IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13157 of 2024

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M/s Bishnu Coal Briquette Industries, through its Proprietor Anil Kumar Verma, Male, aged about 56 years, Son of Ramji Prasad, Resident of Flat No. 901, Sri Ram Palace, Ashok Nagar Dhansar, Rajasbera, Dhanbad, Jharkhand, 828106. ... ... Petitioner

Versus

1. The Union of India, through the Principal Chief Commissioners of Central Tax, Govt of India, Ministry of Finance, New Delhi.
2. The Commissioner, Central Tax, Central Revenue Building, Birchand Patel Path, Patna - 800001.
3. The Additional Commissioner, Central Tax, Central Revenue Building, Birchand Patel Path, Patna - 800001.
4. The Assistant Commissioner, Central GST and Central Excise Division, Begusarai.
5. The Superintendent, CGST and CX, Saharsa Range.
6. The Inspector, CGST and CX, Saharsa Range.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Ravi Raj, Advocate
For the Respondents	:	Mr. Anshuman Singh, Senior SC

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 20-08-2025

Heard learned counsel for the petitioner and learned Senior Standing Counsel for the CGST & CX.

2. The petitioner in this writ petition is seeking the following reliefs:-

> "i. For issuance of an appropriate writ in the nature of Certiorari for setting aside the DRC-01 (Demand cum Show Cause Notice) dated 02.08.2024 issued under the signature of

Respondent No.4/The Assistant Commissioner, CGST & CX, Begusarai Division on the ground that the business firm of the petitioner has been found as 'fake and non-existing firm' at the address mentioned in the registration certificate in most arbitrary manner violating the Principles of Natural Justice.

ii. For issuance of an appropriate writ in the nature of Certiorari for setting aside the order of Rejection of Revocation of Cancellation dated 30.04.2024 issued under the signature of Respondent No.4/The Assistant Commissioner, CGST, Saharsa on the ground that during physical verification of the firm's address mentioned in the registration certificate the firm was non-existing and also neither any clarification was given nor any document in connection with the address was submitted by the petitioner in the reply to the query raised in the portal.

iii. For issuance of an appropriate writ in the nature of Mandamus directing and commanding the responsible authorities for not taking any steps in furtherance of the Demand cum Show Cause Notice dated 02.08.2024 during the pendency of this writ application.

iv. For any other reliefs for which the petitioner is entitled to in the facts and circumstances of the case."

Brief Facts of the Case

3. It is the case of the petitioner that it is carrying on business as a proprietorship firm engaged in the business of coal since 2012 and was paying taxes under Value Added Tax (in short called ‘VAT’) to the Government and after migration to the Goods and Services Tax (in short ‘GST’) in the year 2017, the petitioner got itself registered vide GST Registration mentioned in paragraph ‘3’ of the writ application.

4. The petitioner claims that he went on changing his place of business from Tiri to Simraha, Saharsa and had given information in this regard to the GST authorities but they had not raised any objection.

Submissions on behalf of the Petitioner

5. Learned counsel for the petitioner submits that the petitioner was served with a show cause notice proposing cancellation of registration on the ground that he had obtained the registration by means of fraud, willful misstatement or suppression of facts. The registration of the petitioner was suspended with effect from 18.05.2023 and he was directed to file a reply within the stipulated period. A copy of the show cause notice dated 18.05.2023 has been brought on record as Annexure ‘P/4’ to the writ application.

6. It is further submitted that upon request of the petitioner, the GST authorities granted some time to file the required documents/papers pertaining to his GST registration and later on, the petitioner submitted all the required documents as stated in his letter dated 20.06.2023 (Annexure 'P/8').

7. The petitioner vide his letter dated 31.01.2024 requested for withdrawal of suspension of the registration for complying with the formalities as per the GST norms.

8. The grievance of the petitioner is that Respondent No. 5 vide order dated 22.02.2024 (Annexure 'P/11') cancelled the GST registration of the petitioner without taking into consideration the submissions filed by the petitioner. It is pointed out that, in fact, the order of cancellation has been made to take effect from 01.07.2017 i.e. with retrospective effect. By placing before this Court the order of cancellation as contained in Annexure 'P/11', learned counsel points out that it is an unreasoned order.

9. The petitioner, later on, filed an application dated 02.03.2024 seeking revocation of the cancellation of registration but the same has been rejected by Respondent No. 4 vide order dated 30.04.2024. A copy of the order dated 30.04.2024 has been enclosed as Annexure 'P/13' to the writ application.

10. Learned counsel for the petitioner submits that pursuant to the order dated 30.04.2024 (Annexure 'P/13'), the Assistant Commissioner, CGST & CX, Begusarai Division has issued a Demand-cum-Show Cause Notice under Section 127 of the Central Goods and Services Tax Act, 2017 (in short 'CGST Act, 2017') read with Rule 142 1(a) of CGST/BGST Rules, 2017 by which he has proposed to impose a penalty equivalent to the amount of fake Input Tax Credit (in short 'ITC') availed to the tune of Rs.2,31,03,615/- and fake ITC passed on to the tune of Rs.2,11,18,336/-.

11. Learned counsel submits that on perusal of the order rejecting the application for revocation of cancellation, it would appear that the order refers to a physical verification said to have been conducted on 17.05.2023 and again on 22.03.2024 in which it was found that at the address mentioned in the registration certificate, the firm does not exist. The order takes into consideration a 'Panchnama' drawn in presence of the Mukhiya and the 'Sarpanch' of the said village in this regard on both the occasions.

12. It is submitted that not only the first physical verification report, even the second one which is said to have been done on 22.03.2024 i.e. during pendency of the application of the petitioner seeking revocation of the order of cancellation, was not supplied to the petitioner. The 'Panchnama' which was drawn in presence of the Mukhiya and the 'Sarpanch' of the village on both the occasions were not provided to the petitioner and no prior notice of inspection to be conducted on 22.03.2024 was given to the petitioner. For the first time, the copy of 'Panchnama' and the visit note have been provided with the Demand-cum-Show Cause Notice (Annexure 'P/14').

13. Learned counsel submits that from Annexure 'P/8' dated 20.06.2023, it would appear that the petitioner had submitted the required documents in the office of the Superintendent, Central GST and CX, Saharsa pursuant to his Letter No. 40/Investigation dated 29/30.05.2023 but when the order of cancellation of registration was issued on 22.02.2024 (Annexure 'P/11'), no reason for cancellation could be mentioned in the said letter. It would appear that a completely unreasoned order of cancellation was issued without any application of judicious mind to the documents provided by the petitioner. The petitioner applied for revocation of the order of cancellation.

14. It is submitted that even though the petitioner has not specifically challenged the order for cancellation of registration (Annexure 'P/11') but enough foundation of facts have been laid in the writ application which will be relied upon by the petitioner to demonstrate that not only the order of cancellation of registration has been passed without consideration of the materials available on the record, but even thereafter when the petitioner applied for revocation of the order of cancellation, the Assistant Commissioner, Saharsa did not consider those materials which were on the record. This is in addition to the fact that the documents on which he placed reliance were not supplied to the petitioner.

Submissions on behalf of the CGST & CX

15. The writ application has been opposed by Mr. Anshuman Singh, learned Senior Standing Counsel for the CGST & CX. Relying upon the averments made in the counter affidavit, learned Senior Standing Counsel submits that the registration of the petitioner has been rightly cancelled in terms of Section 29 (2) (e) of the CGST Act, 2017 with retrospective effect. It is submitted that so far as Annexure 'P/8' to the writ application is concerned, as per records available in the office, no records regarding receipt of documents is available. It is submitted that the firm in question was found non-existent at the principal place of business, Tiri, Sour Bazar, Saharsa. The petitioner had not filed any amendment pertaining to change in principal place of business on the GSTIN portal. It is submitted that two letters dated 30.05.2023 and 05.06.2023 which were sent to the petitioner for submission of documents were returned undelivered by the postal authorities.

16. Learned Senior Standing Counsel has justified the order (Annexure 'P/13') by which the application of the petitioner for revocation has been rejected.

<u>Consideration</u>

17. We have heard learned counsel for the parties and gone through the records. Challenge in this writ application is to Annexure 'P/13' which is the order of rejection of application for revocation of cancellation. The order is contained in one paragraph which we reproduce hereunder for a ready reference:-

> "1. During special All-India drive against fake GST registrations, M/s Bishnu Coal Briquette Industries, GSTIN 10AEJPV2939J2Z8, was assigned by DGARM, New Delhi, to carry out physical verification of principal place of business of M/s Bishnu Coal Briquette Industries, GSTIN 10AEJPV2939J2Z8, Legal Name Anil Kumar Verma, Tiri Saur Bazar, Saharsa, Bihar, PIN-852122 under Section 71 of the CGST Act 2017. During physical verification of the above address by officers of CGST, Saharsa Range on 17.05.2023 and again on 22.03.2024, it was found that at the address mentioned in the registration certificate above firm does not exist. A Panchnama was drawn in presence of the Mukhiya and the Sarpanch of the said village in this regard on both the occasions.
>
> M/s Bishnu Coal Briquette Industries neither mentioned any point regarding their Non-

existence in the address mentioned in registration certificate nor submitted any document in this regard, in their reply to the query raised in the portal."

18. It is evident on perusal of the records that this order rejecting the application of the petitioner has been passed on an application of the petitioner seeking revocation of the retrospective cancellation of the registration. It is, therefore, important to take note of the order of cancellation as contained in Annexure 'P/11'. The order for cancellation of registration reads as under:

> "**Order for Cancellation of Registration**
> This has reference to show cause notice issued dated 18/05/2023.
>
> The effective date of cancellation of your registration is 01/07/2017.
> 3. It may be noted that a registered person furnishing return under sub-section (1) of section 39 of the CGST Act, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.
> 4. You are required to furnish all your pending returns.
> 5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or

not such tax and other dues are determined before or after the date of cancellation."

19. On going through the pleadings available on the record, it appears that the show cause notice was issued to the petitioner vide Annexure 'P/4'. A perusal of the same would show that the Proper Officer had some information in his possession based on which he issued notice to show cause for the reason "1. Section 29(2)(e)-registration obtained by means of fraud, willful misstatement or suppression of facts." The petitioner was not only called upon to submit a reply to the notice within seven working days but was also given an opportunity to appear on 25.05.2023. It, however, appears that the date was extended for filing reply. The letters dated 29/30.05.2023 and 05.06.2023 which are said to have been issued by the Proper Officer are said to have been returned unserved, however, there is no denial of the receipt of letter dated 12.06.2023 (Annexure 'P/6') submitted by the petitioner in the office of the Superintendent, Central GST & CX.

20. Similarly, there is no denial of the receipt of Letter dated 12.06.2023 (Annexure 'P/7') whereby the petitioner had made available his Advocate's E-mail ID and the E-mail ID of the firm for further communication and information. Although receipt of the letter dated 20.06.2023 (Annexure 'P/8') has been denied by the respondents in paragraph ‘9’ of their counter affidavit, this Court finds that what has been stated in this paragraph is that “.. as per records available with this office, no records regarding receipt of documents is available..”. The counter affidavit has been sworn by the Assistant Commissioner, CGST & CX, however, the letter (Annexure ‘P/8’) seems to have been submitted in the office of the Superintendent, Central GST & CX, Gandhi Path Range, Saharsa. In the opinion of this Court, the response in the counter affidavit with regard to submission of the letter (Annexure ‘P/8’) and the documents mentioned therein are completely vague. There is no statement that the documents were not submitted in the office of the Superintendent, CGST & CX. We would take it as a half-hearted reply.

21. We have also noticed that even though the Proper Officer accepts that a reply was submitted by the petitioner and the same has been discussed in the counter affidavit, no discussion takes place either in the order of cancellation of registration or in the order by which the application for revocation of cancellation of registration has been rejected by the Proper Officer.

22. We further find that during pendency of the application for revocation, the Proper Officer had conducted an inspection on 22.03.2024 but no notice of such inspection was given to the petitioner. The Proper Officer has relied upon a 'Panchnama' drawn in the presence of the Mukhiya and the 'Sarpanch' but those were also not supplied to the petitioner at the stage of passing of the order dated 30.04.2024 (Annexure P/13').

23. In the Demand-cum-Show Cause Notice (Annexure 'P/14'), the Proper Officer has stated not only about the non-existence of the firm at Tiri, Saur Bazar, Saharsa, the Proper Officer has gone on to the extent of recording that the petitioner was engaged in generating fake invoices without actual receipt of goods to pass on fake ITC. The Proper Officer also mentions about the examination of returns of the noticee for the financial years 2017-18 to 2023-24 and based on such examination, findings have been recorded with regard to availment of fake ITC.

24. This Court finds that these were not the reasons mentioned in the show cause notice issued to the petitioner. If at all these reasons were to be considered to justify cancellation of registration with retrospective effect, the respondent authorities were required to issue these additional grounds giving an opportunity to the petitioner to submit his response which has not been done in the present case. In fact, from Annexure 'P/14' itself, it appears that for the first time, the copy of 'Panchnama' and the visit note were made available to the petitioner with this demand-cum-show cause notice.

25. In the light of the discussions made hereinabove, we are of the considered opinion that the application of the petitioner seeking revocation of cancellation is required to be considered afresh.

26. We set aside the order dated 30.04.2024 (Annexure 'P/13') and remand the matter to the Assistant Commissioner, Central GST & CX (Respondent No. 4) for taking a fresh plea of the matter. It will be open for the petitioner as well as the respondents to take such appropriate step/steps which may be required in the present proceeding in accordance with law.

27. Till fresh decision is taken, the Demand-cum-Show Cause Notice as contained in Annexure 'P/14' shall be kept in abeyance.

28. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	26.08.2025
Transmission Date	