



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. : 20220364SW0000717211

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1007/2021

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-40/2021-22**
दिनांक Date : **02-03-2022** जारी करने की तारीख Date of Issue : 02-03-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

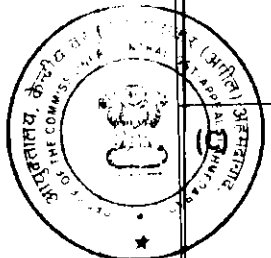
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZA240421189071W** dated **28-04-2021**
issued by Assistant Commissioner, Central Goods and Service Tax,
Division-Palanpur, Gandhinagar

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

M/s Zale Trading Pvt Ltd
Godown No. 5B, Umesh Godown,
Nr. Satyam Vaghel Bridge, Vaghel Road,
Harij, Patan, Gujarat-384240

(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.
	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. Zale Trading Pvt. Ltd., Godown No. 5B, Umesh Godwn, Harji, Near Satyam Vaghel Bridge, Vaghel Road, Patan, Gujarat, 384240 (hereinafter referred as '**appellant**') has filed present appeal against Order bearing reference No. ZA240421189071W dated 28.04.2021 for cancellation of Registration (hereinafter referred to as '**impugned order**'), issued by Assistant Commissioner, CGST, Palanpur, Gandhinagar, Commissionerate- (hereinafter referred to as '**adjudicating authority**').

2. The brief facts of the case are that the appellant is registered under GST having registration number 24AABCZ2171M1Z5. They were issued with a show cause notice dated 07/03/2021 by jurisdictional range Superintendent. The SCN was adjudicated by the range superintendent and cancelled the registration vide OIO reference No. ZA240321153789F dated 16.03.2021 with the reason that attachments has not been received by range office till date, hence registration is cancelled.

3. Being aggrieved with the order reference dated 16.03.2021 the appellant filed revocation application to the Assistant Commissioner CGST, Palanpur. The Assistant Commissioner, CGST, Palanpur issued show cause notice reference No. ZA240421126320C dated 12.04.2021 alleging that it is learnt that Search was conducted at the premises by CGST Gandhinagar and it was found that the firm is Non-Operational & no business activity was carried out at their premises; the SCN dated 12.04.2021 was adjudicated by the Assistant Commissioner, Central GST, Palanpur vide reference No. ZA240421189071W dated 28.04.2021 and rejected the application for revocation of cancelled registration as per Rule 23(2)(b) of CGST Rules, 2017 as firm is non-operational.

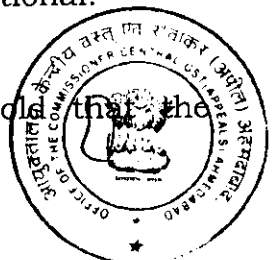
Submissions and Defense Reply

4. Being aggrieved with the order dated 28.04.2021 issued by the Assistant Commissioner, CGST, Palanpur, the appellant filed the appeal on 27.05.2021; the ground of appeal filed by the appellant are summarized as given below:-

4.1 that at the outset, the impugned Order rejecting the revocation application under Rule 23(2)(b) of the CGST Rules on the ground that the Appellant is not operational is ex-facie untenable and unsustainable.

4.2 Further, it has been submitted that the application for revocation of cancellation of registration filed by the appellant could not have been rejected in terms of Rule 23(2)(b) of the CGST Rules on the ground of no-operational.

4.3 That the Assistant Commissioner, while purporting to hold that the



Appellant is non-operational, purported to rely upon the search proceeding conducted by the Preventive Section, CGST Gandhinagar. Admittedly, nothing has been brought on record by the Assistant Commissioner which could establish that the Appellant was non-operational.

4.4 Further it has been submitted that no evidences and/or material which was obtained by the Preventive Section is made available to the Appellant or placed on record to support the purported finding that the Appellant was non-operational.

4.5 Further it has been submitted that, no material was available during the search conducted by the Preventive Section, to allege that the Appellant was non-operational and not carrying on its business.

4.6 In the Show cause notice also issued by the Assistant Commissioner, no evidence /material was produced to show that the Appellant was non-operational; further, the impugned order suffers from the vice of non-application of mind and without considering the documentary evidence produced by the Appellant.

4.7 That the Assistant Commissioner, without considering the reply filed by the Appellant and documentary evidence produced therein, held that the Appellant had filed the reply to show cause notice without any documentary evidence. The said finding is contrary to the records. The Appellant had produced all the relevant material to prove that the Applicant was operational.

4.8 Further it has been submitted that in any event, the Appellant has been carrying on business, since, past 3 years. No allegation of non-operational was raised by the Department during the said 3 years. The Appellant carve leaves to refer upon the documents in support at the time of hearing.

4.9 That the Appellant was duly registered under Gujarat Value Added Tax Act(GVAT Act) and CST. The Appellant, after implementation of GST had migrated from the said GVAT and CST and obtained registration under the GST Act.

4.10 The Appellant has been discharging its liability as per returns filed under the respective Acts. The Department including the GST Department has time to time accepted the tax liabilities discharged by the Appellant.



4.11 The aforesaid returns filed by the Appellant under the aforesaid Acts were duly produced before the Assistant Commissioner along with reply. However, totally ignoring the said return, the Assistant Commissioner concluded that the no document evidence was produced by the Appellant.

4.12 It is submitted that once, CGST department has accepted the taxes paid by the Appellant, it is not open for the department to now allege that it is no-operational. The GST department cannot take different stand at different occasions.

4.13 Further, in the impugned order, the Assistant Commissioner wrongly held that the Appellant appeared to be utilising fake input tax credit.

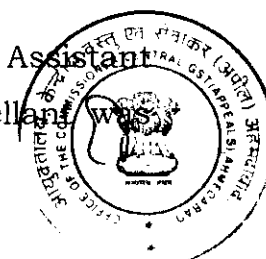
4.14 Further, the Appellant had produced returns filed under the Income Tax Act, Bank statements, and rent agreement to establish that the Appellant was operational. However, the same has also been ignored by the Assistant Commissioner while passing the impugned order.

4.15 That in FY 2019-2020, had made an outward supply of approximately Rs. 11.43 crore and inward purchase of 10.35 crore . In FY 2020-21, the Appellant has made outward supply of nearly 77.29 crore and inward purchase of 79.03 crore. The appellant had duly discharged its GST tax liability on outward supply and has utilized eligible input tax credit. The reason for reduction in transition in FY 2020-21, was solely due to pandemic.

4.16 It has been submitted that the burden to prove that the Appellant was either utilizing wrong input tax credit and the said input tax credit was obtained by fraud was upon the Revenue. However, the Revenue has failed to discharged its burden.

4.16 Further, the Appellant submitted that in any event, without prejudice to the above, the Assistant Commissioner failed to appreciate that the registration of the Appellant was not cancelled on the ground of no-operational. The Superintendent by his order dated 16.03.2021 had only cancelled the registration because some attachment was not received by him which appeared to the reply of the Appellant. In effect, the Superintendent cancelled the registration without considering the submission of the Appellant in reply to show cause notice.

4.17 Further, it has been submitted that in the impugned order, the Assistant Commissioner has purported to hold that it appears that the Appellant was passing fake input tax credit by way of fraud.



4.18 The purported finding of the Assistant Commissioner that the Appellant appears to be passing fake input tax credit by way of fraud is ex-facie perverse and based on no documents.

4.19 In any event, the purported finding of the Assistant Commissioner is solely on the basis of surmises and conjectures on his part.

4.20 The Assistant Commissioner has proceeded on an assumption that the Appellant was allegedly passing on fake input credit by way of fraud.

4.21 The Appellant had specifically, in the reply to show cause notice dated 12.04.2021 issued by the Assistant Commissioner and at the time of hearing before Assistant Commissioner, pointed out that the reply was received by the Superintendent as evident from the order cancelling the registration and also, the documents on record.

4.22 Admittedly, no documentary evidence and /or any material whatsoever has been produced /referred to by the Assistant Commissioner to support the purported finding that the Appellant was passing fake input tax credit by way of fraud.

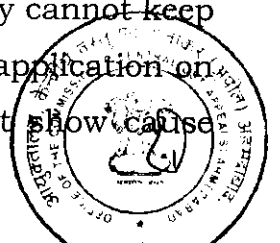
4.23 It is submitted that the rejection of revocation application merely on assumption basis cannot be sustained and impugned order is liable to be quashed.

4.24 In any event, the Appellant is not involved in any activity of passing fake input tax credit by way of fraud.

4.25 In any event, without prejudice to the above , the Assistant Commissioner failed to appreciate that the registration of the Appellant was not cancelled on the ground or of non-operational.

4.26 The application for revocation of cancelation is now rejected on an entirely new allegation/ground, which was not raised either in the SCN or order passed by the Superintendent cancelling the registration viz. that the Appellant was not operational at the premises for which registration was granted.

4.27 It has been submitted that the first SCN is the foundation of the department's case and the department authorities under GST is bound to confirm to allegations mentioned therein. The Department authority cannot keep on changing the allegations at the appellate stages and reject the application on an altogether a new ground which was never alleged in the first show cause



notice or even order cancelling registration. The Appellant had specifically raised the aforesaid issue before the Assistant Commissioner. However, the impugned order is completely silent on the said issue. The Assistant Commissioner has not considered the said issue in the impugned order.

4.30 Further, the appellant has specifically raised a contention before the Assistant Commissioner that the Superintendent had passed the order purporting to cancel their registration in breach of principles of natural justice in as much as no opportunity of hearing was granted to the Appellant and finding recorded by the Superintendent in the said order that the hearing was held on 10.03.2021 was factually incorrect and contrary to the record; however the Assistant Commissioner has totally ignored the said submission of the Appellant and without considering the said submission pass the impugned order; the Assistant Commissioner failed to appreciate that the Superintendent had mechanically cancelled the registration and cancellation was without independent application of mind.

4.31 The appellant has requested that the impugned order is liable to be quashed and cancellation of registration of the appellant is liable to be revoked.

Personal Hearing

5. Personal Hearing in the matter was held 07.09.2021. Shri Prakash Shah, Shri Jas Sanghavi, Shri Nirbhay, Shri Jignesh Shah, Shri Bhavesh Suthar and Shri Abhishek Bansal attended the Personal Hearing. They have relied on their written submission dated 31st May, 2021 and case law compilation submitted at the time of hearing. They have reiterated the grounds of appeals. They have nothing to add to this.

Discussions and Finding

6.1 I have gone through the facts of the case and written submissions made by the appellant. I find that the proper officer vide SCN reference No. ZA240321120422E, dated 07.03.2021 suspended the registration with effect from 07.03.2021 for the reason that 1. *Issue any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment of input tax credit or refund of tax.* Further, the proper officer vide order reference No. ZA240321153789F dated 16.03.2021 has cancelled the registration with effect from 01.02.2021 for the reason given below:-

1. *Attachment has not been received by this office till date. Hence, registration is cancelled.*



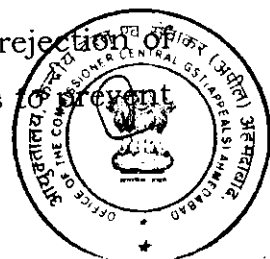
8. I find that facts of the both cases are not similar, as in the present case the registration was cancelled on the basis of Fraud, willful misstatement and suppression of the facts that has been corroborated during the search conducted by the Preventive Section of CGST, Gandhinagar Commissinerate and it was found that the firm was not operative which is clear violation of provisions of the Section 29(2)(e) of CGST Act, 2017, whereas in the order of Hon'ble High Court of Tripura no reason was cited by the proper authority in the show Cause notice for cancellation of registration. It has also been observed that Order of Superintended also seeks recovery of certain taxes with penalty which was not part of the show-cause notice dated 06.12.2020.

9 Further, the appellant in his grounds of appeal contended that they have not been provided opportunity for personal hearing in the instant case in terms of the provision for following principal of natural justice. On perusal of available records, I find that the appellant has been given opportunity of personal hearing on 10.03.2021 and against which the appellant has also filed reply to Show Cause Notice. Further, I find that the appellant has filed the application for revocation of cancellation of registration before the higher authority as per Rule 23 (2)(b) of CGST Rules, 2017 and the adjudication authority has followed proper procedure of natural justice as laid down in GST ACT/Rules before the issuance of impugned Order. Hence, the contention of the appellant is not correct and proper.

10. I find that Joint Commissioner, CGST, Gandhinagar vide letter F. No. GEXCOM/AE/MISC/276/2021-AE-O/o COMNR-CGST-GANDHINAGAR dated 22.12.2021 has informed that afore subject tax payer do not hold any ground for revocation of the cancellation of registration.

11. I find that the adjudicating authority has rejected the application for revocation of cancelled registration of the appellant under Rule 23(2) (b) of CGST Rules, 2017 on the ground that during search conducted by the Preventive Section Gandhinagar it was found that the appellant was non operational and was passing fake ITC by way of fraud. I also found that the adjudicating authority has rejected the application for revocation after following the prescribed procedure prescribed under Rule 23 of CGST Rules, 2017. Moreover, Joint Commissioner, CGST, Gandhinagar vide letter F.No. GEXCOM/AE/MISC/276/2020-2021 dated 22.12.2021 has also informed that since the investigation is in progress the appellant do not hold any ground for revocation of the cancelation of registration.

In view of above I find the adjudicating authority has ordered rejection of application for revocation of registration as a deterrent measure so as to prevent



6.2 Being aggrieved with order of the dated 16.03.2021 the appellant had filed application for revocation of cancellation of registration before the Adjudicating authority. The Adjudicating authority vide order reference No. ZA240421189071W dated 28.04.2021 had stated that as per search conducted by the Prev. Section, CGST, Gandhinagar, the firm was found to be non-operational & that it appeared the firm was passing on fake ITC by way of fraud hence rejected the application for revocation of cancellation registration as per rule 23(2) (b) of CGST Rules, 2017, as firm is non operational.

6.3 Further, it has been come to notice from the Preventive, CGST Gandhinagar Commissionerate that no activity was carried out from premises and only banner displaying the name and GSTIN of the unit was found; it has also observed that around 68 units connected to Abans group of companies, directly or indirectly, registered at various commissionerates all over India involved in this circular trading and passed huge amount of ITC without supplying any goods or services across the country.

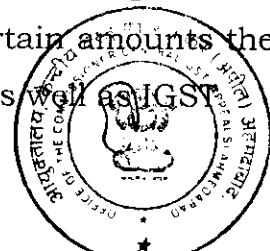
6.4 I find that in view of the facts comes to the notice at the time of search by the Preventive section of Gandhinagar Commissionerate and to protect the Govt. revenue the proper officer had been directed to cancel the registration. It has been further notice the matter has been referred to 19 CGST Commissionerate for initiates the follow up inquiries /investigation and the case appears to have all India ramification; the investigation in afore subject companies, is in progress.

7. I find that the appellant at the time of hearing the has referred the Hon'ble High Court Tripura's order dated 31.08.2021 WP (C) No. 401/2021 in case of M/s. OPC Assets Solutions Pvt. Lt Vs. The State of Tripura and others. In the order dated 31.08.2021 Hon'ble High Court has observed that Superintendent of Taxes had cancelled the registration without citing any reason. The notice reads as under:

" whereas on the basis of information which has come my notice, it appears that your registration is liable to be cancelled for the following reason:-

- i. **Non compliance of any specified provisions in the GST Act or the Rules made there under as may be prescribed.**

After considering the reply of the appellant on 23.04.2021 the superintendent of Taxes passed the impugned order and cancelled the petitioner's registration effective from 01.07.2017. Consequently, he also computed certain amounts the petitioner would have to pay by way of Central and State GST as well as IGST

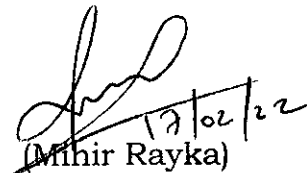


further loss to Government exchequer and on the ground of ongoing investigation against the appellant. Therefore, I do not find it appropriate to interfere with the impugned order passed by the adjudicating authority at this stage of proceedings.

12. The subject appeal filed by the appellant is hereby rejected.

13. 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)

Additional Commissioner (Appeals)

Date: .1.2022

Attested


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



By R.P.A.D.

By R.P.A.D.

To,
M/s. Zale Trading Pvt. Ltd., Godown No. 5B,
Umesh Godwn, Harji, Near Satyam Vaghel Bridge,
Vaghel Road, Patan, Gujarat, 384240]

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 Assistant Commissioner, CGST & C.Ex, Division-Palanpur,
Commissionerate-Gandhinagar
5. The Superintendent, CGST, Patan, Div. Palanpur
6. The Additional Commissioner, Central Tax (System), Gandhinagar.
7. Guard File.
9. P File