



सत्यमेव जयते

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

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 07926305065- टेलीफैक्स 07926305136



DIN NO. : 20211264SW00005505F3

15030 TO 5036

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2507/2021

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC-30/2021-22**

दिनांक Date : **13-12-2021** जारी करने की तारीख Date of Issue : 13-12-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

Arising out of Order-in-Original No **ZA240120008073I** dated **02-01-2020** issued by Superintendent, Central Goods and Service Tax, Range-II, Division-Palanpur, Gandhinagar

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

M/s Nirav Enterprise
[Shri Niravbhai Tribhovanbhai Soni]
First Floor, Shop No. 41,
Aroma Arcade, Near Cosy Tower,
Palanpur, Banaskantha, Gujarat-385001

(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

M/S. Niravbhai Tribhovanbhai Soni, Shop No.41, I Floor, Aroma Arcade, Near Cosy Tower, Palanpur, Banaskantha, Gujarat 385 001 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 12-11-2021 against Order No.ZA240120008073 [dated 2-1-2020 (hereinafter referred to as 'the impugned Order') passed by the Superintendent, AR II (Ambaji), Division Palanpur (hereinafter referred to as the 'adjudicating authority').

2. The brief facts of the case are that the appellant is registered under GST Registration No.24BVVPS2075Q1ZI. The appellant was issued show cause notice dated 23-12-2019 for cancellation of their registration for the reason that the appellant has not filed returns for a continuous period of six months. The show cause notice was decided by the adjudicating authority vide impugned Order wherein the adjudicating authority has cancelled their GST registration with effect from 2-1-2020 on the reasons of FAILURE TO FILE SIX MONTHLY RETURNS :

3. Being aggrieved the appellant filed the present appeal on the ground that with regard to delay in response to the notice because of the medical sickness and fitness of their GST consultant, appropriate response to the notice served to them within the prescribed time limit ; that the Department has taken the ex-parte decision to cancel the GST registration on the reason that they had complied and filed all the returns liable to file under GST Act on 16-11-2019 during the defaulted period. Even though they had filed all the relevant returns the Department had categorized them under defaulter category and issued show cause notice which was almost 37 days after they complied their irregularity of the return ; that they fail to figure out that even through filing of all backlog of returns of GST 37 before notice how can they be subject to defaulter within the meaning of provisions of GST Act and their GST number can be cancelled on those grounds ; that they agree that there was delay in reply to the SCN due to medical grounds of their advocate consultant ; that failure on his part has led to cancellation of their number, ; that due to non availability of any of the options they had filed an online appeal against the cancellation order ; that they had filed all relevant self attested documents in soft scanned copies. In view of above, they requested that they are facing much difficulties with their routine business due to non activation of the GSTN and hence requested to re-tract the order of cancellation of GST number.

4. Personal hearing was held on dated 8-12-2021. Shri Darshil Shah, Authorized representative appeared on behalf of the appellant on virtual mode. They have nothing more to add to their written submission till date.

5. I have carefully gone through the facts of the case, grounds of appeal and submissions made by the appellant. I find that the present appeal was filed seeking relief for filing application for revocation of cancellation of the registration. It is observed from the records that post cancellation of their registration the assessee has not filed any application for revocation of

cancellation of their registration within the prescribed time period and hence sought relief in appeal proceedings.

6. Before proceeding on the merits of the case I find that the impugned order was communicated to the appellant on dated 2-1-2020 and the appeal was filed on dated 12-11-2021 ie after 22 months' period. As per Section 107 of CGST Act, 2017, the time limit for filing appeal was prescribed as three months from the date of communication of the Order, which is extendable for further period of one-month subject to showing sufficient cause. Thus, the present appeal was filed beyond the time limit prescribed under Section 107 of the Act. However, I find that Hon'ble Supreme Court's vide its judgment dated 23-3-2020, taking suo motu cognizance of the situation arising due to Covid 19 pandemic, has extended the period of limitation prescribed under the Law with effect from 15-3-2020 till further Orders. Subsequently vide Order dated 27-4-2021, Hon'ble Supreme Court has restored the Order dated 23-3-2020 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 15-3-2020. In pursuance to said decision, CBIC vide Circular No.157/13/2021-GST dated 20-7-2021 has also clarified that *appeals by tax payers/tax authorities against any quasi judicial order, whether 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 proceedings for revision or rectification of any order is required to be undertaken, the time limit for the same would stand extended as per the Hon'ble Supreme Court's Order. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27-4-2021 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 proceedings 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 decision and clarification I find that since the time limit for filing appeal in this case falls after 15-3-2020 the present appeal is not hit by limitation factor prescribed under Section 107 of CGST Act, 2017.

7. I find that in this case, the registration of the appellant was cancelled due to non filing of six monthly returns under Section 29 (2) of CGST Act, 2017. In such cases provision for revocation of cancellation is provided under Rule 23 of CGST Rules, 2017 as under :

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 of 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.

8. In view of above in case of cancellation of registration due to non filing of returns the registered person need to file an application with appropriate authority after filing the return and paying applicable tax dues, interest, penalty and late fee. In the subject case the appellant has not filed any application for revocation of cancellation of their registration either within the stipulated time limit prescribed under Rule 23 of CGST Rules, 2017 or within the extended time period granted vide Circular No. 158/14/2021-GST dated 6th September, 2021. However, for compliance to proviso to Rule 23 of Rules, I have verified GST portal and find that the appellant has filed GSTR3B return till the month of January 2020 and quarterly GSTR1 return till the month of January 2020. Further the appellant has also submitted challan for Rs.193130/- towards payment of tax.

8. In view above, I find that since the appellant has sought relief in appeal for restoration of their registration after complying with the requirement prescribed under proviso to Rule 23 of CGST Rules, 2017, I find it just and fair to allow this appeal. Needless to say any request for revocation of cancellation of registration may be considered by the appropriate authority subject to payment of all dues and in accordance with provisions of Act, Rules and instructions in force. Accordingly I allow the appeal filed by the appellant.

अपील कर्थाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


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


(Mihir Rayka)

Joint Commissioner (Appeals)

Date :

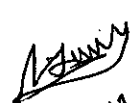
Attested


(Har Sahai Meena)
Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,

M/S. Niravbhai Tribhovanbhai Soni,
Shop No.41, I Floor, Aroma Arcade,
Near Cosy Tower,
Palanpur,
Banaskantha, Gujarat 385 001

O/C


निपटारा दिनांक 15/11/21
9898982135

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division I Palanpur, Gandhinagar
- 5) The Superintendent, CGST, Range Ambaji, Division I, Palanpur, Gandhinagar
- 6) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 7) Guard File
- 8) PA file