

TAX INFO

Dated 21/05/2022

Latest update on GST Law: **Physical verification cannot be done without the knowledge of the dealer** as given by **High Court Of Delhi**.

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Name of Petitioner	Micro Focus Software Solutions India Private Ltd.
Name of Respondent	Union Of India
Court	High Court Of Delhi
Date of Judgement	26.04.2022
Appeal No.	W.P.(C) 8451/2021

Brief Facts of the Case Law:

The petitioner was issued a show cause notice dated 11.11.2020 where the petitioner was called upon to show cause as to the factum of it not being found functioning or existing at the given address. The petitioner responded to the same via the reply dated 12.11.2020 wherein the petitioner sought extension of time for personal hearing to 23.11.2020. On 23.11.2020, a reply was filed by the petitioner as to why it wished to continue with its registration. It was mentioned in the reply that:

- From December 2019 month onwards, the company discontinued its business operations at Delhi and therefore, had not renewed the lease agreement.
- However, the company did not apply for cancellation of GST registration on grounds of practical business challenges viz.
 1. Issuance of credit notes during FY 2020-21 against supplies made upto December 2019;
 2. Amendment of incorrect particulars inadvertently reported in GST returns filed during FY 2019-20 (Since GST law allows reporting/rectification of error or omission till September month of the next financial year);
 3. Furnishing of Form GSTR-9 and GSTR-9C for FY 2017-18/2018-19 on account of extended due dates;
 4. Filing of refund claims.
- The company is in the process of preparing and filing Form GSTR-9 and GSTR-9C for FY 2018-19 which is due for filing by 31 December 2020 and would apply for cancellation of registration suo-moto post filing of GSTR-9 and GSTR-9C for FY 2018-19 and furnishing of refund claim against excess payment of tax made during FY 2018-19.

However, the first impugned order dated 09.12.2020 was passed. The petitioner filed an application for revocation on 22.12.2020 which was rejected via order dated 18.02.2021.

Contention of the Petitioner:

There has been a complete violation of principles of natural justice. The request made by the petitioner for grant of extension of time via the communication dated 12.11.2020 was not responded to by Department and while passing the order dated 09.12.2020, the reply given on 23.11.2020 was not taken into consideration. As per Rule 25 of the CGST Rules, 2017, before carrying out physical inspection, notice had to be given to the petitioner. However, no notice was given in this case.

Decision of the Court:

The first impugned order i.e., order dated 09.12.2020 was passed without considering reply dated 23.11.2020. There is no reference to the said reply or the reasons set out therein, in the order dated 09.12.2020. The order dated 18.12.2021 whereby the application for revocation was rejected shows that an inspection was carried out on the premises of the petitioner. It is not in dispute that although, Rule 25 requires inspection to be done in the presence of the person whose property is being inspected, it was not done that way as the petitioner had no notice of the inspection.

The order dated 09.12.2020 clearly discloses that there is no tax outstanding qua the petitioner.

It is quite obvious that the petitioner wishes to continue maintaining its registration only for the purposes disclosed in its reply dated 23.11.2020.

Therefore, this Court set aside the impugned orders dated 09.12.2020 and 18.02.2021. It also directed to the Department to revive the petitioner's registration. However, as indicated by the petitioner, once the purpose of the registration is over, it would suo motu apply for de-registration.

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