

Non-Submission of reply to the SCN cannot be a valid ground for cancellation of GST Registration

The Hon'ble Allahabad High Court, Lucknow Bench in *M/s. Agarwal Construction Company v. Commissioner State Tax and Ors. [Writ Tax No. - 43 of 2023 dated February 23, 2023]* has set aside the cancellation order of the GST Registration of the assessee on the grounds that the non-submission of reply to the Show Cause Notice (“SCN”) cannot be a ground for cancellation of the GST Registration. The court permitted the assessee to submit the reply to the SCN and directed the Revenue Department to pass fresh orders in accordance with the law.

Facts:

This petition has been filed by M/s. Agarwal Construction Company (“**the Petitioner**”), who is the sole proprietary of the firm engaged in the business of civil construction work challenging the Order-in-Original dated July 30, 2022 (“**the OIO**”), cancelling the GST Registration of the Petitioner, and the Order-in-Appeal dated January 12, 2023 (“**the OIA**”).

A SCN dated July 18, 2022 (“**the 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 and the OIA were passed.

The Petitioner contended that, he was not able to get the SCN issued and hence, could not submit a reply within the stipulated time and the Appellate Authority also rejected its appeal on the grounds of delay. Further contended that, he has not been given the opportunity of hearing. Further contended, 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.

Issue:

Whether the OIO passed without the Petitioner not being given the SCN and opportunity of being heard is sustainable?

Held:

The Hon'ble Allahabad High Court, Lucknow Bench in ***Writ Tax No. - 43 of 2023*** held as under:

- Relied on the judgment in its earlier matter of ***Technosum India Pvt. Ltd. Lucknow v. Union of India and others [Writ Tax No.145 of 2022 dated September 26, 2022]***, wherein, it was noted that the non-submission of reply to a SCN cannot be a ground for cancellation of the GST Registration.
- Permitted the Petitioner to submit the reply to the SCN along with the certified copy of this order and the ***Technosum India Pvt. Ltd. Lucknow v. Union of India and others (supra)*** within 3 weeks.
- Directed the Respondent to pass fresh orders in accordance with the law.
- Set aside the OIO and the OIA.

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