

**Pending conclusion of Audit observation challenged under WRIT jurisdiction, SCN cannot be issued**

**Fact: -**

Department had initiated an audit of books of account of petitioner. In relation to audit conducted by department, an audit observation was intimated to petitioner, which was challenged before the Hon'ble High Court. Meanwhile, department had concluded the audit and audit report was issued and thereafter Show Cause Notice was issued to the petitioner in relation to demand involved in audit report.

Being aggrieved by the action of the department regarding the issuance of Show Cause Notice while the matter was pending before the Court on Audit observation, petitioner has filed a WRIT before the Hon'ble High Court as the respondents had concluded the audit and issued audit report before any interim order from the Court against audit observation.

**Petitioner Contention: -**

The petitioner contended that the initial intimation of audit observation of respondent was challenged before the Court and same was sub-judice. However, the respondent continued further proceedings regarding the same subject matter, without waiting for any order from the Court. The respondent concluded the audit and prepared an audit report. Thereafter, Show Cause Notice was issued in relation to observations made by department. The petitioner further contended that as no interim order was passed by the court in relation to the audit observation, the action of department to proceed further and issue show cause notice on the same ground was beyond jurisdiction.

**Held: -**

The Hon'ble High Court held that initially an audit was conducted against which an observation was issued by Department, which was challenged by petitioner before the Hon'ble High Court. The matter was pending before the court and no interim order was passed by the Court. However, Department concluded the audit and prepared an audit report thereafter SCN was issued merely calling upon the petitioner to show cause as to why amounts, penalty, interest and likewise should not be levied on him. Therefore, such action taken by the department without any interim order from the Court, particularly when the writ against audit observation was pending is not justified. The Hon'ble Court hold that the current WRIT petition against SCN, be disposed of, giving petitioner the liberty to submit a reply to the SCN within a month.

The Hon'ble Court subsequently directed that on receiving the reply to the SCN, the department shall provide the petitioner an opportunity of personal hearing. The department was also directed that no coercive steps can be taken before considering the reply of the petitioner to the SCN issued, providing a personal hearing and thereby pass such speaking orders as is fit and justified as per law.

**Conclusion: -**

It can be concluded from the above judgement, that whenever audit is conducted by Department and thereafter Audit observations issued by Department wherein Taxpayer finds such observations to be vague, he might challenge such observation before the Hon'ble High Court by filing a WRIT. Whenever such WRIT is filed before a High Court, the WRIT acts a stay order on proceedings of the Department such that it cannot proceed on that subject matter before the Court passes any order in that regard. Therefore, in order to proceed in this matter being a taxpayer, whenever an Audit is conducted, the taxpayer firstly, must examine the observations made by Department as to whether such observations are relevant or not. Secondly, if he finds the observations to be unfit or vague, such Taxpayer may challenge those observations by filing a WRIT before the Court. Subsequently, the Department will be prevented from proceeding further on such Audit unless the Court passes an interim order.