

TAX INFO

Dated 05/01/2023

Latest update on GST Law: **SCN must specify the reason for which the allegation of wrongful availment or utilization of Input Tax Credit has been made** as given in judgement by **Gujarat High Court**.

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Name of Petitioner	Dee Cubes Diamonds Pvt. Ltd.
Name of Respondent	State of Gujarat
Authority	Gujarat High Court
Date of Judgement	16.12.2022
Appeal No.	R/Special Civil Application No. 22875 Of 2022

Brief Facts of the Case Law:

The petitioner is engaged in the business of trading in bullion and the sale and purchase of goods is their usual course of business and all the transactions were duly reflected in the returns filed. The taxes were duly paid as per the returns filed. All the transactions of the petitioners were duly supported by tax invoices and all the payments were made through banking channels. A search proceeding was carried out by the Central GST Department at the premises of the petitioner on 08.12.2021. On the allegation of wrongful availment of Input Tax Credit (ITC) under the GST Act to avoid coercive action, the petitioners reversed ITC of Rs.90,00,000/- and further made payment of Rs.2,00,00,000/- through electronic cash ledger under protest to show their bonafide and also to avoid coercive actions. Officers of the State GST Department visited the premises of the petitioner in May, 2022 for inquiry. The visit to premises was without prior intimation and at the relevant time only employees of the petitioners were present. Thereafter, State GST Officer issued a SCN on 26.05.2022 proposing to cancel the registration of the petitioner by alleging that the petitioner was engaged in issuing invoices. The said allegation was without any supporting materials to form such basis. The petitioner responded to the SCN vide reply dated 02.07.2022. It was replied that the notice was completely vague and bereft of any reasons and without any supporting materials. It was also replied that they are not in a position to give any response to the notice unless and until they have been given some basis for issuing such notice. Thus, the request was made by the petitioner to drop the SCN or to provide details, basis which the allegations were made in the SCN. The petitioner also gave another submission dated 08.09.2022 requesting to restore the registration and requested for personal hearing. However, the Department passed an order cancelling the RC of the petitioner on the ground which was never form part of the notice.

Contention of the Petitioner:

The order cancelling RC dated 11.10.2022, is beyond the scope of show cause notice, arbitrary and in breach of principles of natural justice. The SCN being non-speaking and being bereft of any reasons is illegal. The SCN dated 26.05.2022 was so vague that it would not be possible for the petitioner to respond to the same as no supportive documents were provided despite sought for. Even the order cancelling the RC has been passed without providing any opportunity of hearing. The material based on which the allegations were made in the SCN were not provided to the petitioners. Therefore, also the initiation of the proceedings vide SCN dated 26.05.2022 itself is illegal and not tenable in law.

Contention of the Department:

The SCN dated 26.05.2022 was served calling for reply to show-cause on or before 03.06.2022, however, the petitioner filed reply to show-cause on 02.07.2022. The reply was filed without any supporting documents justifying the transactions as genuine and thereafter the order of cancellation of registration was passed. The procedure contemplated under the provisions of the Act has been followed and there being no illegality,

Findings and Decision of the Court:

Perusal of both these orders dated 26.05.2022 and 11.10.2022 show that no valid reason was given for cancellation of registration. Despite requested for, no details were provided and prima facie reply of the petitioner have not been considered. The SCN dated 26.05.2022 does not specify the reason for which the allegation of wrongful availment or utilization of Input Tax Credit (ITC) is made. As the SCN does not contain reason to justify the action of the Department, it is violative of principles of natural justice. As held by this Court in Aggarwal Dyeing (Supra), reasons are heart and soul of the order and non-communication of the same itself amounts to denial of reasonable opportunity of hearing resulting into miscarriage of justice. Therefore, applying the same principle, as the SCN dated 26.05.2022 is bereft of any reasons, the same deserves to be set aside. The order of cancellation of registration dated 11.10.2022 was also quashed and the RC The registration of the petitioner was directed to be restored.

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