IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1546 of 2025

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M/s National Rural and Mountain Tribal Development Association, Vrindavan Colony, PS Phulwarisharif Patna Bihar 801505 through Proprietor Arvind Pandey aged about 60 years, male Son of Ram Rajiv Pandey, Resident of Vrindavan Colony Road No.2 New Walmi Complex, Police Station- Phulwari Sharif, District- Patna.

... ... Petitioner

Versus

1. The Union of India through the Commissioner, Central Goods and Services, Excise, Central Revenue Building (Annexe) Birchand Patel Path Patna 800001.
2. The Commissioner (Appeals) Customs, Central GST and Central Excise Patna, 2nd floor C.R. Building (Annexe) Birchand Patel Path Patna.
3. The Superintendent, CGST and CX, Phulwarisharif Range.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. Gopal Prasad Singh, Advocate

For the Respondent/s : Mr. Anshuman Singh, Senior SC

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE AJIT KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 11-08-2025 Heard learned counsel for the petitioner and learned Senior Standing Counsel for the Department of CGST and CX.

2. At the outset, it is recorded that this Court having noticed that counter affidavit was served upon learned counsel for the petitioner today itself, called upon learned counsel for the petitioner to say as to whether he would like to file a rejoinder to the counter affidavit and for that reason, the matter is to be adjourned.

3. Learned counsel for the petitioner submitted that he is not required to file any rejoinder and is ready to argue the matter.

4. In the present writ application, the petitioner is seeking a writ in the nature of a Writ of Certiorari to quash and cancel the order dated 09.10.2024 passed in Appeal Order No. 374/PAT/2024-25 by the Additional Commissioner, CGST & CX (Appeals), Patna upholding the order dated 03.07.2020 passed by Respondent No. 3 i.e. Superintendent, CGST & CX, Phulwarisarif Range whereby the GST registration of the petitioner firm has been cancelled.

5. Learned counsel for the petitioner submits that the petitioner was served with a show cause notice dated 27.11.2019 calling upon him as to why the registration of the firm be not cancelled for not filing return from June 2018. The petitioner submitted its reply on 06.12.2019 explaining the reasons of not filing return, partly because of lack of communication at the office level. Thereafter, the Respondent No. 3 passed the order dated 03.07.2020 (Annexure 'P/1') whereby and whereunder the registration of the petitioner was cancelled in terms of Section 29(2)(c) of the Central Goods and Services Tax/Bihar Goods and Services Tax Act (hereinafter referred to as the 'CGST/BGST Act').

6. Learned counsel submits that the petitioner preferred an appeal on 25.08.2024 before the Additional Commissioner (Appeal), Patna, CGST who without appreciating the facts and circumstances of this case, dismissed the appeal merely on the ground of limitation. A copy of the appellate order has been brought on record as Annexure 'P/2' to the writ application.

7. It is submitted that the petitioner firm filed its return continuously till cancellation of registration. Relying upon a judgment of learned co-ordinate Bench of this Court in the case of **M/S Ambey Refrigerator Vs. The State of Bihar and Others (CWJC No. 6292 of 2023)**, learned counsel submits that this Court may be pleased to set aside the impugned orders.

8. In course of hearing of the writ application, learned counsel has placed before this Court another judgment of the learned co-ordinate Bench rendered in the case of **M/S New Elegant Homes Planners and Developers Pvt. Ltd Vs. The State of Bihar and Others (CWJC No. 1709 of 2025)** to strengthen his submission that in a similar circumstance, the learned co-ordinate Bench had been pleased to set aside the order of cancellation of registration.

9. Mr. Anshuman Singh, learned Senior Standing

Counsel for the Department of CGST and CX submits that in this case, admittedly the petitioner had received the show cause notice and submitted its reply. It is not one of those cases in which the show cause notice was not received by the petitioner for any reason. According to him, the case laws placed before this Court on behalf of the petitioner would not be applicable in the facts of this case. Those were the cases in which the show cause notices were not served and there was a submission on behalf of the petitioner on the strength of Section 169 of the CGST/BGST Act that the notices were not served in accordance with the said provision.

10. Learned Senior Standing Counsel has further submitted that the petitioner had an opportunity to file the pending returns even after receipt of the show cause notice but the petitioner did not avail the opportunity. The petitioner was given more than seven months after the show cause notice to file the pending returns. It is, thus, submitted that the plea raised by the petitioner is not valid plea and in such circumstance, this Court sitting in its extraordinary writ jurisdiction may not entertain the present writ application.

11. Attention of this Court has been drawn towards the statement made in paragraph '11' of the counter affidavit. It is submitted that the petitioner has not filed GSTR-1 for June 2018, July 2018, September 2019 suggesting that the petitioner had sought to suppress taxable value of supply.

12. As regards the appeal preferred by the petitioner, referring to Section 107(1) and 107(4) of the CGST Act, 2017, learned Senior Standing Counsel submits that the appellate authority could not have condoned the delay of more than one month from the date of expiry of the period of limitation. It is submitted that by judicial pronouncements, it has already been held that in such circumstances where the statute itself prescribes the maximum period which may be condoned by a statutory authority, the said statutory authority being a creature of law would not have gone beyond the statutory provision.

13. It is submitted that the appeal itself was preferred after a period of almost four years, therefore, the appellate authority has not committed any illegality in passing of the impugned order dismissing the appeal.

14. We have heard learned counsel for the petitioner and learned Senior Standing Counsel for the Department of CGST & CX. It is evident from the records that it is not one of those cases in which the petitioner has not received the show cause notice. In fact, there is no whisper in the pleading that the petitioner had not received the show cause notice, rather the statement is that the petitioner had replied to the show cause notice explaining reasons for not filing the return which was partly because of lack of communication at office level.

15. This Court finds that the petitioner was given an opportunity to be heard in terms of proviso to sub-section (2) of Section 29 of the CGST/BGST Act. The impugned order has been passed after about seven months from the date of issuance of show cause. It is the specific case of the respondents which has not been denied by the petitioner that the pending returns with admitted tax were neither filed nor paid within the date of passing of the impugned order dated 03.07.2020 (Annexure 'P/1').

16. A perusal of Section 29(2)(c) of the CGST/BGST Act would show that non-filing of the return for the given period as stated in the impugned order would be a legal and valid reason for cancellation of registration. We find no illegality in the impugned order as contained in Annexure 'P/1' issued on 03.07.2020.

17. We further find that the petitioner was aware of the order dated 03.07.2020. In the writ application, there is no statement that the petitioner was not aware of the said order, still the appeal was preferred after about four years. The appellate authority has passed the impugned order dated 09.10.2024 (Annexure 'P/2') whereby the appeal preferred by the petitioner has been rejected on the ground of limitation. The appellate authority has relied upon the judgment of the Hon'ble Supreme Court in the case of **Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur** reported in **2008 (221) E.L.T. 163 (SC)**. We have further noticed that 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 31.08.2023. The petitioner did not avail of such remedy also. This observation of the appellate authority in paragraph '9' of the order has not been assailed by the petitioner.

18. We have also perused the judgments of the learned co-ordinate Bench of this Court on which reliance has been placed by learned counsel for the petitioner. On going through the judgment in the case of **M/S Ambey Refrigerator** (supra), it is noticed that in the said case, the order of cancellation of registration did not bear any reason. The order of cancellation has been quoted in the order of the learned co-ordinate Bench.

In the present case, admittedly reason has been provided in Annexure ‘P/1’.

19. In **M/S New Elegant Homes Planners and Developers** (supra), order of cancellation itself indicates that no reply to the show cause notice was submitted. The facts as appearing from the said order and noticed by the learned co-ordinate Bench may be found from the order. The Court held that there was a violation of Section 169 of the CGST Act which resulted into a denial of opportunity of hearing. Again, the present case would not be covered by the judgment of the learned co-ordinate Bench.

20. In the kind of pleadings available on the record in the present case, we find no reason to interfere with the impugned orders.

21. This writ application has no merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

(Ajit Kumar, J)

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