



Tax alert: Delhi High Court holds that consolidated show cause notice for multiple financial years is permissible

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The Delhi High Court (HC) has upheld the validity of a consolidated show cause notice (SCN) for multiple financial years in a case of fraudulent availment / utilization of input tax credit.

In a nutshell



A SCN for multiple financial years was raised against the petitioner on the grounds of alleged fraudulent availment and wrongful passing on of input tax credit.



The petitioner challenged the issuance of the SCN for multiple years and passing of the impugned order.



The language “for any period” and “for such periods” contemplates that SCN can be issued for a period more than one financial year.



A consolidated notice is not only permissible, but, in fact, required in cases to establish the illegal modality adopted by the businesses and entities.



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Background

- The petitioner is a sole proprietorship concern dealing in metal scrap.
- The Directorate General of GST Intelligence (DGGI) conducted a search operation at the residential and sales office premises of the proprietor, leading to his arrest. He was later released on bail.
- A show cause notice (SCN) for financial years from 2017-2018 to 2021-2022 was raised against the petitioner on the grounds of alleged fraudulent availment and wrongful passing on of input tax credit (ITC).
- It has been alleged that ITC has been availed based on invoices issued from non-existent or fake firms. An order was passed for demand along with penalty.
- The petitioner challenged the issuance of the SCN and passing of the impugned order.
- One of the key contentions of the petitioner was that consolidated SCN for multiple financial years has been issued which is impermissible under GST law.

Observations of the High Court

- No details regarding genuine conduct of business were provided by the petitioner in its replies to the SCN. The conclusion of the Adjudicating Authority cannot be held to be arbitrary or perverse.
- The language used under the provisions that deals with issuance of SCN is “for any period” and “for such periods” as against “financial year” or “assessment year”. This contemplates that a notice can be issued for a period which could be more than one financial year.
- In contrast, the phrase “financial year” in the provisions prescribes time limit to issue order. Thus, Legislature is conscious of the fact that insofar as wrongfully availed ITC is concerned, the notice can relate to any period and need not be for a specific financial year.
- A solitary availment/ utilization of ITC in one financial year may not be capable of establishing the pattern of fraudulent availment/ utilization. It is only when the series of transactions over different financial years are evaluated that the same may be revealed.
- A consolidated notice is not merely permissible but, in fact, required in such cases to establish the illegal modality adopted by the businesses and entities.
- The impugned order does not travel beyond SCN in any manner as the SCN contemplates demands of tax, interest, and penalty for wrongful availment or utilization of ITC.
- Reference was made to order of coordinate bench of Delhi HC in the case of **M/s Vallabh Textile**¹ that has clarified the position in law that a consolidated SCN for multiple years is permissible under GST Law, and hence, the said argument cannot be the grounds for entertaining a writ petition.
- Where a statutory remedy exists that is both efficacious and adequate, the invocation of the writ jurisdiction of the High Court is generally not warranted.

Deloitte comments

Recently, the Madras HC had held that clubbing of SCNs for more than one financial year is impermissible under GST Law. However, considering there are contrary HC judgements on this aspect, the issue is not yet settled.

¹ W.P.(C) 13855/2024



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