IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3774 of 2022

S.K. Enterprises a Partnership firm having its Registered Office at Janki Asthan, Ward No. 1, Riga Road, Sitamarhi, Bihar 843302 through its authorized Signatory Manish Kumar Mishra (Male) (aged about 39 Years) Son of Nagendra Mishra, resident of Alaula, Kalyanpur, East Champaran, Kalyanpur, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, having its Office at Vikas Bhawan Bailey Road, Patna.
2. Addl. Commissioner of State Tax, Tirhut Division (Appeal), Muzaffarpur, Bihar.
3. Joint Commissioner of State Tax, Sitamarhi, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Manju Jha, Advocate
		Mr. Saurav Karn, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

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

Date : 09-03-2022

Heard learned counsel for the parties.

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

i) the order dated 05.02.2019 (as contained in Annexure -2) cancelling e registration under Section 29 of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the Act) be quashed.

ii) the respondent no. 3 be directed to restore registration under Section 22 of the Act to enable filing of return and payment of tax in accordance therewith.

iii) the order dated 23.02.2022 (as contained in Annexure -5) passed by the respondent no.2 dismissing the appeal in liminie on the solitary ground of delay filing of the appeal be quashed.

iv) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

Vide order dated 5th of February, 2019 (Annexure-2 Page 17), the Joint Commissioner of State Tax, Sitamarhi, Bihar 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 5th of February, 2019. The order is extracted in toto as under:-

17

Reference Number: ZA1002190055260 **ANNEXURE** -2- Date: 05/02/2019

To
S K ENTERPRISES
JANKI ASTHAN WARD NO 01 RIGA ROAD,JANKI ASTHAN RIGA ROAD,JANKI ASTHAN,Sitamarhi,Bihar,843302
GSTIN/ UIN :10ABJFS2650Q1ZX
Application Reference No. (ARN): AA100119027445N Dated: 25/01/2019

Order for Cancellation of Registration

This has reference to your reply dated 05/02/2019 in response to the notice to show cause dated 25/01/2019
Whereas no reply to notice to show cause has been submitted;

The effective date of cancellation of your registration is 05/02/2019
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 15/02/2019 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 :05/02/2019

Uma Nand Choudhary
Joint Commissioner of State Tax
Sitamarhi

Validity unknown
Digitally signed by GOODS AND SERVICES TAX NETWORK(2)
Date: 2019.02.05 45:27 IST

Against the impugned order dated 5th of February, 2019, petitioner preferred an appeal which stands dismissed vide order dated 23.02.2022 (Annexure-6) on the solitary ground of delay in filing of the appeal.

It cannot be disputed that with the passing of the order dated 5th of February, 2019, 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. 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 5th of February, 2019 passed by Respondent No.3, namely the Joint Commissioner of State Tax, Sitamarhi, Bihar in Reference No. ZA1002190055260 (Annexure-2) as also the appellate order in Form GST APL-02 dated 23.02.2022 passed by Respondent No. 2 namely Addl. Commissioner of State Tax, Tirhut Division (Appeal), Muzaffarpur, Bihar in Reference No. ZD100222009299W (Annexure-6) stand quashed with the petitioner's registration restored, with a further direction to 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(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	10.03.2022
Transmission Date	