IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2942 of 2023

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Kadru Infrastructure Pvt. Ltd. having its local place of business Rampur, Jamalpur, Munger- 811214 through its authorized signatory namely Nilesh Kumar male aged about 44 years son of Birandra Kumar Singh resident of Rampur, Munger, Jamalpur, Bihar - 811214.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes, Munger Circle, Munger. (November 2018 to June 2019).

... ... Respondent/s

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Appearance :

For the Petitioner/s : M/s.Gautam Kumar Kejriwal, Alok Kumar Jha, Mukund Kumar, Advocates

For the Respondent/s : Mr.Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 28-04-2023

The petitioner who was an assessee under the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act') is concerned with the cancellation of his registration and also an assessment carried out under Section 62 of the Act. The petitioner was a works contractor who committed default in filing returns for 8 months; i.e. between

November, 2018 to March, 2019 and April, 2019 to June, 2019. This happened due to the default of the local employees of the petitioner, is the explanation. The petitioner was issued with a show cause notice, Annexure-1 and the registration was cancelled as per Annexure-2. Subsequently, the cancellation was revoked by Annexure-3. The petitioner is then said to have uploaded all the returns, which were earlier defaulted, however, again a show cause notice was issued to the petitioner by Annexure-4 and the registration cancelled at Annexure-5.

2. Due to the cancellation of registration by the Department, the petitioner could not file the subsequent returns. The proceedings under Section 62 of the Act which concluded with Annexure-6 order. A summary of the order was issued at Annexure-7 and demand notices were raised, which are produced as Annexure-8. The petitioner's bank accounts were also attached. The petitioner now seeks for relief under Notification Nos. 03 of 2023 and 06 of 2023.

3. We extract Notification No. 03 of 2023 as under:-

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

NOTIFICATION
NO. 03/2023 – CENTRAL TAX

New Delhi, dated the 31st March, 2023

G.S.R.....(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies that the registered person, whose registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act on or before the 31st day of December, 2022, and who has failed to apply for revocation of cancellation of such registration within the time period specified in section 30 of the said Act as the class of registered persons who shall follow the following special procedure in respect of revocation of cancellation of such registration, namely:–

(a) the registered person may apply for revocation of cancellation of such registration upto the 30th day of June, 2023;

(b) the application for revocation shall be filed only after furnishing the returns due upto the effective date of cancellation of registration and after payment of any amount due as tax, in terms of such returns, along with any amount payable towards interest, penalty and late fee in respect of the such returns;

(c) no further extension of time period for filing application for revocation of cancellation of registration shall be available in such cases.

Explanation: For the purposes of this notification, the person who has failed to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section (1) of section 30 of the said Act.

[F. No. CBIC-20013/1/2023-GST]

(Alok Kumar)
Director

4. We also extract form GST REG-19:-

Form GST REG-19
[See rule 22(3)]

Reference No. - Date
To
Name
Address
GSTIN / UIN

Application Reference No. (ARN) Date

Order for Cancellation of Registration

This has reference to your reply dated ---- in response to the notice to show cause dated -----.

☐ Whereas no reply to notice to show cause has been submitted; or
☐ Whereas on the day fixed for hearing you did not appear; or
☐ Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

1.
2.

The effective date of cancellation of your registration is <<DD/MM/YYYY>>.

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 ------ (date) failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head Tax	Central Tax	State Tax	UT Tax	Integrated Tax	Cess
Interest					
Penalty					
Others					
Total					

Place:
Date:

Signature
<Name of the Officer>
Designation
Jurisdiction

5. As per the cancellation affected, the Bihar Goods and Services Taxes Rules, 2017 has provided the form in which the order of cancellation has to be effected, which is GST REG-19. The said form also has a column for reasons assigned for the cancellation. We see that the present impugned order at Annexure-5 does not assign any reason. A Division Bench of this Court in ***Manoj Kumar Sah versus The State of Bihar and Anr. in C.W.J.C. No. 18307 of 2022*** found that a cancellation entails both civil and penal consequences and a non-speaking order without any reasons for the cancellation, decipherable therefrom, violates the principles of natural of justice and is liable to be set aside. Following the said judgment, we set aside Annexure-5 order of cancellation.

6. We also notice that the Central Government, on the recommendation of the GST Council, has brought Notification No. 03 of 2023 wherein if the cancellation has been effected for failure to file returns under clause (b) or clause (c) of sub-section (2) of Section 29, there is a further period allowed up to 30.06.2023, wherein the registered person can apply for revocation of cancellation.

7. The petitioner also did not comply with sub-section

(2) of Section 62 by filing a return within one month of the issuance of the assessment order. Now, the Government of India has on the recommendation of the GST Council, brought out the following notification:-

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

NOTIFICATION
NO. 06/2023 – CENTRAL TAX

New Delhi, the 31st March, 2023

S.O......(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies that the registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the said Act, as the classes of registered persons, in respect of whom said assessment order shall be deemed to have been withdrawn, if such registered persons follow the special procedures as specified below, namely,-

(i) the registered persons shall furnish the said return on or before the 30th day of June 2023;

(ii) the return shall be accompanied by payment of interest due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act,

irrespective of whether or not an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided.

[F. No. CBIC-20013/1/2023-GST]

(Alok Kumar)
Director

8. The petitioner would be entitled to act in accordance with the notification, file a return satisfying the liability to interest and late fee, if not already done. Definitely, the Assessing Officer would be entitled to verify whether there is due compliance under the notification, herein above extracted, and if the compliance is in accordance with the notification, the

assessment order would stand withdrawn.

9. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

M.E.H/uttam/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2023
Transmission Date	NA