

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4490 of 2023

Shri Nitendra Kumar, Son of Ram Yatan Sharma, the name and style of Nitendra Kumar, at Rajopatti, Dumra Road, Sitamarhi, The appellant is a contractor. Under the CGST read with Bihar Goods and Service Tax Act (hereinafter referred as BGST Act.) The GSTN of the appellant is 10BBXPK4323F1ZU.

... .. Petitioner/s

Versus

1. The Chief Commissioner, Central GST and Central Excise, Ranchi Zone Patna.
2. The Commissioner, Central GST and Central, Patna- II, Patna.
3. The Assistant Commissioner, CGST and CX, Darbhanga Division, Patna- II.
4. The Superintendent, CGST and CX, Madhubani Range.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rakesh Verma, Advocate
For the Respondent/s : Dr. K.N. Singh, ASG

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-04-2023

1. The petitioner is aggrieved with the cancellation of registration by Annexure-3 order dated 03.02.2021. An appeal was filed which was delayed, which also stood rejected. Insofar as the Bihar Goods and Services Tax Act is concerned, now there is no Tribunal constituted for the State.

2. In such circumstances, we have looked at the order at Annexure-3, especially since the learned counsel for the petitioner has argued that it is a non-speaking order. We see



from the order that there is no reason stated as to why the cancellation was ordered and not even the subject of the notice is referred to in the order.

3. It is the submission of the learned counsel for the State that the form GST REG-19 has been adopted by the Assessing Officer.

4. We extract form GST REG-19:-

Form GST REG-19

Rev. code 79/19

Date

Reference No.:

To:

Name:

Address:

GSTIN/UTIN:

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 ---.

1.

Whereas no reply to notice to show cause has been submitted; or

2.

Whereas on the day fixed for hearing you did not appear; or

3.

Whereas the undersigned has examined your reply and other material made available 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 DDMMYY.

Disbursement of amount payable on cancellation:

Accordingly, the amount payable by you and the corporation and body thereof is as follows:

The amount 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	Central Tax	State Tax	UT Tax	Integrated Tax	Cess
Tax					
Interest					
Penalty					
Others					
Total					

Place:

Date:

Signature

& Name of the Officer

Designation

Inspection

5. As we see from the Bihar Goods and Services Taxes Rules, 2017, GST REG-19 has a specific column where reasons have to be assigned. However, the Assessing Officer seems to be laboring under the belief that when an assessee does

not appear or an objection is not filed, no reasons have to be assigned.

6. We cannot countenance the said order, especially when there is absolutely no reason stated regarding the cancellation of registration.

7. We also notice the judgment of another Hon'ble Division Bench of this Court passed in *Manoj Kumar Sah versus The State of Bihar and Anr.* in **C.W.J.C. No. 18307 of 2022** wherein it has been stated so:-

" 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. "

8. The impugned order in the instant writ petition also suffers from the very same illegality which has been pointed out by the Division Bench. In such circumstances, we set aside the order at Annexure-3 and direct reconsideration of the issue.

9. In this context, we also notice that notification No. 3 of 2023 has been brought in by the Central Government on the



recommendations of the G.S.T. Council 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 invocation of cancellation. This is also subject to the condition that the return should be filed up to the effective date of cancellation of registration and the payment of tax, interest, penalty and late fee in respect of such returns have also been made. The assessee would also be entitled to avail of the said remedy if the cancellation has been effected under clause (b) or clause (c) of Sub-section (2) of Section 29.

10. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.04.2023
Transmission Date	NA

