



सत्यमेव जयते

आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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क फाइल संख्या : File No : GAPPL/ADC/GSTP/1254/2022 / 2708 - 2022

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-41/2022-23**

दिनांक Date : **20-07-2022** जारी करने की तारीख Date of Issue : 20-07-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZA2401210959896** dated **22.01.2021** issued by Superintendent, Range-II, Central Goods and Service Tax, Division Kadi, Gandhinagar Commissionerate

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

M/s Kanaiyalal Somabhai Patel
19, Vatsalya Bungalows, Karannagar Road,
Kadi, Mahisagar, Gujarat - 384440

(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. Kanaiyalal Somabhai Patel, 19, Vatslya Bunglows, Karannagar Road, Kadi, Mahisagar, Gujarat-384440 (hereinafter referred to as '**appellant**') has filed present appeal against Order bearing reference No. ZA2401210959896 dated 22.01.2021 for cancellation of Registration (hereinafter referred to as '**impugned order**'), issued by Superintendent, Range-II, Division- Kadi, Gandhinagar Commissionerate- (hereinafter referred to as '**adjudicating authority**').

2. Brief facts of the case are that the "*Proper Officer*" has issued SCN bearing No. ZA240121045288W dated 11.01.2021 that 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;

'Any taxpayer other than composition taxpayer has not filed returns for a continuous period of six months.' and directed to furnish reply to the notice within 07 working days from the service of this notice. Further, the adjudicating officers vide Order reference No. ZA2401210959896 dated 22.01.2021 cancelled the registration with the reason that the tax payer neither appeared in PH nor responded to SCN/Notice issued and also not filed pending returns, hence registration is liable for cancellation. Hence same is cancelled with effect from 22/01/2021.

3.1 Being aggrieved with the '*impugned order*' dated 22.01.2021, the "*appellant*" has filed the present appeal on 02.05.2022, i.e. after the delay of normal period prescribed under Section 107(1) of CGST Act, 2017. The "*appellant*" has submitted that the reason for delay in filing the appeal is that the Appellant is unaware of the procedure and GSTIN is cancelled due to non filing of return. The appellant has faced the problem of Finance and no fund is available with them and could not file returns prescribed under the GST Act, 2017. The Appellant when approached to the office of GST for restoring GSTIN number, the Appellant came to know that GSITN can be restored by filling appeal. Therefore, in the interest of Justice, the COD may be allowed as the Appellant has not acquainted with the procedure of newly introduced GST Act and delay is occurred. The Appellant is ready to comply with the condition laid down by the Appellate Authority if the said GSTIN is resorted. The Appellant has requested to restore the GSTIN after setting aside order for cancellation Registration number and oblige



Personal Hearing :-

4. The Appellant vide their letter dated 02.05.2022 has requested that the appeal may be decided on available of records and the appellant don't want any personal hearing. The appellant has further requested that the reason for restoring GSTIN is that the appellant wants to continue business on same number and likely to get business after COVID-19. The appellant is ready to comply with the condition if GSTIN is restored in the interest of justice.

Discussion and Findings :-

5. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is (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 for revocation/restoration of cancelled registration by the proper officer.

6. First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

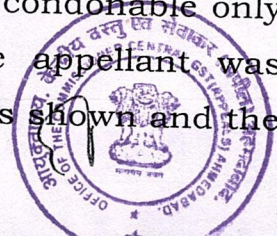
SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within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

7.1 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.

7.2 Further, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022, in MA 665/2021 IN SMW(C) No. 3 of 2020. The relevant para No. 5 (III) of said order is reproduced as under:

5. *Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following direction: Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions:-*

III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022, is greater than 90 days, that longer period shall apply.*

In the present appeal, the "impugned order" is of 22.01.2021 so the normal appeal period of three months was available upto 21.04.2021. Further, looking to the 'COD' application of *appellant* as well as Covid-19 pandemic situation the present appeal is condonable for one month as per Section 107(4) of the CGST Act, 2017. Accordingly, the appeal was required to be filed before 21.05.2021. Now, as per the Para 5(III) of the aforesaid order of Hon'ble Supreme Court the *appellant* became eligible to file appeal within three months from 01.03.2022. It is pertinent to mention here that the *appellant* has filed the present appeal on 02.05.2022 that is to say that appeal filed within 3 months from 01.03.2022.

7.3 I also find that the CBIC, New Delhi has issued Circular No. 157/13/121-GST dated 20th July, 2021 and clarified as under:-

4(c):- Appeals by taxpayers/ tax authorities against any quasi-judicial order:-Wherever any appeal is required to 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.

7.4 In view of above and also looking into the **Covid-19 pandemic situation** in the instant matter, I am inclined to condone the delay of filing of appeal. Therefore, I find that the present appeal is filed within stipulated time limit.

Accordingly, I am proceeded to decide the case.

8. I have gone through the facts of the case and the written submissions made by the *appellant*. I find that the adjudicating authority/proper officer has cancelled the registration with effect from 22.01.2021 as the *appellant* failed to file GST Returns for a continuous period of more than six months.

Further, I find that the provisions of revocation of cancellation of registration when the same is cancelled by the proper officer on suo moto basis are contained in Section 30 of the CGST Act, 2017 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).]

(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 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 :

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

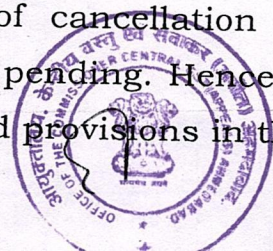
(1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in **FORM GST REG-24***.

(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.

9. Further, I find that the Central Board of Indirect Taxes & Customs, New Delhi has clarified the issue vide circular No. 99/18/2019-GST dated 23.04.2019. Para 3 of said circular read as under:

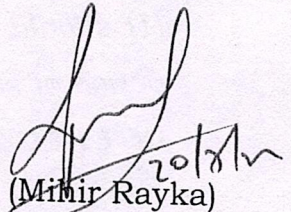
3. First proviso to sub-rule (1) of rule 23 of the said Rules provides that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished and any amount in terms of such returns is paid. Thus, where the registration has been cancelled with effect from the date of order of cancellation of registration, all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed. Further, in such cases, in terms of the second proviso to sub-rule (1) of rule 23 of the said Rules, all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of thirty days from the date of the order of revocation.

10. On going through the records/submissions, I find that the appellant has declared in the appeal memorandum that they have filed GST Returns till January' 2021 i.e. till the date of cancellation of registration and also informed that no GST liability is pending. Hence, I find that the appellant has complied with the above said provisions in the



instant case. Therefore, I am of the opinion that the 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. Accordingly, I allow the appeal of the *appellant* and order to the proper officer to consider the revocation application of the *appellant* after due verification of payment particulars of tax, penalty, late fee, interest and status of returns.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. The appeal filed by the appellant stands disposed of in above terms.


(Mimir Rayka)

Additional Commissioner (Appeals)

Date: .06.2022



Attested



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

By R.P.A.D.

To,

M/s. Kanaiyalal Somabhai Patel,
19, Vatslya Bungalows, Karannagar Road,
Kadi, Mahisagar, Gujarat-384440

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Gandhinagar .
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-Kadi Gandhinagar .
5. The Additional Commissioner, Central Tax (System), Gandhinagar.
6. The Superintendent, CGST, Range-II, Kadi, Div. Kadi.
- ✓ 7. Guard File.
8. P.A. File