

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17199 of 2022

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M/S AL- Tayyebaat Foods Pvt. Ltd. Phulwari Sharif, Thana No.35, Khata No. 734, Survey Plot No. 2526, Naya Tola, Janipur Road, Phulwari Sharif, Patna, through one of its Director Shabistan Arshi, Aged about 47 years, Gender Female, Wife of Perwaiz Kouser, Resident of 41, Shanti Kunj, Haroon Nagar, Sector- 02, Phulwari Sharif, P.S. Phulwari Sharif, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Tax (Appeals), Patna West Division, Patna.
3. The Joint Commissioner, State Tax, Danapur Circle, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP 7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(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.)

Date : 16-12-2022

Petitioner has prayed for the following relief(s):

“ (i) For issuance of writ or order for quashing of order dated 22.11.2022 issued vide Memo No. 2048 dated 22.11.2022 passed by the Additional Commissioner, State Tax (Appeals), Patna West Division, Patna whereby the application filed for Revocation of order of cancellation bearing Appeal Case



No. GST/DN-38/2022-23 has been rejected;
(ii) For issuance of writ or order for quashing of ex-parte order dated 28.08.2021 issued vide Reference No. ZA100821239961P by the Joint Commissioner of State Tax, Danapur Circle, Patna whereby the Registration granted under the GST Act, 2017 of the Petitioner has been cancelled without giving proper opportunity of filing reply and without giving opportunity of hearing;
(iii) For a direction to the Respondent No. 3 to restore the registration granted under GST Act, 2017 of the petitioner company whereby the registration of the petitioner company was cancelled by an ex-parte order;
(iv) For a direction to the Respondents for de-freezing/ de-attaching of the Bank Account of the petitioner company attached by the Respondents;
(v) For further issuance of a direction restraining the Respondent No. 3 from taking any coercive action for recovery of the amount in demand during pendency of the present writ petition;
(vi) For grant of any relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.”

Vide order dated 28.08.2021 (Page 11 to the brief), the Joint Commissioner of State Tax, Danapur Circle, Patna has cancelled the petitioner’s registration under the provision of Section 29 of the Bihar Goods and Services Tax Act, 2017. Prior thereto, no notice to show cause was issued to which the petitioner could respond. The order is extracted in toto as under:-

“Reference Number: ZA100821239961P

Date: 28/08/2021



To
AL-TAYYEBAAT FOODS PRIVATE LIMITED
Phulwari Shreef, Thana no. 35, Khata no. 734 Survey Plot no.-2526,
Naya Tola, Janipur Road Phulwari Shareef, Patna, Bihar, 801505
GSTIN/UIN: 10AARCA1401BIZN
Application Reference No. (ARN): AA1008210373481
Date: 11/08/2021

Order for Cancellation of Registration

This has reference to your reply dated 21/08/201 in response to the notice to show cause dated 10/08/2021
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 28/08/2021
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 07/09/2021 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: 28/08/2021

Sunita Kumari
Joint Commissioner of State Tax
Danapur”

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. After Covid-19 Pandemic, petitioner's firm started work. 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 28/08/2021 passed by the respondent no.3, namely the Joint Commissioner of State Tax, Danapur Circle, Patna is quashed with the petitioner's registration restored, with a further direction to the respondent no. 1, namely The 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 Vivek Prasad, learned G.P. 7, appearing for the respondents.

The writ petition stands allowed in the above terms.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

K.C.Jha/-DKS

AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2022
Transmission Date	

