

Non-payment of dues for a period of 3 months, cannot be a ground for cancellation of Registration-HC

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REFER THE DECISION OF THE HON'BLE DELHI HIGH COURT IN THE CASE OF

Subhana Fashion vs. Commissioner, Delhi Goods and Services Tax (W.P. (C) 12255/2024, decided on September 19, 2024)

Case Background:

Subhana Fashion challenged the cancellation of its GST registration, which was annulled retrospectively from July 1, 2017. The cancellation was based on a Show Cause Notice (SCN) dated September 3, 2021, citing non-payment of tax, interest, or penalty for over three months as the sole reason.

Key Judicial Findings:

1. **Insufficiency of SCN:** The Court observed that the SCN lacked specific details, rendering it vague and unintelligible. Such a notice fails to provide the taxpayer with a fair opportunity to respond, violating principles of natural justice.
2. **Requirement of Personal Hearing:** Emphasizing procedural fairness, the Court highlighted that the petitioner was not afforded a personal hearing, a critical component ensuring that decisions are made after considering the taxpayer's perspective.
3. **Invalid Ground for Cancellation:** The Court clarified that mere non-payment of dues for three months is not a prescribed ground for cancellation under Section 29 of the CGST Act. Such a reason, without more, cannot justify the annulment of GST registration.
4. **Retrospective Cancellation Scrutinized:** The judgment underscored that retrospective cancellation requires substantial justification. In this case, the SCN did not mention any reason for backdating the cancellation, making the retrospective effect unsustainable.
5. **Independent Assessment by Proper Officer:** The Court noted that the cancellation order appeared to be issued based on directions from the

Anti-Evasion Branch, without the proper officer's independent assessment. Such delegation without personal evaluation contravenes the requirement for the proper officer to exercise discretion judiciously.

Conclusion:

The Delhi High Court set aside the cancellation order, directing the reinstatement of Subhana Fashion's GST registration. However, it permitted the authorities to initiate fresh proceedings, if warranted, ensuring adherence to due process and the principles of natural justice.

This judgment reinforces the necessity for tax authorities to issue detailed SCNs, provide opportunities for personal hearings, and ensure decisions are made based on independent assessments, thereby upholding the taxpayer's rights and maintaining procedural integrity.

Advise:

Always ensure timely payment of dues. Refer to this case only when a show cause notice has been issued.

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