

TAX INFO

Dated 10/01/2023

Latest update on GST Law: **Rule 25 provides mandatory serving of the Notice to assessee before carrying out physical inspection of business premises** as given in judgement by **Delhi High Court**.

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Name of Petitioner	Aditya Narayan Ojha (Amit Associates)
Name of Respondent	Principal Commissioner, CGST, Delhi North
Authority	Delhi High Court
Date of Judgement	02.08.2022
Appeal No.	W.P.(C) 8508/2022

Brief Facts of the Case Law:

The principal grievance of the petitioner is that the Order-in-Appeal [OIA] dated 07.01.2022 has not been complied with by the revenue vide which the appellate authority has revoked the RC cancellation order dated 10.10.2021 of the petitioner. The said order, in turn, is predicated on the show-cause notice (SCN) dated 28.09.2021 which was premised on the basis that the "Registration has been obtained by means of fraud, wilful misstatement or suppression of facts". The petitioner neither filed a reply, nor did anyone appear before the concerned officer. However, the order cancelling the registration dated 10.10.2021 mentions about a reply dated 07.10.2021, when none was filed by the petitioner. The petitioner's registration was cancelled via order dated 10.10.2021. Being aggrieved, the petitioner preferred an appeal. The first appellate authority reversed the order dated 10.10.2021 based on the reasoning that for revocation of the cancelled registration; what is to be examined is whether sufficient cause exists for revocation of cancellation of registration and the Appellant vide letter dated 31.12.2021 has submitted Undertaking stating that they had filed GST returns till September 2021 along with tax amount, and shall file pending returns with tax within 15 days of restoration of GST registration along with interest, shall pay any other government dues if found subsequently under the GST Act. The default by the Appellant was not wilful. There is also an Undertaking of the Appellant on record to make the payment of pending taxes and filing of pending returns. The law also permits revocation of cancellation of registration on sufficient cause being shown; the cause shown by the Appellant is sufficient to allow revocation of cancellation of registration. The Appellant has submitted relevant documents like copy of Aadhar card of the appellant along with bank passbook, photographs of the premises and surroundings, rent agreement of place of business, NOC by the owner of the property to early business activities, electricity bills & copy of property documents, copies of GSTR-3B till September 2021, 86 relevant sales & purchase invoices. It is in this backdrop i.e., on account of the OIA dated 07.01.2022 not being complied with that the petitioner has approached this Court.

Contention of the Petitioner:

The delay is causing immense detriment as without GST registration, the petitioner is neither able to carry on its business nor is in a position to make statutory compliances. A perusal of the order of cancellation dated 10.10.2021 shows that even on the date when the petitioner's registration was cancelled, nothing was owed by the petitioner towards tax, interest and/or penalty. In any event, an undertaking has already been given, as recorded in the OIA dated 07.01.2022, to the effect, that if there is any outstanding tax liability, the same will be liquidated. The inspection of the petitioner's premises (and the finding that the petitioner was not in existence at the said premises) was the prime reason, based on which the revenue proceeded to cancel the petitioner's registration; although, the said reason does not find mention in the order dated 10.10.2021. Also, no notice of physical inspection was served on the petitioner.

Findings and Decision of the Court:

There is no reference in the order dated 10.10.2021 to the fact that the petitioner was not found to be in existence and therefore, registration was cancelled. The only reason adverted to in the order dated 10.10.2021 was that "No response was received from the taxpayer's end". But it cannot be accepted that under Rule 25 of the CGST Rules, 2017, before carrying out physical inspection, the revenue is required to serve a notice on the concerned person/entity. However, all this did not form part of the order dated 10.10.2021. Furthermore, the first appellate authority has given a rationale for revoking the order cancelling the petitioner's GST registration; as noted hereinabove.

Thus, the revenue, at this juncture, have no other alternative, but to comply with the order of the first appellate authority and shall restore the petitioner's GST registration within one week from the date of receipt of a copy of this judgement.

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