

S.N.	Case Subject	Case	Held
1.	Actual Physical Movement and Genuineness of Transactions to be proved for entitlement to claim ITC	Malik Traders v. State of U.P. [2023] 155 taxmann.com 517 (Allahabad) (18-10-2023)	<p><b>Show Cause Notice</b> was issued to the Petitioner U/Sec 74 for wrong availment of Credit.</p> <p><b>The Court observed</b> that the petitioner has only brought on record the <b>tax invoices, e-way bills, GR and payment through banking channel</b>, but no such details such as <b>payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof</b> has been provided. Thus, in absence of these documents, actual physical movement of goods and genuineness of transportation as well as transaction could not be established and in such circumstances, further no proof of filing of GSTR 2A has also been brought on record, thus proceedings were held to be rightly initiated.</p> <p><b>Cases Referred-</b> State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited (SC), M/s Aastha Enterprises Vs. State of Bihar (Patna HC), Commissioner Commercial Tax Vs. M/s Ramway Foods Ltd (Sales / Trade Tax Revision No. 26 of 2023) (All HC) (23-08-2023)</p>
2.	<p>-Mere common location of petitioner and parent company itself was not sufficient to hold that the petitioner has committed fraud in obtaining registration and involved in bill trading, without the scrutiny of the relevant records</p> <p>-Cancellation of Registration cannot be made as place of business shown by the petitioner was held to be not suited for the present business activities</p>	Sakthi Steel Industries India (P.) Ltd. v. Appellate Additional Commissioner [2023] 155 taxmann.com 504 (Andhra Pradesh) (29-09-2023)	<p><b>Court observed that</b> SCN, which was precursor for cancellation of registration, only revealed that registration of petitioner was liable to be cancelled for the reason "In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts".</p> <p><b>Observation about SCN-</b>The Court stated that SCN was as vague and dubious as it could be without mentioning requisite particulars constituting the alleged fraud, wilful misstatement and suppression of facts. The elements of fraud, wilful misstatement and suppression of facts may be of varied types. Hence, the nature of fraud, wilful misstatement and suppression of facts have to be sufficiently described so as to give an opportunity to the taxpayer as otherwise, it will be difficult for him to submit an apt and appropriate reply/objections. <b>The public authorities</b> must know that the issuance of SCN has an avowed purpose of stating the formal grounds of accusation so as to invite proper reply from the person who is accused of charges. This process was based on equitable principle of natural justice that no man should be condemned of unheard. <b>Mere issuance of SCN</b> devoid of requisite particulars does not amount to proper compliance of the requirement. <b>In that context</b>, it was mentioned that SCN had flagrantly violated principles of natural justice. Therefore, very foundation for invocation of cancellation was feeble as it had no legal sanctity.</p> <p><b>Reply by the Petitioner-</b>The Court observed that petitioner although submitted reply with requisite particulars to the best of its ability. It clearly stated that to maintain proper supply chain and to have better control and operational efficiency on cost as well as convenience of operations, it applied for GST registration in Andhra Pradesh by obtaining lease of part of the property owned by its parent company in Kuppam, Andhra Pradesh. The petitioner mentioned that all the TMT purchases of the petitioner are from its parent company and sales were spread over to different States. Further, most of the scrap iron which was procured by the petitioner from different countries was sold to its parent company. Most importantly, the petitioner avouched that the complete details of the purchases and sales could be verified at any point of time if the need arises. The petitioner further avouched that never ever, the petitioner committed any wilful fraud, bill trading or movement of goods without proper invoices. On such submission, petitioner sought for revocation of suspension of its GST registration.</p> <p><b>Order for Cancellation-</b>Registration of the petitioner was cancelled as it was held that it was obtained by playing fraud and petitioner was involved in bill trading without actual movement of goods and genuine invoices on following reasons</p> <ol style="list-style-type: none"> <li>Parent and group company have obtained registration in respect of same premises,</li> <li>Leasehold premises of the petitioner was not conducive for the type of business it has undertaken <i>i.e.</i>, sale of TMT bars and billets, since it was the case of the petitioner that all the goods supplied to its parent company were delivered as and when the goods were received from suppliers and the finished goods which are purchased from parent company are immediately shipped to the buyers and such is the business activity of the petitioner, there was no need to take huge land to an extent of Ac.2.71 cents when the same is not used for storing the goods,</li> <li>Lease Deed dated 26-11-2022 was an unregistered document.</li> </ol> <p><b>Observation about the Order-</b> The main reason for cancellation of registration was that the petitioner and its parent company emanate from same premises. The Officer without verifying the records to know whether the petitioner was involved in issuing and obtaining the fake invoices and doing fake business to avoid tax, concluded that place of business shown by the petitioner was not suited for the present business activities and hence, recommended for cancellation. The Court stated that they were unable to comprehend, even if the place of business of the petitioner for argument sake was not conducive for its business, how the said fact can be treated as sufficient to conclude that petitioner obtained registration by committing fraud or wilful misstatement or suppression of facts. It should not be forgotten that whether petitioner was involved in bill trading without proper receipt and supply of goods can be determined only after thorough examination of relevant records such as account books, e waybills, transportation particulars, toll plaza particulars etc. However, in spite of petitioner's submission that complete details of purchases and sales could be verified at any point of time, the authority without resorting to such logical and legal exercise, simply carried away by the recommendations of the Inspecting Authority who on a conjuncture suspected that taxpayer may be engaged in bill trading without proper receipt and supply of goods, for which there was no proper basis. Therefore, impugned registration cancellation order was held not to be sustainable.</p> <p><b>Observation about appellate order-</b>The appellate authority was also held to be committed the same mistake in confirming the order of without considering a logical question as to how the mere commonality of the location of the petitioner and parent company itself is sufficient to hold that the petitioner has committed fraud in obtaining registration and involved in bill trading, without the scrutiny of the relevant records.</p> <p><b>Held- Original order and appellate order</b> was set aside. Writ Petition was allowed with a direction to restore the GST registration of the petitioner.</p>