IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15888 of 2021

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M/s Brajesh Enterprises a proprietorship Firm Having its Place of Business at Asarganj, Munger through its Proprietor namely Brajesh Kumar Suman male aged about 47 Years Son of Sahdeo Panjiytra Resident of Asarganj, Munger-813201.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Joint Commissioner of State Taxes, Munger Circle, Munger.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
		Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (SC-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

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Date : 17-09-2021

Petitioner has prayed for the following relief(s):-

"1(a) For issuance of a writ in the nature of certiorari for quashing of the ex-parte order bearing reference number ZA100719043649K dated 30.07.2019 passed by the respondent No.3 under section 29 of the Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar Act 2017 for short) read with Rule 22 of the Bihar Goods And Services Tax Rules, 2017 (hereinafter referred to as the "Bihar rules 2017" for short).

(b) For issuance of a writ in the nature of mandamus directing the respondent's especially the respondent No.3 to restore the registration of the petitioner with effect from the month of July 2019 so that the petitioner may file all the pending returns since August 2019 till date and also discharge liability of tax and interest (attracted if any) in accordance with the provisions of the Bihar act 2017 and the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short).

(c) For further holding and a declaration that the cancellation of registration of the petitioner by virtue of an ex-parte order passed by the respondent No.3 is violative of the principles of natural justice and the petitioner having already filed pending returns and discharge tax liabilities till the month of July 2019 is entitled to restoration of registration in terms of rule 23(1) first proviso to the Bihar rules 2017.

(d) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

Vide order dated 30th July, 2019 (Page 109 to the brief), the Joint Commissioner of State Taxes, Munger Circle, Munger has cancelled the petitioner's registration under the provision of Section 29 of the Bihar Goods and Services Tax Act, 2017. Prior thereto, notice to show cause was issued to which the petitioner responded vide communication dated 25th July, 2019. The order is extracted in toto as under:-

"**Reference Number: ZA100719043649A**

Date: 30/07/2019

To
BRAJESH KUAMR SUMAN
ASARGANJ, ASARGANJ, MUNGER, Bihar, 813201
GSTIN/UIN:10CFPPS9651K1ZT
Application Reference No. (ARN): AA100719012311V

Date: 16/07/2019

Order for Cancellation of Registration

This has reference to your reply dated 25/07/2019 in response to the notice to show cause dated 16/07/2019
Whereas no reply to notice to show cause has been submitted;
Whereas on the day fixed for hearing you did not appear;

The effective date of cancellation of your registration is 30/07/2019
Determination of amount payable pursuant to cancellation:
Accordingly, the amount payable by you and the computation and basis thereof is as follows:
The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.
You are required to pay the following amounts on or before 09/08/2021 failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head	Central Tax	State Tax.UT Tax	Integrated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	0	0	0	0
Others	0	0	0	0
Total	0.0	0.0	0.0	0.0

Place: Bihar
Date: 30/07/2019

Ajay Kumar
Joint Commissioner of State Tax
Munger"

It cannot be disputed that with the passing of the said order, petitioner is liable to both civil and penal consequences. To say the least, the authority ought to have at least referred to the contents of the show cause and the response thereto, which was not done. Not only the order is non-speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom. Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences.

Record, as made available, reveals that the petitioner had applied for registration which request was favourably considered by the authorities under the Act with a specific registration number allotted to the petitioner. Since the year 2017, petitioner has been regularly filing its return and depositing all dues. All this was done through the petitioner's Tax Consultant who was professionally engaged to undertake such task. Unfortunately, information of the returns for certain period not being uploaded, surfaced in the year 2019 and the cause was totally beyond the petitioner's reach. Perhaps, the Tax

Consultant is no more in the land of living. Nonetheless, under further advice, petitioner filed the returns along with the late fine for the entire period preceding July, 2019. Such returns were filed between 3rd December, 2020 and 5th July, 2021. The tax liability was also discharged with the same being deposited, about which fact there is no dispute. The competent authority can condone the delay for filing the returns, in the attending facts and circumstances, more so, with the Onset of Pandemic Covid-19, preventing further follow up action. In the peculiar facts and circumstances, the authority ought to have condoned the delay which unfortunately was not done, despite the petitioner having made a fervent request for condonation of delay in accepting the return, preventing cancellation of registration.

Hence, for all the aforesaid reasons, the order dated 30th July, 2019 passed by the respondent no.3, namely the Joint Commissioner of State Taxes, Munger Circle, Munger is quashed with the petitioner's registration restored, with a further direction to the respondent no.2, namely The Principal Secretary-cum- Commissioner, Department of State Taxes, Government of Bihar, Patna to finalize the petitioner's assessment and/or pass appropriate orders, in accordance with law.

We reiterate that issue of delay in filing the returns shall remain closed and not raised again as is stated by Sri Vikash Kumar, learned Standing Counsel-11 appearing for the respondents.

The writ petition stands allowed in the above terms.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	23.09.2021
Transmission Date	