to vitiate the orders of assessment barring one for the period in relation to the year 2018-19. The order passed by the Superintendent and the approach that he has adopted is totally unsatisfactory.

Decision of the Court:

The basic requirement of principle of natural justice for sharing adverse material before utilising the same against a person must be observed with greater rigour in the times of availability of information on internet, all of which need not necessarily be accurate at all times. Accurate or otherwise the noticee must have a chance to meet with such adverse material before it is used against him. For each individual reason namely the order being unintelligible, the action failing the test of principles of natural justice and the Superintendent of Taxes exceeding the show-cause notice, the impugned orders must be set aside. The same were set aside. Nothing stated in this order would prevent the Superintendent of Taxes from proceeding against the petitioner afresh for framing proper assessment if so advised and permitted under law.

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