SNR & COMPANY
CHARTERED ACCOUNTANTS

GST BULLETIN

MARCH 2024

Delhi, Pune, Bangalore

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1. Retrospective cancellation of GST registration without any specific reasons not valid:

Case of : Himanshu Goyal
Decision by : Delhi High Court
Date of Ruling : 27rd February 2024

- Himanshu Goyal (petitioner) is engaged in the business of trading of household edible items and had obtained the GST Registration. The petitioner closed his business in June 2022.
- The revenue issued a show cause notice to the petitioner for non-filing of returns. However, this notice lacked crucial details such as the date, time, venue for appearance, and even the issuing officer's name and designation, raising concerns about its adequacy and fairness.
- The petitioner received impugned order dated 12-10-2022 cancelling the registration with retrospective date of 08-06-2018. The impugned order required the petitioner to pay the amounts mentioned in the notice on or before 22-10-2022. However, the amount mentioned was 0 i.e. Nil.
- The petitioner filed a writ petition before the Delhi High Court, contending that in terms of Section 29(2) of the CGST Act, 2017, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Thus, the registration can be cancelled with retrospective effect based on some objective criteria. The GST registration cannot be cancelled merely because a taxpayer has not filed the returns for some period that too with retrospective effect for the period in which the returns were duly filed and the petitioner was compliant.
- While the revenue contended that the consequences for cancelling a tax payer's registration with retrospective effect is that the petitioner's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period.
- The court observed that SCN dated 18-07-2022 and order dated 12-10-2022 did not put the assessee to notice that the registration is liable to be cancelled retrospectively. Clearly, the impugned notice and impugned order are bereft of any detail and are thus not sustainable. However, in the present case, petitioner had itself shut the business since June 2022 and was no longer interested in the restoration of the GST registration.

- While concluding the petition, the court added that both the petitioner as well as the revenue wanted cancellation of GST registration, however, for different reasons and it was clarified that Revenue was also not precluded from taking any steps for recovery of any tax, penalty or interest that may be due in respect of the subject firm in accordance with law including retrospective cancellation.
- Thus, the court held that the impugned order dated 12-10-2022 should be modified to the effect that the cancellation of registration effective from 18-07-2022 i.e. the date of the SCN and assessee should however comply with the provisions of Section 29 of the CGST Act, 2017 and file all necessary details as mandated by the Act.

Full Judgement: Himanshu Goyal

SNR's Take

This ruling of High Court reiterates that GST registration cancellation requires proper procedure and justification as per the CGST Act and that retrospective cancellation should be based on objective criteria, not just non-filing.

2. Directs to facilitate TRAN-1 and TRAN-2 filing for rectification of mistakes:

Case of : Mangaldas Mehta & Co. Ltd
Decision by : AAR, Gujarat
Date of Ruling : 03rd February 2024

- Applicant runs a boutique, hotel as well as a restaurant and the property has been declared as a certified heritage property and has demarcated area for the heritage room, kitchen, courtyard & restaurant.
- The AAR noted that as the declared tariff falls below Rs. 7,500/- the applicant charged 5% GST on the restaurant services. The authority referred to Notification no. 20/2019-CT which specifies that 'Supply of 'restaurant service' other than specified premises' is taxable at 5% provided that the ITC charged on goods and services used in supplying the service has not been taken.
- On a conjoint reading of the facts and the wording in the notification under which the applicant discharged GST, AAR inferred that the Applicant by virtue of providing restaurant service at a premises other than at a specified premises is eligible for availing the benefit of the notification i.e. charging 5% GST subject to the condition that input tax charged on goods and services used in supplying the service has not been taken.
- Further, w.r.t. Applicant's entitlement to ITC of the expenses incurred for the general expenses of the Company, AAR elaborated that

  (i) explanation (iv) of the Notification no. 20/2019 would mean that ITC charged on goods or services used exclusively in supplying restaurant service is not eligible and

  (ii) ITC charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for ITC, is reversed as if supply of such service is an exempt supply attracting provisions of section 17(2);

- As regards entitlement to ITC based on square foot & area of usage of the premises, AAR apprised that determination of ITC in respect of inputs or input services and reversal thereof shall be governed by Rule 42 of the CGST Rules and in respect of capital goods vide Rule 43.

Full Judgement: Mangaldas Mehta & Co. Ltd

SNR's Take

This AAR ruling emphasises the need for businesses, particularly those in the hospitality sector, to carefully assess their eligibility for availing benefits such as reduced tax rates based on specific notifications. Moreover, clarity on ITC entitlement, especially concerning expenses used for both restaurant services and other supplies, is crucial. Businesses should ensure compliance with relevant rules and regulations governing ITC determination and reversal, as outlined in Rule 42 and Rule 43 of the CGST Rules, to avoid potential disputes with tax authorities.

3. The opportunity for a personal hearing is mandatory for adverse orders even if not requested:

Case of : M/s. IJM Concrete Products Pvt. Ltd.
Decision by : Madhya Pradesh High Court
Date of Ruling : 22nd February 2024

- M/s. IJM Concrete Products Pvt. Ltd. is a registered person under the GST law. GST department passed an assessment order u/s 73(4) of CGST Act, directing the Assessee to reverse the excess availed Input Tax Credit (ITC) along with interest and penalty without providing an opportunity of personal hearing. Aggrieved, the assessee filed a Writ Petition before the Madhya Pradesh High Court.
- Petitioner contended that as per section 75(4) of the CGST Act, opportunity for hearing shall be provided in the following situations:
  - When the person chargeable with tax or penalty specifically requests so in writing; or
  - Where any adverse decision is contemplated against a registered person.
- The GST Authorities should have offered a chance for a personal hearing regardless of whether it was requested explicitly or not. The absence of such an opportunity undermines the legal requirement outlined in Section 75 of the CGST Act and Section 73(9) of the CGST Act, which mandates the GST Authorities to issue an order after duly considering the representation submitted by the taxpayer.
- The GST department contended that the taxpayer failed to demonstrate compliance with Section 75(4) of the CGST Act, as it pertains to the opportunity for a 'personal hearing.' According to their argument, this section solely addresses a 'hearing' opportunity, which is satisfied upon receipt of the reply to the show cause notice and does not explicitly mention a 'personal hearing.' Following the issuance of the show cause notice, the Assessee had the option to request a 'personal hearing,' which they did not exercise. Therefore, the actions of the Tax Authorities cannot be criticized.
- Upon considering the opposing arguments, the court noted that the wording in Section 75(4) of the CGST Act is unequivocal, with the use of the term 'or' serving a distinct purpose. While the initial segment of the provision stipulates a specific request by the Assessee, the subsequent portion following the term 'or' clarifies that the opportunity for a hearing must be provided even in situations where such a request was not made but an adverse decision is being considered.

- The argument put forth by the GST department, suggesting that the 'opportunity of hearing' requirement is satisfied upon receiving the reply to the show cause notice, was deemed untenable. Regardless of whether a specific request was made by the Assessee, given that an adverse decision was being contemplated, it was obligatory and mandatory for the GST department to afford the Assessee an opportunity for a personal hearing, which they failed to do.
- Therefore, the Court determined that the decision-making process of the GST department was tainted and ran counter to the principles of natural justice and the statutory mandate outlined in Section 75(4) of the CGST Act. Consequently, the GST department was instructed to grant the Assessee an opportunity for a personal hearing by an officer distinct from the one who issued the show cause notice (SCN).

Full Judgement: M/s. IJM Concrete Products Pvt. Ltd.

SNR's Take

The ruling by the Hon'ble High Court establishes the necessity for the GST authority to offer an "opportunity of personal hearing" before issuing any adverse order. This decision sets a significant precedent and is expected to have a positive impact by ensuring fairness and due process in administrative actions under GST law. Going forward, it emphasizes the importance of upholding principles of natural justice, which will contribute to enhancing transparency and accountability within the GST system.

4. Discounts provided to meet sales targets cannot be considered as a subsidy within the transaction value of the supply made by the recipient:

Case of : M/s. Supreme Paradise
Decision by : Madras High Court
Date of Judgement : 10th February 2024

- M/s. Supreme Paradise (Petitioner) was engaged in the sale of mobile phones. A show cause notice was issued for the period starting from FY 2017-18 to 2021-22. Basis the reply furnished by the Assessee and the consequent personal hearing, the SCN was confirmed by the GST department vide separate Assessment Orders for each year seeking imposition of GST along with interest and penalty in respect of the discount received by the petitioner from its suppliers on achieving a sales target i.e. volume discount.

- One of the key grounds for confirmation of the Impugned Orders was that there must be a pre-determined criteria of discount specified by the Supplier and an 'open-ended' discount cannot be allowed. Aggrieved by the above, the petitioner filed a Writ Petition before the Madras High Court.

- Before the court, the petitioner contented that the transaction value of any transaction between unrelated parties is the invoice amount including the volume discount provided by the Supplier to the assessee as per section 15 of the CGST Act.

- The petitioner also argued that it is a common trade practice for suppliers to instruct retailers to offer discounted prices on mobile phones during specific seasons. According to them, these discounts should not be interpreted as subsidies under Section 15(2)(e) of the CGST Act. Moreover, there is no specific justification for establishing the discount on a particular mobile phone. It is entirely reliant on market conditions and cannot be anticipated at the time of supply. The Supplier issues a credit note to the Assessee during the discount season to safeguard the dealer from potential losses in case previously supplied goods remain unsold.

- The High Court noted that discounts provided by a supplier to a recipient cannot be included in the transaction value of the recipient for subsequent supply to their client or customer. Therefore, any sale or supply made by the recipient/seller at a discounted price cannot be considered as part of their 'transaction value,' unless the discount was actually a subsidy for that supply from a third party and was misrepresented as a discount.

- The discount provided to the Assessee and the reduced price at which the Assessee sells goods to its customers are separate transactions, and there is no basis for combining these transactions to levy tax on the Taxpayer. The discounted price at which the Taxpayer sells goods is only pertinent for determining the 'transaction value' chosen by the Taxpayer.
- Thus, the High Court determined that unless the discounted price itself is attributed to a subsidy, the discount provided cannot be included in the transaction value of the supplies made by the Assessee.

Full Judgement: M/s. Supreme Paradise

SNR's Take

The case underscores the significance of distinguishing between discounts and subsidies in GST valuation. Suppliers must specify predetermined criteria for discounts, while taxpayers should maintain documentation to substantiate discount arrangements. This case sets a precedent for future disputes regarding the treatment of discounts in GST transactions, emphasizing the importance of adherence to legal provisions and judicial clarity in resolving such matters.

5. Quashes assessment order rejecting ITC claim solely for non-reflection in GSTR-3B

Case of : M/s. Sri Shanmuga Hardwares Electricals
Decision by : Madras High Court
Date of Ruling : 20th February 2024

- M/s Sri Shanmunga Hardwares Electrical is engaged in the business of trading of electrical products and hardware. Assessee erroneously filed NIL GSTR-3B. Assessee received assessment orders for FY 2017-18, 2018-19 and 2019-20 rejecting ITC claimed by the Assessee. Aggrieved by the order, assessee filed writ petition in Madras High Court.
- Assessee contended that NIL returns were erroneously and inadvertently filed in the GSTR-3B and he is eligible for Input Tax Credit (ITC) in assessment periods and that this is duly reflected in the GSTR-2A returns. Consequently, the assessee stated that GSTR-9 (annual returns) were filed duly reflecting the ITC claims of the assessee.
- The revenue submitted that the burden of proof is on the registered person to establish ITC eligibility which has not been discharged by assessee.
- HC observed that when the registered person asserts that he is eligible for ITC by referring to GSTR-2A and GSTR-9 returns, the assessing officer should examine whether the ITC claim is valid by examining all relevant documents, including by calling upon the registered person to provide such documents.
- Consequently, the Court quashed the assessment orders and remanded the matters for reconsideration. The petitioner was granted two weeks to submit all relevant documents supporting their ITC claims. The assessing officer was instructed to provide a reasonable opportunity, including a personal hearing, and issue fresh assessment orders within two months.

Full Judgement: M/s. Sri Shanmuga Hardwares Electricals

SNR's Take

This ruling emphasizes the significance of equity in tax evaluations and underscores the necessity for thorough scrutiny of Input Tax Credit (ITC) claims, surpassing mere adherence to GSTR-3B filings. It reaffirms the principle that eligibility for ITC should be established on substantial evidence rather than procedural formalities.

Circulars/ Notifications:

1. CBIC notified 'Public Tech Platform for Frictionless Credit' for consent-based information-sharing from GSTN:

CBIC notified "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under sub-section (2) of Section 158A of the CGST Act, 2017. The notification explained that Public Tech Platform for Frictionless Credit means an enterprise-grade open architecture information technology platform, conceptualized by the RBI as a part of its "Statement on Developmental and Regulatory Policies" dated August 10,2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit. The notification envisages that it aims to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

Full Read: No. 06/2024 – Central Tax

FY 2023-2024 - YEAR END COMPLIANCES

Type	Particulars
Sales	Prepare proper sales register for full financial year. Sales register shall mention HSN code, tax rate, supplier GSTIN, taxable value and taxes
Sales	Reconcile Sales register with sales reported in GSTR-01 and GSTR-3B, any discrepancy can be rectified up to 30th November. Sales if not reported in GSTR-1 and GSTR-3B shall be reported in next month return along with interest at the rate of 18%. Along with sales, credit note or debit note issued to customers should be reconciled as well.
Sales	It is mandatory to issue e-invoice for B2B sales if total turnover of taxpayer is exceeding Rs. 5 crores. So, taxpayer shall reconcile sales with E-invoices record. E-invoice record can be downloaded from GST common portal.
Sales	To verify GST has been charged on all taxable income, it is important to prepare a reconciliation of incomes reflecting in profit and loss account of taxpayer and income reported in GSTR-01/3B.
Sales	It is important to review inward services and identify if any services is liable to reverse charge and reconcile it with RCM paid in GSTR-3B. If short reported then it should be reported in next month's GSTR3B.
ITC	Reconciliation of ITC register with GSTR-2B is a monthly exercise. However, it is important to reconcile complete ITC register with full year GSTR-2B and make sure invoices not reflecting GSTR-2B should be reversed
ITC	Reconcile input claimed in GSTR-3B with ITC register and any discrepancies shall be rectified. In case if input claimed in GSTR-3B is in excess of input available in ITC register then it shall be reversed and in case of short claimed, input shall be claimed in GSTR-3B of next month. Such rectification can be done only upto 30th November of next FY
ITC	Identify ineligible credit in ITC register and verify no ineligible input was claimed. If ineligible input was claimed in GSTR-3B during FY then such input shall b reversed in next month GSTR-3B. Also, verify ineligible input is expensed off in the books of accounts.
ITC	If business make both taxable and exempt supply then it is important to identify common credit (input on goods/services used for making both taxable and exempt supply) and reverse common credit in proportion to exempt supply as per Rule 42 of CGST Rules.
ITC	Any fixed asset if disposed off during the FY within 5 years from date of purchase and input was claimed at the time of purchase then Rule 43 need to comply with.
ITC	Ageing of creditors shall be prepared to verify that all creditors has been paid within 180 days from date of invoice. If not, then input shall be reversed on 181th day alongwith interest at the rate 18% p.a.
OTHERS	Recheck if there is any registration that needs to be surrendered on account of no business activity or non-commencement of business activity within the 6 months from date of registration

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