ACUPRO CONSULTING

WEEK 3, MARCH 2023

THE GST PULSE

ONE PLACE FOR ALL THE UPDATES



Recent Judgement and Rulings

ITC NOT ALLOWED TO PURCHASING DEALER WITHOUT PROOF OF GENUINE TRANSACTIONS AND PHYSICAL MOVEMENT.

HON'BLE SUPREME COURT OF INDIA.

M/s. Ecom Gill Coffee Trading Pvt Ltd. ("the Taxpayer") is dealing in purchasing of green coffee beans from vendors and reselling the same in foreign market and in the domestic market. The Revenue Department ("the Appellant") issued a notice to the taxpayer under Section 39 of the KVAT Act due to irregularities in Input Tax Rebate claimed for Assessment Year 2010-2011. Upon reassessment it was found that the taxpayer has claimed ITC from various dealers but some of them are de-registered/not filed taxes and hence, ITC was disallowed. The taxpayer appealed to the second Appellate Authority and the appeal was allowed on the grounds that the taxpayer had purchased the coffee from the registered dealer under genuine tax invoices and allowed the ITC. Further the Karnataka High Court has also dismissed the revision application of the appellant.

Being aggrieved the Appellant has filed an appeal in Supreme Court contending that the High Court erred in dismissing the revision application, as the burden of proof for claiming ITC is on the purchasing dealers to prove authenticity of transactions and actual movement of goods. As the Appellant cannot recover from sellers who are not registered or have filed 'NIL' returns, by denying the sale.

The Hon'ble Supreme Court has set aside the order passed by the High Court, ruling that until the purchasing dealer proves the genuineness of the transaction/purchase and sale by producing relevant materials, they are not entitled to Input Tax Credit.



NON-SUBMISSION OF REPLY TO SCN NOT VALID FOR CANCELLATION OF GST REGISTRATION.

HON'BLE ALLAHABAD HIGH COURT

M/s. Agarwal Construction Company ("the Petitioner") is a sole proprietary firm having business of civil construction work. A SCN was issued by the Revenue Department ("Respondent") on the grounds that the GST Returns were not filed and directing the Petitioner to submit a reply. Subsequently, the OIO was passed for cancelling the GST registration of the petitioner.

The Petitioner contended that, they have not received the issued SCN and hence, could not submit a reply within the stipulated time. Further the Appellate Authority also rejected the appeal on the grounds of delay. The Petitioner also contended that he was not been given the opportunity of hearing and the OIO is self-contradictory as it states that, the Petitioner has submitted its reply to the SCN, but the following line states that the Petitioner has not submitted its reply. Being aggrieved the Petitioner has filed an appeal in High Court.

The Hon'ble Allahabad High Court has set aside the cancellation order of the GST Registration on the grounds that the non-submission of reply to the Show Cause Notice ("SCN") cannot be a ground for cancellation. The court has permitted the assessee to submit the reply to the SCN and directed the Revenue Department to pass fresh orders in accordance with the law.



CANCELLATION OF GST REGISTRATION WITHOUT DETERMINING THE AMOUNT PAYABLE IS INVALID AND UNSUSTAINABLE

HON'BLE GUJARAT HIGH COURT

M/s Devi Products ("the Petitioner") is a sole proprietor engaged in the business of trading of brass articles. The Petitioner has filed GST returns till June 2020, thereafter due to Covid-19 pandemic the Petitioner has not filed any returns after June 2020 as the petitioner had no business, and the petitioner was of the view that there is no requirement to file GST returns. The Revenue Department issued a SCN dated March 15, 2021 to the Petitioner, informing them that their GST Registration was liable to be cancelled for non filing of returns for a continuous period of six months.

The GST Registration of the Petitioner was suspended under Rule 21A of the CGST Rules without recording any particulars or the reasons or the grounds for cancellation and without determining the tax demand. Being aggrieved the Petitioner has filed an appeal in High Court contending that the Respondent has cancelled the GST Registration without recording the grounds and without determining the tax demand which is not sustainable.

Hon'ble Gujarat High Court has set aside the Show Cause Notice issued to the assessee and the consequential order for cancellation of GST Registration on the grounds that it was passed without recording any reasons and without determining the tax demand.



DEMAND ORDER PASSED WITHOUT CONSIDERING SCN REPLY IS NOT SUSTAINABLE.

HON'BLE MADRAS HIGH COURT

M/s. Engineering Aids ("the Petitioner") has been filed Petition challenging the summary order in Form GST DRC-07 dated April 5, 2022. The Revenue Department passed impugned order under Section 74 of the CGST Act, 2017 for demand and recovery of tax. The Petitioner contended that only the Impugned Order was served and not the detailed order nor it has been uploaded on the GST portal.

The Petitioner also claims that the reply to the SCN was not considered by the Respondent while passing the Impugned Order. Being aggrieved the Petitioner has filed an appeal in High Court contending that it is the violation of principal of natural justice.

The Hon'ble Madras High Court has quashed the demand order passed by the Revenue Department on the grounds that the reply filed by the assessee to the Show Cause Notice ("SCN") was not considered. It has remanded the matter back for fresh consideration and directed the Revenue Department to pass final orders after adhering to the principles of natural justice and providing the opportunity of hearing to the assessee.



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
CHANCHAL KANSAL

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/