IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7678 of 2023

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Rahul Kumar, Son of Prem Nath, Resident of House No. 115/251, Sheikhpura, Near Icon Public School, B.V. College, Patna- 800014

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance.
2. The Chief Commissioner, Central GST & Central Excise, Ranchi Zone, Patna.
3. The Commissioner, Central GST Control Excise, Patna- 1, Patna.
4. The Additional Commissioner, GST & CX (Appeals), Patna.
5. The Superintendent Phulwarisharif Range, CGST & Control Excise Patna Central, Patna.
6. The Assistant Commissioner, CGST & CX, Patna West Division, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ashish, Advocate
For the Respondent/s	:	Dr. K.N. Singh, Additional Solicitor General
		Mr. Anshuman Singh, Sr. SC, CGST & CX

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-01-2024

The petitioner is aggrieved with the cancellation of registration by Annexure-3 order passed on 14.01.2021. The vehement contention of the learned counsel for the petitioner is that the show-cause notice for cancellation of registration dated 29.12.2020 directed appearance on 24.12.2020 and the order of cancellation of registration was passed on 14.01.2021. Learned counsel for the petitioner contends that the proceedings are fraught with illegality in so far as no notice having been issued.

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 14.01.2021. 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 06.12.2022, after about five

months from the date on which even the 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.

4. True, there is an illegality in so far as the notice issued having shown a date prior to the date of the notice for hearing. The petitioner could have responded to the notice and asked for a further date which was not done by the petitioner. The petitioner does not have any case that the show-cause notice was not received by him. Further, it is very pertinent that the petitioner had not filed an appeal from the order of cancellation of registration in which he could very well have raised this ground of violation of principles of natural justice. As was noticed, the appeal ought to have been filed on or before 30.07.2022. The petitioner has not been diligent enough and at this distance of time almost three years after the cancellation of registration cannot seek a fresh show-cause notice to be issued. 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 a continuous period of six months. The petitioner does not have any case that he had in fact filed a return in the continuous period of six months. A remand would be a useless formality.

5. The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	11.01.2024
Transmission Date	