

Registration cannot be cancelled on the premise that place of business is not conducive for business - Andhra Pradesh HC

7 November 2023



Summary

The Andhra Pradesh High Court (HC) has held that the parent company and its related parties can operate from the same premise and that the commonality of location should not automatically imply that the registration was obtained through fraudulent means, wilful misstatement, and suppression of facts. The HC cited a thorough verification with the books of accounts; other relevant records are critical before the cancellation order. Further, the show cause notice (SCN) should state the appropriate reasoning justifying the fraudulent intention, which otherwise would lead to a violation of the principle of natural justice.

Facts of the case

- M/s Sakthi Steel Industries India Private Limited (the petitioner) is engaged in the business of trading TMT bars and billets and importing iron scrap from foreign countries.
 - The petitioner purchases TMT bars from its parent company (Sakthi Ferro Alloys (India) Private Limited). The imported scrap iron is majorly supplied to its parent company.
 - The petitioner obtained vacant land on lease from its parent company, from where the parent company also carries its business.
 - Subsequent to a visit by the department officials, a field report was submitted, stating that the petitioner had obtained registration without an independent place of business and had falsely claimed to be conducting business at the leased premises.
 - Thereafter, a show cause notice was issued, alleging that the registration had been obtained by means of fraud, wilful misstatement, or suppression of facts. Accordingly, the petitioner's registration was suspended.
 - Without considering the petitioner's contentions, the order for the cancellation of GST registration was passed.
- Aggrieved by the cancellation order, the petitioner filed an appeal before the commissioner, which was later dismissed.
 - Thereafter, the petitioner filed a writ petition before the HC.

Andhra Pradesh HC's observations and judgement [Writ Petition No.17500 of 2023 dated 20 September 2023]

- **SCN is vague and dubious:** The HC observed that the SCN was improper, as it lacked requisite particulars constituting the alleged fraud, wilful statement, and suppression of facts. It held that the SCN deliberately violated the principles of natural justice, as the premises taken on lease were deemed unsuitable for the business without delving into relevant facts.
- **Cancellation order lacks suitable justification:** The HC opined that the cancellation order is based on the fact that the petitioner and the parent company share the same premise without thoroughly verifying relevant records, such as account books, e-way bills, transportation details, etc. The HC observed that the department's action was without due scrutiny, and therefore, the order was not sustainable in the eye of the law.

- **No problem in commonality of location:** The HC held that the mere commonality of location between the petitioner and the parent company is not

sufficient to hold the fraudulent intent of the petitioner. Accordingly, the HC dismissed the impugned order.

Our comments

Generally, affiliated companies operate from the same location and issue invoices to their related entities, potentially falling under the GST lens due to suspected fraudulent intentions. This recent judgement is a positive development, as it addresses key issues.

First, the SCN should clearly outline the specific details related to fraud, misrepresentation, or the omission of facts. Issuing an SCN without stating the formal grounds of accusation goes against the principles of natural justice.

Moreover, the commonality of location should not be the sole basis for concluding fraud or intentional misrepresentation. A thorough review process and a well-justified decision are crucial in such cases.

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