(2022) 12 PAT CK 0061

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17569 Of 2022

M/S Kamlakshi Travels — APPELLANT

Vs

State Of Bihar — RESPONDENT

Date of Decision : 16-12-2022

Acts Referred:
Bihar Goods and Services Tax Act, 2017 — Section 29

Citation : (2022) 12 PAT CK 0061

Hon'ble Judges : Sanjay Karol, CJ;Partha Sarthy, J

Bench : Division Bench

Advocate : Alok Kumar, Vivek Prasad

Final Decision : Disposed Of

Judgement

Petitioner has prayed for the following relief(s):-

"(i) For issuance of appropriate writ or order for quashing of order dated 24.11.2022 issued vide Memo No. 2077 dated 24.11.2022 passed by the Additional Commissioner, State Tax (Appeals), Patna West Division, Patna whereby the application filed for Revocation of order of cancellation bearing Appeal Case No. GST/PS-71/2022-23 has been rejected;

(ii) For issuance of appropriate writ or order for quashing of ex-parte order dated 12.02.2021 passed by the Joint Commissioner of State Tax, Patna South Circle, Patna whereby the Registration granted under the GST Act, 2017 of the Petitioner has been cancelled without giving proper opportunity of fling reply and without giving opportunity of hearing

(iii) For a direction to the Respondent No. 3 to restore the registration granted under GST Act, 2017 of the petitioner firm whereby the registration of the petitioner firm was cancelled by an ex-parte order

(iv) For a direction to the Respondents for de-freezing de-attaching of the Bank Account of the petitioner firm attached by the Respondents

(v) For further issuance of a direction restraining the Respondent No. 3 from taking any coercive action for recovery of the amount in demand during pendency of the present writ petition

(vi) For grant of any relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case."

Vide order dated 12/02/2021 (Page 11 to the brief), the Joint Commissioner of State Tax, Patna South Circle, Patna has cancelled the petitioner's registration under the provision of Section 29 of the Bihar Goods and Services Tax Act, 2017. Prior thereto, no notice to show cause was issued to which the petitioner could respond. The order is extracted in toto as under:-

"Reference Number: ZA100221031238E

Date: 12/02/2021

To

SUNIT KUNAL

raghunath tola, gardani bagh, patna, Patna, Bihar, 800002 GSTIN/UIN: 10DNJPK1038KIZ8

Application Reference No. (ARN): AA1001210466041

Date: 29/01/2021

Order for Cancellation of Registration

This has reference to your reply dated 07/02/2021 in response to the notice to show cause dated 29/01/2021

Whereas no reply to notice to show cause has been submitted; Whereas on the day fixed for hearing you did not appear;

The effective date of cancellation of your registration is 29/01/2021

Determination of amount payable pursuant to cancellation: Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before 22/02/2021 failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head

Central Tax

State Tax.UT Tax

Integrated Tax

Cess

Tax

0

0

0

0

Interest

0

0

0

0

Penalty

0

0

0

0

Others

0

0

0

0

Total

0.0

0.0

0.0

0.0

Place: Bihar

Date: 12/02/2021

Ashok Chand Srivastava

Joint Commissioner of State Tax

Patna South”

It cannot be disputed that with the passing of the said order, petitioner is liable to both civil and penal consequences. To say the least, the authority ought to have at least referred to the contents of the show cause and the response thereto, which was not done. Not only the order is non-speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom. Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences.

Record, as made available, reveals that the petitioner had applied for registration which request was favourably considered by the authorities under the Act with a specific registration number allotted to the petitioner. After Covid-19 Pandemic, petitioner’s firm started work. In the peculiar facts and circumstances, the authority ought to have condoned the delay which unfortunately was not done, despite the petitioner having made a fervent request for condonation of delay in accepting the return, preventing cancellation of registration.

Hence, for all the aforesaid reasons, the order dated 12/02/2021 passed by the respondent no.3, namely the Joint Commissioner of State Tax, Patna South Circle, Patna is quashed with the petitioner’s registration restored, with a further direction to the respondent no. 1, namely The Commissioner, Department of State Taxes, Government of Bihar, Patna to finalize the petitioner’s assessment and/or pass appropriate orders, in accordance with law.

We reiterate that issue of delay in filing the returns shall remain closed and not raised again as is stated by Sri Vivek Prasad, learned G.P. 7, appearing for the respondents.

The writ petition stands allowed in the above terms.

Interlocutory Application, if any, shall stand disposed of.