

TAX INFO

Dated 12/01/2023

Latest update on GST Law: **Order set aside proceeding was initiated without issuing the SCN in Part A of FORM GST DRC-01A** as given in judgement by **Allahabad High Court**.

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Name of Petitioner	M/s Skyline Automation Industries
Name of Respondent	State of U.P.
Authority	Allahabad High Court
Date of Judgement	02.01.2023
Appeal No.	WRIT TAX No. - 1512 of 2022

Brief Facts of the Case Law:

The order dated November 10, 2022 (DRC-07) was passed by Department. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017 existing at the time of initiation of the proceedings against the petitioner before it was amended on October 15, 2020 was that before issuing the notice under Section 74(1) of the CGST Act, 2017, a show cause notice in Part A of FORM GST DRC-01A is required to be issued. It is only thereafter that the jurisdiction is vested with the Competent Authority to pass order. In the case in hand, notice in Part A of FORM GST DRC-01A having not been issued, any subsequent proceeding will be without jurisdiction as the petitioner did not have fair opportunity to respond. The reliance was placed on a judgment of Delhi High Court in Gulati Enterprises v. CBIC & others, 2022 U.P.T.C. (Vol. 111) - 1271.

Findings and Decision of the Court:

Form GST DRC-01A is a pre-show cause notice intimation which focuses on reducing litigation. Therefore, on account of the non-compliance with the provisions of Rule 142 (1A) of the CGST Rules, the order deserves to be quashed.

The Department submitted that Rule 142(1A) of the CGST Rules have been amended by the Central Board of Indirect Taxes and Customs (CBIC) by Notification No.79/2020 dated October 15, 2020, which states that there is no requirement to send a statement in Part-A of GST DRC-01A under Rule 142(1A) of the CGST Rules.

For initiation of proceedings against the petitioner a notice as provided for under Rule 142(1A) of the Rules in Part A of FORM GST DRC-01A was not issued, which provided for communication of details of any tax, interest and penalties as ascertained by the officer. Any subsequent reminder will not cure inherent defect in proceedings initiated against the petitioner. Similar view has been expressed by the Delhi High Court in Gulati Enterprises' case (supra) wherein also in identical facts pertaining to a case prior to the amendment of Rule 142(1A) of the Rules with effect from October 15, 2020, the impugned show cause notice was set aside and the matter was remitted back to authority concerned to initiate fresh proceedings in accordance with law.

In the case in hand, the only difference being that subsequent thereto an order has also been passed on November 10, 2022, the same will not make any difference. As the initiation of proceedings itself are bad, the order passed consequent thereto will also fall. The impugned order dated November 10, 2022 was quashed. However, with liberty to the Department to initiate fresh proceedings against the petitioner in accordance with law.

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