IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.203 of 2025

M/s Medicana a Proprietorship firm having GSTIN- 10APMPS2534L2ZQ and its office at Jay Kamala Plaza, East Boring Canal Road, Patna, P.S. Buddha Colony, Dist.- Patna, Bihar, 800001 through its proprietor, Poonam Singh, Gender- Female, aged about 65 years, Wife of Sri Umesh Prasad, Resident of Mohalla- Bihari Kunj, Makhania Kuan, Arya Kumar Road, P.S.- Pirbahore, District- Patna, Bihar- 800004.

.. ... Petitioner/s

Versus

1. Union of India through The Secretary (Revenue), Ministry of Finance, Government of India North Block, New Delhi- 110001.
2. The Commissioner, Central Goods and Service Tax, Patna- 1, 3rd Floor, Kendriya Rajaswa Bhawan (Annexe Building), Bir Chand Patel Path, Patna- 800001.
3. The Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
4. The Commissioner of Central GST, Patna, Bihar.
5. The Superintendent, Central Goods and Service Tax, Patna Central-1, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bijay Kumar Gupta, Adv.
	:	Mr. Manish Kumar, Adv.
For the U.O.I.	:	Mr. Dr. K. N. Sinha, Sr. Adv., A.S.G.
	:	Mr. Anshuman Singh, Adv.
For the State of Bihar	:	Mr. Vivek Prasad, G.P. 7

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 02-05-2025

In the instant petition petitioner has prayed for the following reliefs:-

> "(i) the Show Cause Notice dated 13.11.2023 vide Reference No: ZA101123031229A (as contained in Annexure-P1) in form of REG-17/31 issued by the Respondent No.-5 for Cancellation of GST Registration be quashed.
>
> (ii) The Ex parte order For Cancellation of GST Registration dated 15.12.2023 vide Reference No: ZA1012230354472 (as contained in Annexure-P2) passed by the Respondent No-5 Cancelling GST registration of the Petitioner **by non-speaking order** stating " **This has reference to show cause notice issued dated 13/11/2023. The effective date of cancellation of your registration is 13/11/2023** and without providing sufficient opportunity of hearing in violation of principles of natural justice be quashed.
>
> (iii) For directing the Respondents to restore the GST Registration of the Petitioner with immediate effects as the **Petitioner has already filed GST returns properly up to Nov, 2023** and appropriate taxes had also been paid along with late fee and for the remaining period from December, 2023 onwards, Petitioner was not able to upload

> monthly returns as the GST portal is not allowing filing of return further due to cancellation of his GST Registration w.e.f. 13.11.2023.
>
> (iv) For granting any other relief(s) to which the Petitioner is otherwise found entitled to in accordance with law."

2. Petitioner is a proprietor of M/s MEDICANA which is registered firm under the **GST Act, 2017** having GSTIN No. since July 2017. It is into the business of selling retail medicines and its principal place of business is at Jay Kamala Plaza, East Boring Canal Road, Patna. Petitioner has not filed his return. Resultantly, the official respondents proceeded to issue show cause notice for cancellation of registration on 13.11.2023 which is stated to have been uploaded on portal. Since there was no response from the petitioner the official respondent proceeded to cancel the registration by order dated 15.12.2023. The petitioner is stated to have filed belated application for revocation of cancellation of registration under **Section 30 of CGST Act, 2017.** The same was

not materialized resultantly he has invoked the remedy before this Court without exhausting statutory remedy under Section 107 of **CGST Act, 2017** before the commissioner of appeal. Hence the present writ petition.

3. Learned counsel for the petitioner submitted that petitioner did not exhaust statutory remedy of appeal under **Section 107 of CGST Act, 2017** on the issue that show cause notice was not communicated to the petitioner. It was only uploaded in portal. Further there are defects in the show cause notice to the effect that petitioner was required to furnish his reply to the notice within 30 days from the date of service of notice. Notice is dated 13.11.2023 and it has not been served on the petitioner other than uploaded in portal. Assuming that it was uploaded on 13.11.2023, 30 days lapses on 12.12.2023. Therefore, notice cannot indicate for personal appearance of the petitioner on 11.12.2023 at 11:00 A.M. It was further pointed out that if the petitioner failed to furnish reply within stipulated date or

failed to appear for personal hearing on the appointed date and time the case will be decided *ex-parte* on the basis of available records and on merits. In the order of cancellation of registration there is no *iota* of material insofar as taking note of available records and on merits. There is not even reference to the date of communication of notice dated 13.11.2023 to the extent on what date it was uploaded in the portal. Further petitioner failed to submit his reply to the show cause notice and so also failed to appear before the concerned authority on the date fixed on 11.12.2023.

4. In support of the non speaking order, petitioner relied on Annexure P/4, P7, P8. Having regard to the fact that the aforementioned defects are forthcoming in the impugned show cause notice and order of cancellation of registration, the petitioner need not to be relegated to the appellant authority under Section 107. Having regard to the fact that there is a violation of principles of natural justice he need not exhaust statutory remedy of appeal

before the appellate authority in the light of **M/s Godrej Sara Lee Ltd. vs. the Excise and Taxation Officer-cum-Assessing Authority and Ors.** reported in **2023 SCC OnLine SC 95.**

5. It is further submitted that impugned action of the respondent violates article 19(1)(g) of Constitution. In support of the same, he relied on Division Bench decision of the Bombay High Court in the case of **Rohit Enterprises vs. the commissioner and others** vide annexure P/6 (para 9). It is also submitted that official respondents are exercising quasi judicial function under Section 29. In that event they are bound by certain principles laid down by the Hon'ble Supreme Court in the case of **M/s. Kranti Associates Pvt. Ltd. & Anr. v. Masood Ahmed Khan & Ors**, reported in (**2010) 9 SCC 496**. Para 47

6. The learned counsel for the petitioner submitted that in this backdrop he proceeded to file returns belatedly, the same was not accepted by the

system only on the score of delay. On this counts, the impugned action of the respondents are liable to be set aside and writ petition is to be allowed.

7. Per contra learned counsel for the respondent resisted the aforementioned contentions and submitted that show cause notice dated 13.11.2023 was uploaded in the portal, therefore, it was bounden duty of the petitioner to draw an inference that he had the knowledge and he failed to submit his reply and so also he has failed to appear on 11.12.2023 at 11:00 AM. Resultantly, order of cancellation of registration has been passed.

8. Learned counsel for the respondent submitted that writ petition could be dismissed on the ground of delay since petitioner has not exhausted the remedy of appeal under Section 107. In support of said contention he relied on co-ordinate bench decision passed in C.W.J.C. No. 82 of 2023 decided on 28.04.2023 and its affirmation by the Hon'ble Supreme Court on 04.08.2023 in Special Leave to Appeal (C) No. (S) 15594 of 2023.

9. Having regard to the conduct of the petitioner, he did not open his eyes as and when cause of action accrued to the petitioner insofar as filing of return within stipulated period. He cannot take undue advantage of approaching in assailing the show cause notice and order.

10. Heard the learned counsel for the respective parties undisputed facts are that the petitioner is a dealer in selling of retail medicines and he has registration of GST since July, 2017. He has failed to furnish returns in the year 2023, resulted in issuance of show cause notice on 13.11.2023 and followed by order for cancellation of registration on 15.12.2023. It is necessary to reproduce both show cause notice for cancellation of registration and order of cancellation of registration. They are as under:-

" **Show Cause Notice for Cancellation of Registration**

> Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:
>
> 1. returns furnished by you under section 39

of the Central Goods and Services Tax Act,2017

Observations

Failure to furnish returns for a continuous period of six months

You are hereby directed to furnish a reply to the notice within thirty days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 11/12/2023 at 11:00

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 13/11/2023"

" Order for Cancellation Of Registration

This has reference to show cause notice issued dated 13/11/2023.

The effective date of cancellation of your registration is 13/11/2023.

> 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 GSTAR-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."

Perusal of the aforementioned documents, it is evident that show cause notice dated 13.11.2023 was uploaded in portal. It has a civil consequences in taking away certain rights with reference to Article 19(1)(g) of the Constitution. Therefore, it was duty on the part of the official respondent in communicating the show cause notice in more than one mode. The same has not been exercised by the concerned authority, that apart there are defects in the show cause notice to the extent that petitioner was asked to submit his reply within 30 days from the date of service of the notice dated 13.11.2023, assuming that 13.11.2023 notice was uploaded in the portal on 13.11.2023 itself, 30 days lapses on 12.12.2023. On the other hand, petitioner was asked to appear before the author of the show cause notice on 11.12.2023 at 11:00 AM. Therefore, there is no breathing time insofar as appearance after service of notice. Further, it is to be notice that it has been uploaded only in portal. Notice should have been communicated through registered post under acknowledgment, having regard to the fact that it has a civil consequences to the petitioner. Order for cancellation of registration dated 15.12.2023 is a dearth of material information and on merits, for the reasons that in the show cause notice dated 13.11.2023 the author of the notice has indicated as under

> "if you failed to a furnish reply within stipulated date or failed to appear for personal hearing on the appointed date and time, the case will be decided ex-parte on the basis of available records and on merits".

The ingredient of available records and on merits or not forthcoming in the order for cancellation of registration. It is to be noted in the order for cancellation of registration there is not even write up that the petitioner has failed to avail submission of his reply to the show cause notice and so also failed to appear in person on 11.12.2023. On this count, the order for cancellation of registration is dearth of material information and it is not a speaking order. It is to be noted that order for cancellation of registration is while invoking Section 29 of **CGST Act, 2017** which is quasi judicial function exercised by the Superintendent, Patna Central. In such circumstances, he was bounden duty to follow the principle laid down by the Hon'ble

Supreme Court in the case of **M/s. Kranti Associates Pvt. Ltd. & Anr. v. Masood Ahmed Khan & Ors, reported in (2010) 9 SCC 496**. Para 47 reads as under:-

> "**47.** Summarising the above discussion, this Court holds:
>
> (*a*) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (*b*) A quasi-judicial authority must record reasons in support of its conclusions.
>
> (*c*) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> (*d*) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> (*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
>
> (*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
>
> (*g*) Reasons facilitate the process of

judicial review by superior courts.

(*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(*m*) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37] .)

(*n*) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija* v. *Spain* [(1994) 19 EHRR 553] EHRR, at 562 para 29 and *Anya* v. *University of Oxford* [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(*o*) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

12. The learned counsel for the petitioner relied on Annexure P/4, P/7 and P/8 on the issue of non speaking order insofar as cancellation of registration which is aptly applicable to the case in hand.

13. The learned counsel for the respondent submitted that having regard to the conduct of the petitioner in not approaching the appellate authority and approaching this Court in the year 2024, he has slept over his right, on this issue he relied on decision in the case of Ms. Vishwananth Traders **(supra)**. The aforementioned decision is not applicable to the case in hand for the reasons that the **Vishwanath Traders** case is considered that petitioner therein had invoked a remedy under Section 107 insofar as filing belated memorandum of appeal, whereas in the present case petitioner has not invoked remedy under **Section 107 of CGST Act, 2017,** obviously for the reasons that impugned show cause notice and cancellation of registration order is in violation of principle of natural justice. Under what circumstances Writ Court can by pass the statutory remedy of appeal by the concerned aggrieved person has been explained in detail in case of **Godrej (supra).** One of the principle is violation of

principle of natural justice. Therefore, the petitioner need not exhaust remedy of appeal before the appellate authority under Section 107. It is to be noted that violation of principle of natural justice would go to the root of the matter. That apart, cancellation of registration has a civil consequences including violation of Article 19(1)(g) of the Constitution. On this issue, the Hon'ble supreme Court insofar as blacklisting contractor for 10 years it was noticed that there would be a violation of Article 19(1)(g) insofar as taking away his right to participate in public contract. Taking note of this principle, the petitioner has made out a case so as to interfere with the impugned show cause notice and order dated 13.11.2023 and 15.12.2023. They are set aside while restoring the registration of the petitioner. The concerned authority is hereby directed to accept belated returns in the interest of revenue and proceed to complete the formalities on receipt of returns. The above exercise shall be completed within a period of three months from the date of receipt of this order.

14. The present C.W.J.C. No. 203 of 2025 stands allowed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Nirajkrs/Prabhakar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2025
Transmission Date	NA