

Proper Officer to decide on the cancellation of GST Registration independently

The Hon'ble Delhi High Court in the case of ***Sant Ram v. Delhi State GST and Ors. [W.P No. 15846 of 2023 dated December 11, 2023]*** allowed the writ petition and set aside the order of GST Registration cancellation thereby holding that, it is important for the Proper Officer to independently arrive at the satisfaction set out in sub-section (1) or (2) of Section 29 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") for the purpose of GST Registration cancellation.

Facts:

Revenue Department ("**the Respondent**") issued a Show Cause Notice dated September 19, 2022 ("**the Impugned SCN**") proposing to cancel GST registration of Sant Ram ("**the Petitioner**"). The reason for issuance of SCN was the receipt of letter dated September 16, 2022 ("**the Letter**") from Deputy Commissioner. Thereafter, the Petitioner was directed to file reply within seven working days from the date of issuance of SCN and directed the Petitioner to appear before the Respondent Authorities. The Petitioner's GST registration was cancelled vide order dated July 11, 2023 ("**Impugned Order**") with retrospective effect, stating reason as Others.

Issue:

Whether the Revenue Department is authorized to cancel GST registration based on the Letter received from another authority?

Held:

The Hon'ble Delhi High Court in the case of ***W.P No. 15846 of 2023*** held as under:

- Observed that, Section 29 of the CGST Act enables the Proper Officer to cancel dealer GST registration in specific circumstances.

- Further Observed that, Section 29(1) of the CGST Act states the circumstances under which taxpayer GST registration can be cancelled. Also, Section 29(2) of the CGST Act, states the circumstances under which registration can be cancelled from such date, including with retrospective effect, as the proper officer deems fit.
- Noted that, Proper Officer is authorised to cancel the GST Registration, only if the circumstances set out in sub-section (1) or (2) of the CGST Act is fulfilled. The Proper Officer is empowered to cancel GST Registration with retrospective effect, only if the conditions specified in Section 29(2) of the CGST Act, are fulfilled.
- Further Noted that, it is important for the Proper Officer to independently arrive at the satisfaction set out in sub-section (1) or (2) of Section 29 of the CGST Act.
- Relying upon the judgment of ***Union of India & Ors. v. Bharat Forge Ltd. & Anr. [(1970) 1 SCC 795]*** and ***Kritika Agarwal v. Union of India & Ors., [W.P. (C) 9424/2023 dated July 18, 2023]*** further noted that, the Proper Officer has to act independently and cannot act mechanically on the instructions of another authority.
- Opined that, Impugned SCN was issued solely based on letter received from another authority. The Letter neither was attached to the Impugned SCN nor does the Impugned SCN refer to the contents stated in the Letter.
- Further Opined that, the Impugned Order does not state that the Proper Officer was satisfied with any of the conditions laid out under sub-section (1) or (2) of Section 29 of the CGST Act.
- Held that, the writ petition is allowed and the Impugned Order cancelling GST Registration is liable to be set aside.

Relevant provision:

Section 29 of the CGST Act:

"Section 29. Cancellation or suspension of registration-

(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 opt out 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 the return for a financial year beyond three months from the due date of furnishing the said return; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; 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.”

(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.