ACUPRO CONSULTING

WEEK 3, FEBRUARY 2023

THE GST PULSE

ONE PLACE FOR ALL THE UPDATES



Recent Judgement and Rulings

NO CANCELLATION OF GST REGISTRATION WHEN THE REPLY TO THE SCN IS NOT CONSIDERED

HON'BLE DELHI HIGH COURT

M/s. Rakesh Enterprises ("the Petitioner") has filed a petition challenging the Impugned Order of cancellation of GST registration dated December 28, 2020 issued by the Revenue Department ("the Respondent"). The Impugned Order was passed in furtherance of proceedings commenced for the SCN dated December 15, 2020, which was issued due to non-filing of returns for more than six months. The Petitioner had responded to the Impugned SCN vide a reply dated December 24, 2020. However, the Impugned Reply is not filed along with this petition as a copy of the same is not readily available.

The Respondent contended that there is no evidence that the Petitioner had submitted a reply to the SCN and that the reference of the Impugned Reply was generated due to a technical glitch. Being aggrieved, the Petitioner has filed a petition in High Court that whether the GST Registration can be cancelled without considering the Impugned Reply to SCN.

The Hon'ble Delhi High Court has set aside the order passed by the Revenue Department for cancellation of GST Registration of the assessee on the ground that the order passed is not sustainable as the reply to the Show Cause Notice ("SCN") furnished by the assessee was not taken into consideration by the Revenue Department, directed the Revenue Department to restore the GST Registration of the assessee.



SUBMISSION OF AN ADDITIONAL REPLY TO A SHOW CAUSE NOTICE IS ALLOWED WITHIN A PRESCRIBED PERIOD AGAINST NON PAYMENT OF TAX

HON'BLE MADRAS HIGH COURT

M/s. P.K Japee & Co. ("the Petitioner") had applied under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019,("the SVLDRS") but failed to make the payments on or before the deadline even after several extensions were granted by the Revenue Department ("the Respondent"). The Petitioner stated that it was unable to make payments due to the critical health condition of one of its partners. Further, a SCN was issued and the Petitioner submitted a reply to the SCN.

The Petitioner was informed before the final order was passed that it was liable to pay the interest and penalty amount. Against which the Petitioner has filed a petition alleging that the entire tax liability has been paid off to the Respondent and has sought for time to file an additional reply.

The Hon'ble Madras High Court has allowed the assessee to submit an additional reply to a Show Cause Notice ("SCN") issued by the Revenue Department. The Court held that, no prejudice will be caused to the Revenue Department if such additional reply is allowed. Further directed the Revenue Department to consider the assesses reply on its merits and pass fresh orders after providing the opportunity of fair hearing and following the principles of natural justice.



WRIT PETITION FILED BEFORE PASSING THE FINAL ORDER IS PREMATURE AND NOT MAINTAINABLE

HON'BLE MADRAS HIGH COURT

Geethanjali (the Petitioner") had received a SCN dated December 12, 2022 from the Revenue Department ("the Respondent") on account of mismatch in ITC and the amount liable to pay towards GST in respect of certain tax invoices. It is alleged that the ITC in respect of the invoices has been claimed by the Petitioner, but the supplier has not paid the tax amounts to the Respondent. The Petitioner furnished a detailed reply to the Impugned SCN on January 6, 2023 and it was acknowledged by the Respondent on the same date.

The Petitioner has contended that despite having furnished the details of the supplier to the Respondent in respect of invoices, the Respondent has once again sent the impugned notice to the Petitioner. The Petitioner's reply to the Impugned SCN has not been considered by the Respondent, and only in case of collusion between the Petitioner and the supplier the Respondent can proceed against them. Being aggrieved the Petitioner has filed a petition in High Court.

The Hon'ble Madras High Court has held that the Petitioner has only challenged the Impugned SCN, and no final order has been passed by the Respondent. Further held that the petition filed by the assessee challenging the SCN for reversal of ITC even before the final order has been passed, is premature and cannot be entertained. Thereby, directed the Revenue Department to consider the reply submitted by the assessee and decide on merits and in accordance with law.



ASSESSMENT PROCEEDINGS SUFFER FROM MAJOR PROCEDURAL FLAWS DUE TO THE LACK OF A PROPER SCN

HON'BLE JHARKHAND HIGH COURT

M/s. Solex Energy Limited (the Petitioner") is engaged in the business of Engineering, procurement and construction of solar power generating system and is also a manufacturer of solar panels. After filing of return in Form GSTR-3B for the month of October, 2020, the Petitioner noticed an amount of INR 39,77,727/- was debited from its electronic credit ledger and INR 21,060/- from its electronic cash ledger. Upon enquiry, it was found that the amount was recovered against an outstanding demand created under a summary of order in Form GST DRC-07 dated January 21, 2019.

The Petitioner sought information under Right to Information Act,2005 regarding the copy of Summary of SCN, summary of statement in Form GST DRC-01, and other relevant documents related to the Impugned Summary Order. The Petitioner claimed that it had not received the summary of notice and summary of statement related to the order and that none of the documents were signed by any authority nor any detailed order was issued. Being aggrieved the petition has been filed.

The Hon'ble Jharkhand High Court has set aside the summary of order issued in Form GST DRC-07 to the assessee by the Revenue Department on the grounds of non-issuance of a proper Show Cause Notice ("SCN"). Held that, the assessment proceedings suffer from serious procedural errors due toabsence of a proper SCN, andthere were serious discrepancies in the proceedings. Thus, the entire proceedings are vitiated.



Summary of Key Highlights of the 49th GST Council meeting

- Recommendations relating to GST rates on Goods and Services

S.No	Description	From	To
1.	Rab	18%	5% - if sold pre-packaged and labelled Nil - if sold otherwise
2	Pencil Sharpener	18%	12%



- It has been decided to extend the exemption available to educational institutions and Central and State educational boards for conduct of entrance examination to any authority, board or a body set up by the Central Government or State Government. It includes National Testing Agency for conduct of entrance examination for admission to educational institutions.

- It has been decided to extend the exemption available to CG, SG, Parliament and State Legislatures with regard to payment of GST under RCM to the Courts and Tribunals also in respect of taxable services supplied by them. It includes renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers etc.

- It has been decided to amend entry at Sl. No. 41A of notification No. 1/2017-Compensation Cess (Rate) so that exemption benefit covers both coal rejects supplied to and by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person.

- The Council has recommended amendment in section 30 of CGST Act, 2017 and rule 23 of CGST Rules, 2017 to provide that –

1. The time limit for making an application for revocation of cancellation of registration be increased from 30 days to 90 days;
2. Where the registered person fails to apply for such revocation within 90 days, the said time period may be extended by the Commissioner or an officer authorized by him in this behalf for a further period not exceeding 180 days.



- Rationalization of Late fee for Annual Return (GSTR-9)

Particulars	Previously levied late fees	Recommended Late fees
Registered person having turnover upto 5 Cr	Rs 200/day (CGST and SGST each) but doesn't exceed 0.5% of turnover	Rs 50/day (Rs 25 CGST + Rs 25 SGST) but doesn't exceed 0.04% of turnover
Person having turnover more than 5 Cr but less than 20 Cr	Rs 200/day (CGST and SGST each) but doesn't exceed 0.5% of turnover	Rs 100/day (Rs 50 CGST + Rs 50 SGST) but doesn't exceed 0.04% of turnover
Person having turnover more than 20 Cr	Rs 200/day (CGST and SGST each) but doesn't exceed 0.5% of turnover	Rs 200/day (CGST and SGST each) but doesn't exceed 0.5% of turnover



Thank You!

ALOK VASANT
PARTNER
TEL: + 91 9811008421
ALOK.VASANT@ACUPROCONSULTING.COM

BALWAN BANSAL
PARTNER
TEL: + 91 9871767277
BALWAN.BANSAL@ACUPROCONSULTING.COM

ANKIT JAIN
PARTNER
TEL: + 91 9811665549
ANKIT.JAIN@ACUPROCONSULTING.COM



NEWSLETTER CONTRIBUTORS
PANKAJ BANSAL
RONAK AGRAWAL
BHUMIKA SACHDEVA
TARUN GUPTA

FOR MORE INFO VISIT
WWW.ACUPROCONSULTING.COM

COMMUNICATION ADDRESSES:
DELHI/NCR

ACUPRO CONSULTING
2ND FLOOR, 108, UDYOG VIHAR,
PHASE I,
GURGAON - 122016
HARYANA, INDIA
PH: +91 124-4ACUPRO(228776)

HTTPS://WWW.LINKEDIN.COM/COMPANY/ACUPROCONSULTINGINDIA/