

GST registration restored which was cancelled without due service of Show Cause Notice

The Hon'ble Kerala High Court ("**the High Court**") in the case of ***Western offshore & marine projects Pvt. Ltd. v. State Tax Officer [WP (C) No. 29765 of 2022 dated November 11, 2022]*** set aside the order cancelling Goods and Service Tax ("**GST**") Registration of M/s Western Offshore & Marine Projects Pvt. Ltd. on the grounds that Show Cause Notice ("**SCN**") was not duly issued for the cancellation of registration by the State Tax Officer.

Facts:

M/s Western Offshore & Marine Projects Pvt. Ltd. ("**the Petitioner**") challenged the Order of cancelling the GST registration of the Petitioner, issued by the State Tax Officer ("**Respondent No. 1**"), Petitioner contended that in terms of Section 29 read with Rule 22 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") / State Goods and Services Tax Act, 2017 ("**the SGST Act**"), the Petitioner was entitled to a SCN in form REG-17 which was not issued.

The Revenue department ("**the Respondent**") admitted that the SCN was not issued to the Petitioner regarding the suspension of registration.

Issue:

Whether the cancellation of GST registration is justified without issuing SCN.

Held:

The High Court admitted the writ petition agreeing with the contention of the Petitioner and remitted back to the Respondent No. 1 to complete the proceedings in accordance with law. As a result of which, the GST registration of the Petitioner was restored.

Relevant Provisions:

Section 29 of the CGST Act:

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

“(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25:”.

Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where—

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts: Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

Rule 22 of the CGST Rules:

(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

(2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG-18 within the period specified in the said sub-rule.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under 1 sub-rule (1) of 16 rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), 3 “or under sub-rule (2A) of rule 21A” cancel the registration, with effect from a date to be determined by him and notify the taxable person,

directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.

(4) Where the reply furnished under sub-rule (2) 4 “or in response to the notice issued under sub-rule (2A) of rule 21A” is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG –20.

Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.

(5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader’s personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.