

TAX INFO

S. No. 17

Dated 17/02/2023

Latest update on GST Law: **RC cannot be cancelled on the basis of faulty procedure adopted by the authority. The authority cannot once again issue another SCN for the same set of facts as given in judgement by Calcutta High Court.**

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Name of Petitioner	Rohit Varma
Name of Respondent	Assistant Commissioner
Authority	Calcutta High Court
Date of Judgement	12.05.2022
Appeal No.	MAT 456 of 2022with I.A. No. CAN 1 of 2022

Brief Facts of the Case Law:

The appellant has been enjoying the benefit of registration under WBVAT Act, 2003 ever since 2013. After coming into force of the WBGST Act, the licence migrated under the new provisions. On 10th September, 2018, a SCN was issued to the appellant by the Deputy Commissioner calling upon the appellant to show cause as to why the registration should not be cancelled as it has been obtained by means of fraud, wilful misstatement or suppression of facts. The appellant did not avail the remedy granted and did not appear before the authority and therefore, the registration was cancelled by order dated 5th October, 2018. Thereafter, the appellant had filed an application dated 4th November, 2018 for revocation of the cancellation of registration, which application was favourably considered and by an order dated 4th January, 2021, the registration was restored. Thereafter, within a period of 3 days, another SCN dated 7th January, 2021 was issued on the same ground as the earlier show cause notice dated 10th September, 2018. The appellant submitted the reply. However, the registration was cancelled by an order dated 13th February, 2021 expressing doubt on the documents produced by the appellant to show that he was carrying on business in the premises, which has been shown in the registration certificate. Thereafter, the appellant filed an application for revocation of the said order, which was dismissed after which an appeal was preferred before the Joint Commissioner, which was also dismissed.

Contention of the Petitioner:

The second SCN dated 7th January, 2021 was without jurisdiction as for the very same allegation an earlier SCN was issued and thereafter an ex parte order of cancellation was passed. The appellant had filed an application for revocation of such order, which was favourably considered and the registration was restored by order dated 4th January, 2021 and having done so, the authority cannot once again issue another SCN for the same set of facts. The procedure adopted by the authority while cancelling the registration was thoroughly flawed as when an inspection was conducted by the officers of the department, the receptionist of the building affirmed that one Mr. Dilip Kumar Agarwal, who was the power of attorney agent of the appellant used to come to the premises and carried on certain business activities. However, the said receptionist could not recognise Mr. Rohit Varma whose photograph appears to have been shown to the said receptionist. In any event, the authority while cancelling the registration could not have solely relied upon a statement made by the receptionist of the building and merely because she could not recognise Mr. Rohit Varma's photograph could not have been the reason for cancellation.

Findings and Decision of the Court:

The proper course that should have been adopted is to issue a notice directing Mr. Rohit Varma and Mr. Dilip Kumar Agarwal to be personally present in the office of the Department and the landlord of the premises also should have been summoned. Had this procedure been adopted, the truth would have been established and a proper order could have been passed either way.

Thus, the matter requires to be remanded to the original authority to redo the matter by conducting a proper enquiry. Consequently, the order passed by the Joint Commissioner was set aside and the order dated 17th March, 2021 directing rejection of application for revocation of cancellation was also set aside and the said application is restored to the file of the authority for conducting fresh enquiry. The original authority is directed to issue notice to the proprietor of the appellant, Mr. Rohit Varma, his power of attorney agent, Mr. Dilip Kumar Agarwal and the landlord of the premises in which the appellant is stated to have been carrying on business. The authority shall enquire into the matter, receive whatever documents the parties may produce and pass a reasoned order on merits and in accordance with law.

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