

Show cause notice cannot be issued to re-open a matter already settled under state government's amnesty scheme - Telangana HC

12 September 2024

Summary

The Telangana High Court (HC) has set aside the show cause notice (SCN) proposing to re-open the issue already settled by the petitioner under the Telangana state government's amnesty scheme [i.e., the One Time Settlement (OTS) scheme]. The HC stated that the Revenue cannot issue an SCN after the entire exercise of determining tax and penalty was conducted by it under the OTS scheme, which the petitioner accepted. The HC further opined that as the object of the OTS scheme is to encourage taxpayers to settle their pending disputes, permitting the Revenue to issue an SCN even after entering into a settlement will vanish the purpose.

Facts of the case

- ACME Cleantech Solutions Private Limited (the petitioner) received two assessment orders (AO) demanding tax and penalty from 2015-16 to 2017-18.
- Aggrieved by the AO, the appellant preferred an appeal before the Commissioner.
- In the interim, the Telangana government introduced an OTS¹ scheme to settle the disputed tax amounts under the Telangana VAT Act and the Central Sales Tax Act 1956.
- Further, an intimation was issued to the petitioner under the OTS scheme to pay the tax demand and avail the benefit.
- With respect to the above, the petitioner preferred an application to avail the benefit, and accordingly, the disputed amount was settled.
- Later, the petitioner received an SCN with an increase in the tax demand with respect to the same AOs.
- Aggrieved by the above SCN, the petitioner filed the present writ before the Telangana HC.

Issue raised before HC

- Can the Revenue issue an SCN to re-open an issue already settled under the OTS scheme?

Petitioner's contention

- The petitioner emphasised that according to the OTS scheme², a three-member committee must scrutinise the application for an OTS scheme. Once a confirmation letter is received, the taxpayer is required to make the payment and submit the necessary documents, along with an application for withdrawal of the appeal, where applicable.
- The petitioner contended that once the benefit under an OTS scheme is availed, the SCN cannot be issued, as these notices did not specify the legal provision empowering their issuance.

Revenue's contentions

1 (OTS) schemes dated 09.05.2022, 25.06.2022 and 04.07.2022 were launched by the Government of Telangana vide G.O.Ms.Nos.45, 61 and 71 respectively
2 G.O.Ms.No.45

- The Revenue argued that the writ petition was not maintainable.
- The Revenue contended that Section 32 of the Telangana VAT Act does not restrict the Commissioner or other authorities from revising tax demands, even after an OTS scheme has been finalised. Therefore, issuing an SCN after an OTS scheme is legally permissible, as there is no statutory bar against it.

Telangana HC's observations and judgement [Writ Petition No. 3194 of 2024, order dated 28 August 2024]

- **Maintainability of appeal against the SCN:** The HC relied on the judgements of the SC³ and dismissed the objection raised by the respondent concerning the maintainability of the petition against an SCN. Further, the HC observed that the court can delve into the correctness of allegations or facts at the stage of an SCN when there is a clear jurisdictional error.
- **Power under Section 32 of Telangana VAT Act:** The HC observed that despite being aware of the alleged short levy of tax and penalty as communicated by the Audit Officer, the respondents proceeded with the OTS scheme, indicating their implied acceptance of the settlement and negating the need for further action under Section 32 the Telangana VAT Act.
- **Benefit was granted:** The HC observed that the scheme under consideration in the SC case⁴ had statutory force, whereas in the present case, the OTS schemes are policy decisions. The HC emphasised that the entire exercise of determination of the tax/penalty amount was in the hands of the respondents, and the benefit was given after a careful analysis of the application.
- **SCN issued is invalid:** The HC observed that the SCN does not contain any allegations that the petitioner had committed any fraud. The HC noted that if the respondent is permitted to issue the SCN even after entering into a settlement, the very purpose of such a scheme will vanish, discouraging the taxpayers from entering into such schemes. Accordingly, the HC set aside the impugned SCN and allowed the writ petition in favour of taxpayers.

³ In the case of Kunisetty Satyanarayana and Coastal Container Transporters Association

⁴ Killick Nixon

Our comments

This ruling would benefit the taxpayers, as it would prevent the tax authorities from revisiting settled matters, reinforcing the integrity and enhancing the credibility of amnesty schemes. The ruling also provides legal protection against post-settlement demands and sets a valuable judicial precedent. It ensures that settlements are final and binding, fostering a fair and predictable tax environment.

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