



आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),



केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN NO. : 20211064SW0000333C44

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2159/2021-APPEAL / 3925 70 3931

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC-27/2021-22**

दिनांक Date : **26-10-2021** जारी करने की तारीख Date of Issue : 26-10-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZA240120084248V** dated **24-01-2020** issued by Superintendent, Central Goods and Service Tax, Range-IV, Siddhpur, Division-Palanpur, Gandhinagar

घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

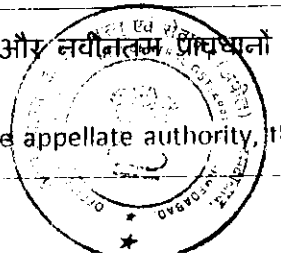
Shri Mohamed Asif AbdulKadir Sayed

[M/s AK Infra]

8-13-34, 35, First, Samarthya Complex,

Highway Road, Siddhpur, Patan, Gujarat-384151

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL

Shri Mohamed Asif Abdulkadir Sayed (Trade name M/s. AK Infra) ,8-13-34, 35, First Samarthiya Complex, Highway Road, Sidhpur, Patan, Gujarat, 38415 (hereinafter referred to as '**appellant**') has filed present appeal against Order bearing reference No. ZA240120084248V dated 24.01.2020 for cancellation of Registration (hereinafter referred to as '**impugned order**'), issued by, Superintendent, Range-IV, Division-Palanpur, Gandhinagar, Commissionerate- (hereinafter referred to as '**adjudicating authority**').

2. The brief facts of the case are that the appellant was registered under GST having registration number 24CUAPS6233H1ZN. They were issued with a show cause notice dated 07/01/2020 asking as to why their registration should not be cancelled for not filing returns for a continuous period of six months. Subsequently, vide the impugned order, their GST Registration was cancelled w.e.f. 24.01.2020 under Section 29(2) of the CGST Act, 2017, as the appellant failed to file monthly/quarterly returns for a continuous period of six months.
3. Being aggrieved, the appellant filed the present appeal against the impugned order submitting that they have filed GSTR upto January, 2020 and that due to lockdown, certain financial difficulties and crisis unable to pay the outstanding liabilities within due dates, they could not file the GST returns from February 2020 onwards.
4. Personal hearing in the matter was held on 22.10.2021 through virtual mode. Shri Punit Prajapati and CA Nisarg Jhadakia attended the hearing. He reiterated the grounds of appeal memorandum and requested to consider the same.
5. I have gone through the records of the case, the impugned order, and the grounds of appeal as well as oral submission of the appellant. I find that the main issue to be decided in the instant case are (i) whether the appeal has been filed within the prescribed time- limit and (ii) whether the appeal filed against the order of cancellation of registration can be considered and eligible for revocation by the proper officer.
6. Accordingly, first I take up the issue of filing the appeal within the prescribed time limit and it is imperative that the statutory provisions be gone through, which are reproduced, below:

SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.



(2)

(3)

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a **further period of one month.**

6.1. I observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.

6.2 In the above context, I find that in terms of the Hon'ble Supreme Court judgment dated 23.03.2020, wherein the Apex Court taking suomotu cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020 till further orders. Further, the Hon'ble Supreme Court vide order dated 27.04.2021 has restored the order dated 23rd March 2020 thereby directing that the period(s) of limitations, as prescribed under any General or Special Laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders from 15.03.2020.

6.3 Further, I also find that the CBIC, New Delhi has issued clarification vide Circular No. 157/13/2021-GST dated 20.07.2021 as under:-

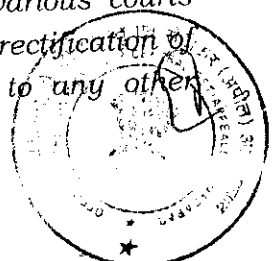
"4. On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows: -

(a)

(b)

(c) Appeals by taxpayers/ tax authorities against any quasi-judicial order:-
Wherever any appeal is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws."



In view of above, I am inclined to condone the delay of filing of appeal in the present case and proceed to decide the case on merits.

7. Now, as regards the merits of the present appeal, I find that the provisions for revocation of cancellation of registration where the same is cancelled by the proper officer on his own motion are contained in Section 30 of the CGST Act and Rule 23 of the CGST Rules, 2017. Therefore, I find it pertinent to refer Section 30 and Rule 23 as under;

Section 30: Revocation of cancellation of registration.

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

(*) [Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,]

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).]

(*) *Substituted for the proviso – ["Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31.03.2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22.07.2019]] (which was Inserted vide Order No. 05/2019-GST dated 23.04.2020)] by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.*

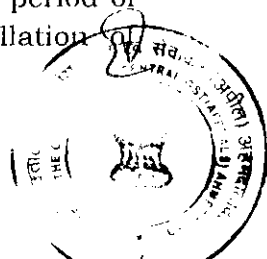
(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

RULE 23. Revocation of cancellation of registration :-

(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation



registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.

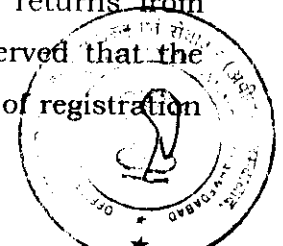
(2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM-GST-REG-24.

(4) Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

7.1 In terms of the provisions of the Section 30 of CGST Act, 2017, I find that the appellant may file an application for revocation of cancellation of registration before the proper officer subject to fulfillment of certain conditions. I also find that the Appellant himself had admitted that he had not filed any such application for revocation of cancellation registration before the proper officer. The Appellant had submitted that that due to lockdown, certain financial difficulties and crisis unable to pay the outstanding liabilities within due dates, they could not file the GST returns from September-2020 onwards, he could not apply for revocation. It is observed that the appellant had skipped intermediate remedy of revocation of cancellation of registration



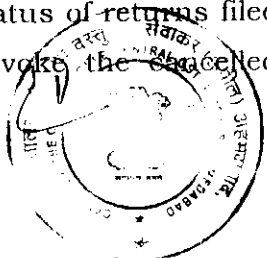
and the time limit for availing such remedy is also over. I take note of the fact that when time for applying for revocation of cancellation of registration is over, the Appellant is left with no other option but to prefer an appeal against the impugned order before the Appellate Authority. It is pertinent to observe that the tax payers, whose registration were cancelled and could not file any application for revocation of cancellation within the time limit of 90 days prescribed for the same, who had approached the GST Help Desk in this regard, has been advised to file appeal against the cancellation order. Further, as per Section 107(1) of the CGST Act any aggrieved person by any decision or order passed under the CGST Act by an adjudicating authority may appeal to the Appellate Authority within stipulated period of three months.

7.2. On perusal of Rule 23(1) read with the first proviso to the said rule, I find that any application for revocation of cancellation of registration where registration has been cancelled for the failure of the registered person to furnish such returns, is to be filed only after such returns (upto the effective date of cancellation of registration) are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns. In the present case, I find that appellant has submitted that they have already filed returns upto tax period January 2020 i.e. upto effective date of cancellation as 24.01.2020. Further, I also find that the third proviso to Rule 23(1) of the CGST Rules, 2017 also mandates as below:

"Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration."

7.3 Further, I also find that no other allegation or charges framed against the Appellant except non-filing of returns for which his registration is cancelled. In the present case, I find that the appellant has now filed returns upto date of cancellation of registration and accordingly substantially complied with the above said provisions. Therefore, I am of the opinion that the cancellation of registration of appellant may be considered for revocation by the proper officer subject to due compliance of the conditions by the appellant under Rule 23(1) of CGST Rules, 2017.

7.4 The appellant is impressed upon to furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration. Needless to say, payment particulars (including tax liability, interest, penalty & late fee etc.) and the status of returns filed may be verified by the concerned authority having power to revoke the cancelled

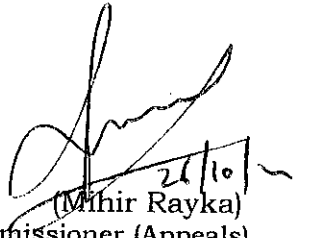


registration. Thus, the appeal filed by the appellant is allowed in above terms.


8. In view of the above, I allow the appeal of the appellant and order the proper officer to consider the request of the appellant for revocation of the cancellation of registration, after due verification of the returns stated as submitted as mentioned in the foregoing paras and the payment particulars of pending dues towards tax, penalty, late fee, interest etc.

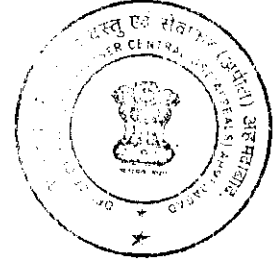
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)
Joint Commissioner (Appeals)
Date: .10.2021

Attested


(H. S. Meena)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,
Shri Mohamed Asif AbdulKadir Sayed (Trade name M/s. AK Infra)
,8-13-34, 35, First Samarthiya Complex, Highway Road,
Sidhpur, Patan, Gujarat, 38415

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Commissionerate- Gandhinagar
4. The Superintendent, CGST & C.Ex, Range-IV, Division - Palanpur, Gandhinagar Commissionerate
5. The Assistant Commissioner, CGST & C.Ex, Division-Palanpur, Gandhinagar Commissionerate-
6. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate-.
7. Guard File.
8. P.A. File