

TAX INFO

Dated 11.10.2021

Latest update on GST Law: Information regarding **Fraud committed by the selling dealer cannot be the reason for cancellation of registration of purchasing dealer** based on the **Judgement issued by Orissa High Court.**

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Fraud committed by the selling dealer cannot be the reason for cancellation of registration of purchasing dealer

Name of Petitioner	Bright Star Plastic Industries
Name of Respondent	Additional Commissioner of Sales Tax
Court	HC-Orissa
Date of Judgement	04.10.2021
Appeal No.	W.P.(C) No.15265 of 2021

Facts of the Case:

The CT & GST Officer issued a SCN for cancellation of Petitioner's registration on the ground that Registration has been obtained by means of fraud, willful misstatement or suppression of facts.

Petitioner filed a reply for dropping the proceedings for cancellation of registration but the respondent on the very same day issued another SCN for cancellation of registration, this time on the ground that: "you have claimed ITC of Rs.2,04,650/- against fake invoices issued by non-existent supplier. Petitioner filed a detailed reply describing the details of transactions and the same had been disclosed in GSTR-3B.

The Respondent issued DRC-01A calling the party to pay the amount of Rs. 3,48,066/- on the ground that the 'ITC claimed was against fake invoices issued by non-existent supplier'. Reply was filed by the petitioner but registration was cancelled with the remark "clarification submitted not satisfactory, hence cancelled."

Petitioner filed the application for revocation of cancellation of registration but, the same was rejected by issuing SCN in Form GST REG-23. Petitioner at the stage filed the writ petition.

Contention of Petitioner:

There is no provision that enables the cancellation of the registration of the purchasing dealer for any fraud committed by the selling dealer. Second, cancellation of registration of selling dealer took place after the dates of purchases and how the Petitioner is going to know that at future point of time the registration of selling dealer is going to be cancelled.

Reply of Respondent:

A field visit was undertaken on 01.07.2019 and the premises was found to be occupied by some other person and not the selling dealer. Hence, the transactions entered by the Petitioner with the selling dealer in April and August 2018 were fake transactions.

Decision of the Court:

For the fraud committed by the selling dealer, resulted in cancellation of a selling dealer's registration and cannot be the reason for an automatic cancellation of the registration of the purchasing dealer. The impugned order was set aside and the Department was directed to restore the registration.

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