



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

07926305065-

टेलिफैक्स 07926305136



DIN- 20221064SW0000222F41

रजिस्टर्ड डाक ए.डी. द्वारा

क

फाइल संख्या : File No : GAPPL/ADC/GSTP/2771/2022 -APPEAL / मोडर्न - १६

ख

अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-54/2022-23

दिनांक Date : 21-10-2022 जारी करने की तारीख Date of Issue : 21-10-2022

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग

Arising out of Order-in-Original No. ZA240922094110U DT. 19.09.2022

issued by Superintendent, CGST, Range-V, Division-Gandhinagar, Gandhinagar CGST Commissionerate

घ

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

M/s. Shubham Products, 1, Mansa Industrial Estate,
Nr. Baliyadev Temple, Mansa, Dist. Gandhinagar-382845

(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 .



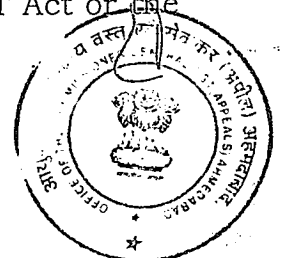
ORDER-IN-APPEAL**Brief Facts of the case**

M/s. Shubham Products, 1, Mansa Industrial Estate, Nr. Baliyadev Temple, Mansa, Dist. Gandhinagar - 382 845, (hereinafter referred as '**appellant**') has filed present appeal against Order bearing reference No. ZA240922094110U dated 19.09.2022 for cancellation of Registration (hereinafter referred to as '**impugned order**'), issued by the Superintendent, Range-V, CGST, Div-Gandhinagar, Gandhinagar CGST 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 24ACPFS9459L1Z5. They were issued with a show cause notice dated 14/09/2022 and after considering the reply dated 16.09.2022 the SCN was adjudicated vide reference No. ZA240922094110U dated 19.09.2022 by jurisdictional Range Superintendent and cancelled registration with the reasons mentioned that "*The TP in his reply has uploaded Rent Agreement executed on 16.09.2022 of unregistered premises. The TP has violated provisions of GST law by not furnishing documents of registered premises when demanded by the officer during the inquiry on 5.9.2022 in connection to letter dated 10.8.2022 issued by the DC (Prev.), Ahmedabad. He has not provided any documents of the registered premises i.e Shop No. 1 till date. Since the TP found to have been running business from unregistered premises i.e Shop No.2 & keeping registered premises i.e Shop No.1 closed by not displaying GST reg no amounts to obtaining of reg by means of suppression of facts from the dept. In spite of giving sufficient opportunity, the TP did not upload any documents of the registered premises is explicit contraventions of provisions of the GST Law. A reg person contravening provisions of GST Act or rules made thereunder attracts cancellation of reg under Sec 29 by the PO as well as penalty provisions under Sec. 122 of the CGST Act, 2017.*"

Submissions and Defense Reply

3. Being aggrieved, the appellant filed an appeal on 24.09.2022 against the order reference No. ZA240922094110U dated 19.09.2022 on the grounds that they have been issued Show Cause Notice vide reference number : ZA240922070482L dated 14.09.2022 for cancellation of registration dated 14.09.2022 for non compliance of any specified provision in the GST Act or the

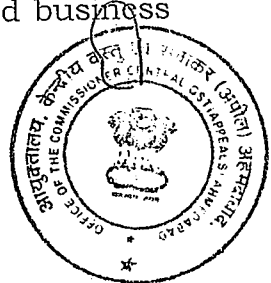


Rules made thereunder as may be prescribed. Range Superintendent, CGST visited at business place and handed over a copy of letter dated 5.9.2022 of investigation in respect of M/s. Shreenathji Enterprise, wherein, Shreenathji Enterprises appeared to have issued bogus sales invoices and on the basis of invoices they have availed ITC credit of Rs.1,66,607/- which is illegal and required to be reversed. Immediately they have filed DRC-03 on 11.09.2022 and reversed the ITC credit. We are doing business from Shed No.1 and we have already mentioned GST number in this premises. On the day of visit of the Officer i.e on 5.9.2022 our premises i.e Shed No.1 was closed due to weekly off falling on Monday. However, some times we also closed the premises due to movement of domestic animals and being a rural area. Further, the officer inquired in Shed No.2, which is stay place for our employees and this property acquired recently by us. The officer advised us that without any agreement we cannot use it. However, we have shown all the documents relating to registered business premises and Food License, Tax Receipt, Registration FSSAI. Since many years we are running the business of milk products from this premises and such action of cancellation of registration has completely halted the business activities and thereby prayed to revoke the cancellation. Further, they plea that the officer has cancelled GST registration on 19.09.2022 for incorrect reasons and requested for revocation of cancelled registration.

4. The impugned order cancelled the registration under Section 29 and penal provisions under Section 122 of the CGST Act, 2017 on the grounds that the appellant is running their business from unregistered premises and registered premises closed by not displaying GST registration number.

Personal Hearing

5. Personal Hearing in the matter was held on 11.10.2022 on the basis of request letter dated 3.10.2022 submitted by the appellant for early hearing in the matter. Shri Rajendra Patel (Partner) of M/s. Shubham Products and Shri Jignesh Prajapati, Representative & Advocate, attended the Personal Hearing. They have relied on their written submission dated 29.09.2022. They have reiterated the grounds of appeals. They have nothing to add to this. However, they further submitted copies of documents related to their registered business premises on 20th October 2022.



Discussions and Findings

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 reference No. ZA240922070482L dated 14.09.2022 issued a Show Cause Notice for Cancellation of Registration mentioning the reasons "*Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed*" and directed to furnish a reply to the notice within seven working days from the date of service of this notice and also provide an opportunity for personal hearing on 21.09.2022.

6.2 On receipt of the above referred SCN, the appellant filed their reply on dated 16.09.2022. In their reply dated 16.09.2022 they have submitted (i) rent agreement for Shop No. 2 with effect from 16.09.2022 for a period of 11 months (ii) they claimed that they have displayed GST number at registered premises and (iii) Copy of DRC-03 dated 11.09.2022 by paying the ITC credit passed on by M/s. Shreenathji Enterprises, the entity which issued bogus invoices to the appellant as per the letter dtd 10.8.2022 of DC (Prev), Ahmedabad. However, it is found that before heard in person by giving opportunity for natural justice to the appellant the registration has been cancelled by the proper officer under Section 29 of CGST Act, 2017.

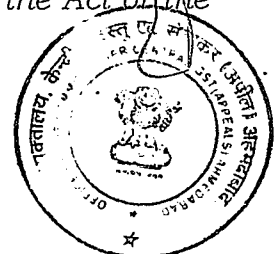
Since, the registration is cancelled under Section 29 of the CGST Act, 2017, I find it pertinent to refer it. The provisions of Section 29 is reproduced as under :

"29. Cancellation [or suspension] of registration

- (1) *The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, -*
- (a) *the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or*
- (b) *there is any change in the constitution of the business; or*
- (c) *the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25*

[PROVIDED that during pendency of the proceedings relating to cancelled of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.]

- (2) *The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, -*
- (a) *A registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or*



- (b) A person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or
- (c) Any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; or
- (d) Any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) Registration has been obtained by means of fraud, willful misstatement or suppression of facts;

PROVIDED that the proper officer shall not cancel the registration without giving the person an opportunity of being heard :

[PROVIDED FURTHER that during pendency of the proceedings relating to cancellations of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.]

- (3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.
- (4) The 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 cancellation of registration under this Act.
- (5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

PROVIDED that in case of capital goods or plant and machinery, the taxable person shall pay an amount equivalent to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under Section 15, whichever is higher :

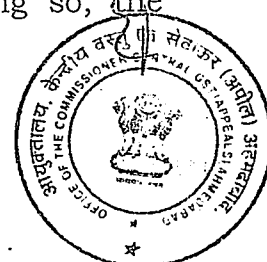
- (6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed."



6.3 Further, the Range Superintendent, informed vide their letter dated 13.10.2022 issued under F.NO. GEXCOM/TECH/MISC/3912/2022-CGST-RANGE-5-DIV-GNR-CO that an investigation has been initiated against one of the supplier i.e M/s. Shreenathji Enterprises GSTIN 24AGRPB0809R1ZJ of M/s. Shubham Products (GSTIN 24ACPF59459L1Z5) Mansa, Gandhinagar by the CGST North Commissionerate, Ahmedabad, wherein it has revealed that the said firm is non-existent at the principal place of business and working on paper only. Further all the sales invoices issued by M/s. Shreenathji Enterprises are bogus and involve invalid ITC, which has been availed and utilized by recipient i.e M/s. Shubham Products for the ICT amount of Rs. 1,66,607/-.

6.5 I find that the appellant is engaged in the business of milk products and the business entity as well as business activity is in existence since last many years as evident from their Sales Tax Registration valid from 24th Feb 2015 and from status of returns filed by them on GST portal. I find that that there is no such allegation either in SCN or departmental communication regarding direct involvement of appellant in any fraud by issuance of bogus invoices or found regular /repeated offender. Further, I find that during visit of departmental officer they found closed the registered premises but I do not find any such allegation of appellant being non-existent. I find that the appellant is in existent and carrying out day to day business activity and filing the necessary GST Returns regularly. Further, I find that as pointed out by the Range Superintendent, the appellant has immediately paid Rs. 1,66,607/- through DRC-03 dated 11.09.2022 invalid ITC which was availed and utilized by them. By doing so, the appellant shown their willingness to comply the provisions prescribed under CGST Act.

6.6 I find that even after paying the invalid ITC of Rs.1,66,607/- through DRC-03 dated 11.09.2022 the proper officer has not allowed the appellant to give an opportunity being heard in person. The opportunity given for personal hearing on 21.09.2019 to respond the show cause notice seeking cancellation is appears mere formality in as much as the impugned order is issued on 19.09.2022 i.e. prior to the PH date.21.09.22. I find that the show cause notice issued by the proper officer is completely lacking of any material particulars. Not only that, no sufficient opportunity has been provided while adjudicating such show cause notice. Cancelling the registration of the appellant on 19.09.2022 by passing an order is found violation of basic principles of natural justice and a extreme remedy taken by the proper officer when other remedies are available, which is not proper, human and appropriate in the eyes of law. By doing so, the



adjudicating authority has erred, made a mistake and subsequent loss to the government exchequer, as the appellant found regular tax payer since their inception of GST registration.

7. I find from the records submitted that the appellant is in the possession of registered premises since the year 2014 as evident from Index issued by SRO, Mansa dated 9.4.2014. Further, on pointed out by the Range Superintendent regarding use of unregistered premises i.e Shop No.2, the appellant has immediately made rent agreement dated 16.09.2022 for a period of 11 months, but due to cancellation of registration they are unable to upload the same on GST portal to inform the department regarding additional place of business.

8. On going through the records / submissions, I find that the Range Superintendent has cancelled the registration due to the reason that the appellant has contravened provisions of GST Act or Rules made thereunder attracts cancellation of registration under Section 29 as well as penalty provisions under Sec. 122 of the CGST Act, 2017.

In this regard, I find that there are provisions for revocation of cancelled registration under GST Act and Rules. The relevant provisions i.e. Section 30 of the CGST Act, 2017 and Rule 23 of the CGT Rules, 2017 are reproduced as under:

Section 30: Revocation of cancellation of registration.

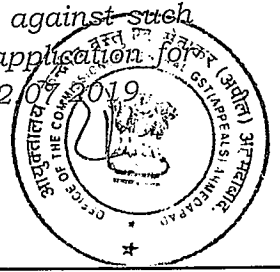
(1) *Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the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

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.



(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 with



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. I find that the appellant has declared in the appeal memorandum that they have filed GST returns till August-2022 i.e till date of cancellation of registration. I find that the appellant have shown their willingness and agreed to pay all the dues which are found to be demanded and recoverable by the department in future.

10. I find that the appellant has complied with the requisite provisions of the Act and Rules in the instant case. The registration is cancelled by the adjudicating authority without providing opportunity of being heard to the appellant. According to the provisions of Section 29(2) of the CGST Act, 2017 "Proper officer shall not cancel the registration without giving the person an opportunity of being heard". I find that the registration is cancelled mainly on the grounds that the appellant has availed ITC from non-existent unit and during visit their registered premises was found closed. Since, there is no allegation of ITC availed without receipt of goods or unit being non-existent I find that cancellation of registration is not appropriate that too without providing opportunity of being heard the appellant. Further, I find from the submission of appellant that they are willing to discharge any GST liability arise in future also. Therefore, I am of the opinion that the registration of the appellant may be considered for revocation by the proper officer subject to due compliance of the conditions by the appellant under Rule 23 of the CGST Act, 2017. Accordingly, I allow the appeal of the appellant and order to the proper officer to consider the revocation application of cancelled registration of the appellant after due verification of payment particulars of tax, penalty, late fee, interest and status of returns any other statutory requirements as per the provisions of CGST Act and Rules made thereunder.

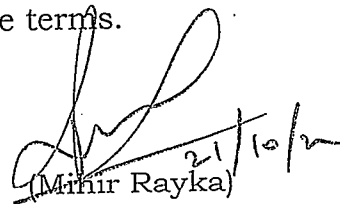
11. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Attested


21/10/2022

तेजस मिस्ट्री/TEJAS MISTRY
अधीक्षक/SUPERINTENDENT
केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद.
CENTRAL GST (APPEALS), AHMEDABAD.

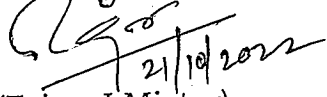

(Mihir Rayka)
21/10/22

Additional Commissioner (Appeals)

Date:



Attested



(Tejas J Mistry)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To

M/s. Shubham Products (GSTIN : 24ACPFS9459L1Z5),
1, Mansa Industrial Estate, Nr. Baliyadev Temple, Mansa,
Dist. Gandhinagar – 382 845

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 Dy / Assistant Commissioner, CGST & C.Ex, Division-Gandhinagar,
Commissionerate-Gandhinagar
- 5.The Additional Commissioner, Central Tax (System), Gandhinagar.
6. The Superintendent, Range-V, CGST Division Gandhinagar.
7. The Superintendent (CPC Wing), PCCO, CGST Ahmedabad Zone, GST Bha
bhavan, Ambawadi, Ahmedabad.
8. Guard File.
9. P.A. File

