IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5459 of 2024

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Tej Narayan Singh through its Proprietor Tej Narayan Singh, Male, aged about 43 years, son of Bishtu Lal Singh, resident of Ward No. 01 Mushal Danga Post-Daluahat, Pothia Poth, District-Kishanganj, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Taxes, New Secretariat, Patna.
2. The Joint Commissioner, State Taxes, Kishanganj, Purnea, Bihar.
3. The Additional Commissioner (Appeal), State Taxes, Purnia Commissionary, Purnia, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Archana Sinha, Sr. SC. Income Tax Dept

For the Respondent/s : Mr. Vivek Prasad, Government Pleader 07

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-04-2024

The petitioner is aggrieved with the cancellation of registration by Annexure-2 order passed on 30.10.2021.

2. Admittedly, there is an appellate remedy which the petitioner availed with gross delay.

3. Section 107 of the Bihar Goods and Services Tax Act, 2017 (“BGST Act” hereafter) permits an appeal to be filed within three months and also apply for delay condonation with satisfactory reasons within a further period of one month. We have to take into account the

saving of limitation granted by the Hon’ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020, In Re: Cognizance For Extension of Limitation therein, due to the pandemic situation limitation was saved between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within ninety days from 01.03.2022. Here, the order impugned in the appeal was dated 30.10.2021. An appeal was to be filed on or before 30.06.2022 as permitted by the Hon’ble Supreme Court and if necessary with a delay condonation application within one month thereafter. The appeal is said to have been filed only on 05.11.2023, after about one year four months from the date on which even the extended limitation period expired. In the above circumstances, we find no reason to invoke the extraordinary jurisdiction under Article 226, especially since it is not a measure to be employed where there are alternate remedies available and the assessee has not been diligent in availing such alternate remedies within the stipulated time. The law favours the diligent and not the indolent.

4. Further, the Government had come out with an

Amnesty Scheme by Circular No. 3 of 2023, by which the registered dealers, whose registrations were cancelled were permitted to restore their registration on payment of all dues between 31.03.2023 to 30.06.2023. The petitioner did not avail of such remedy also.

5. The petitioner does not have any case that the show-cause notice was not received by him. Further, it is also pertinent that the reason stated in the show-cause notice for cancellation of registration is that the petitioner has not filed returns for three consecutive tax periods. The petitioner does not have a case that he had in fact filed returns for three consecutive tax periods.

6. The learned counsel for the petitioner relies on the judgment of a Division Bench of the High Court of Jharkhand at Ranchi in ***W.P(T) No. 827 of 2024; Abdul Satar vs. The Principal Commissioner, Central Goods and Service Tax & CX & Ors.*** Therein, the petitioner was concerned with the cancellation of registration effected on 21.02.2023 and a delayed appeal filed having been rejected on 23.11.2023. The learned Division Bench also noticed the notification dated 31.03.2023, and the Amnesty Scheme

which permitted application for revocation of cancellation till 30.06.2023. The petitioner contended that he was disabled from filing an application for recovery on account of paucity of time and since an appeal against the order of cancellation was pending before the Appellate Authority. The learned Judges, based on the object behind the GST Act, which is for levy and collection of tax, adopted a liberal approach and after examining the materials on record directed the petitioner to file an application under Section 30 subject to the petitioner making payment of dues and other statutory penalty.

7. We have to notice that the facts which distinguish the instant case from the above case is that there the cancellation was on 21.02.2023, whereas, herein the cancellation was far earlier on 30.10.2021. We have already held that after the cancellation there is no scrutiny of the activities of the petitioner by the department and, hence, a revival after a very long time would frustrate the very scheme of the Act which mandates furnishing of monthly returns and the annual return. Three years from the date of cancellation there can be no liberal approach adopted. We

do not also accept the liberal approach adopted by the Division Bench; with due respect, which is against the very scheme of the enactment.

8. The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.04.2024.
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