



सत्यमेव जयते

आयुक्त(अपील) 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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2594/2022

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ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-61/2022-23**

दिनांक Date : **16-11-2022** जारी करने की तारीख Date of Issue : 16-11-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZA240422135919G** dated **27.04.2022** issued by Superintendent, Central Goods and Service Tax, Range-II, Division Himmatnagar, Gandhinagar Commissionerate

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

M/s Vikeshkumar Mukeshkumar Shah [GSTIN-24FEIPS20212P1Z7]  
At & PO, Vijaynagar, Vagodiya Vadla,  
Vijaynagar, Sabarkantha, Gujarat - 383460

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 अपीलार्थी प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**:: ORDER-IN-APPEAL ::**

Vikeshkumar Mukeshkumar Shah [Trade Name : SHAH VIKESHKUMAR MUKESHKUMAR, GSTIN-24FEIPS2012P1Z7], At & PO. Vijaynagar, Vagodiya Vadla, Vijaynagar, Sabarkantha, Gujarat : 383 460 (hereinafter referred to as the 'appellant') has filed present appeal against Order for Cancellation of Registration bearing Reference No. ZA240422135919G dated 27.04.2022 (hereinafter referred to as 'impugned order'), issued by the Superintendent, Central GST, Range-II, Division- Himmatnagar, Gandhinagar Commissionerate (hereinafter referred to as 'adjudicating authority/proper officer').

2. The brief facts of the case are that appellant was registered under GST having registration number as 24FEIPS2012P1Z7. The appellant was issued a show cause notice on 02.02.2022. After examination of the reply dated 05.03.2022 by the appellant, the GST registration was cancelled by the Superintendent, Central GST, Range-II, Division-Himmatnagar, Gandhinagar Commissionerate vide impugned order dated 27.04.2022 citing the following reason:- "Tax payer has failed to furnish returns for a continuous period of six months returns. Since neither the taxpayer has replied to the notice nor did appear for PH and also no return is filed. Hence, the registration is hereby cancelled in terms of Section 29(2)(c) of CGST Act, 2017." The effective date of cancellation of GST registration was 01.07.2022.

3. Being aggrieved, the appellant filed the present appeal on 06.09.2022, against the impugned order, *inter alia*, contending that:-

- (i) No statutory notice was issued or served as per the provision of the act;
- (ii) appellant was suffered from flu and health problem so not filed appeal in time;
- (iii) ready to file all the returns with tax; and not any mala-fide intention for not to file returns.

**Personal Hearing**

4. Personal hearing in the case was held on 19.10.2022 in physical mode. Shri Urvish V Patel, Advocate & Authorized Representative, appeared on behalf of the appellant before the appellate authority, he submitted one more letter on 19.10.2022, which is taken on record. He has nothing to add to their written submission till date. As per their submission letter dated 19.10.2022, they further added that the order was not received as per Section 169 of the CGST Act, 2017 to the appellant.



**Discussion & Findings:**

5. I have gone through the facts of the case, the impugned order and the grounds of appeal as well as written submissions of the appellant. I find that the main issue to be decided in the instant case is

(i) whether order was served as per Section 169 of the CGST Act, 2017 or not;

(ii) whether the appeal has been filed within the prescribed time limit; and

(iii) whether the appeal filed against the order of cancellation of registration can be considered for revocation / restoration of cancelled registration by the proper officer.

I find that the impugned order was issued on 27.04.2022 by the adjudicating authority and the said order was also communicated to them on the same day of 27.04.2022 as the appellant has already accepted and declared in their appeal memorandum FORM GST APL-01 filed on 6.9.2022. However, for this, I refer to the Section 169 of the CGST Act, 2017, which reads as under:

**Section 169 of the CGST Act, 2017:*****"169. Service of notice in certain circumstances***

*(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely –*

*(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorized representative or an advocate or a tax practitioner holding authority to appeal in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or*

*(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorized representative, if any, at his last known place of business or residence; or*

*(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or*

*(d) by making it available on the common portal*



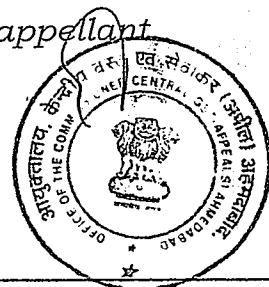
(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in subsection (1);

(3) When such decision, order, summons, notice or any communications sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

Further, I find that in reply to this office letter dated 1.11.2022, it is informed by the Superintendent, Range-II, CGST, Himmatnagar, Ahmedabad vide their letter F. No. AR-II/HMT/Misc/2021-23 dated 7.11.2022 that “the show cause notice dated 02.02.2022 issued to Vikeshkumar Mukeshkumar Shah (GSTIN : 24FEIPS2012P1Z7) through system (GSTN portal) generated due to failure to furnish returns for a continuous period of six months and the said SCN was delivered through system only as there is no mechanism/mode to download the said SCN and to delivered by this office. Thereafter, the taxpayer has neither submitted reply against the said SCN nor filed the GST return (from July 2021) therefore order for Cancellation of Registration Ref. No. ZA240422135919G dated 27.04.2022 was issued to Vikeshkumar Mukeshkumar Shah (GSTIN : 24FEIPS2012P1Z7) by this office through system and the same was delivered through system (GSTN portal) only as there is no mechanism/mode to download the said order and to delivered by this office.” They further supplied the screen shots of GSTN portal on which the transaction dates of notice as well as order are available and showing the date & time of communication to the appellant



From the above facts, I find that the department has served notice as well as order to the appellant as per the provisions Section 169 of the CGST Act, 2017. Hence, I find that contention of the appellant that they have not been served notice as well as order under Section 169 of CGST Act, 2017 is contrary to their submission, not justifiable and does not have any stand.

6. I further find it relevant to go through the relevant statutory provisions of Section 107 of the CGST Act, 2017, which is reproduced as under:

**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.

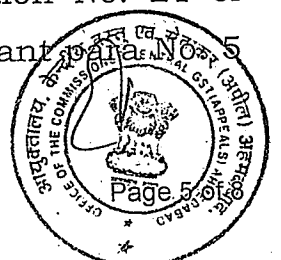
(2) .....

(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 Accordingly, I observed that the Appellant was required to file appeal within 3 months from the receipt of the "impugned order" i.e. on or before 26.07.2022, as stipulated under Section 107(1) of the Act. However, in the instant case the appellant filed the present appeal on 6.9.2022 i.e after a period of more than one month from the due date. Further, I also find that in terms of provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal i.e. up to 26.08.2022, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. Accordingly, I find that there is a delay of more than one month in filing the appeal over and above the normal period of three months. Thus, appeal filed beyond the time limit prescribed under Section 107(1) *ibid* cannot be entertained.

6.2 Further, I also 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 (I) & 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 directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. ....

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.

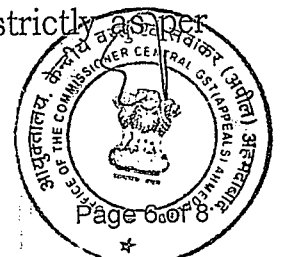
6.3 Further, I also find that the CBIC, New Delhi has issued Circular No. 157/13/2021-GST dated 20<sup>th</sup> July, 2021 and clarified as under:-

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. Looking to the above, I find in the present case that the period of limitation of total 4 (four) months (including condonable period of one month) for filing of appeal from the date of issuance of impugned order, as prescribed under Section 107 of the CGST Act, 2017 was already completed on 26.08.2022 and hence, the present case would not be eligible for the relaxation / extension granted by the H'ble Supreme Court in respect of period(s) of limitation as mentioned above from the date on which the said decision or impugned is communicated to such person. Accordingly, I find that the further proceedings in case of the present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.



8. It is also observed that the appellant has filed application for condonation of delay (COD) and but failed to submit any cogent ground and documents for such **delay of more than one month period in filing the appeal**. Even otherwise, filing of a COD application not going to change the factual position in the present case. I find that this appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act. This appellate authority, therefore, cannot condone delay beyond the period permissible under the CGST Act. When legislature has intended the appellate authority to entertain the appeal by condoning further delay of only one month, this appellate authority cannot go beyond the power vested by the legislature. My views are supported by the following case laws:

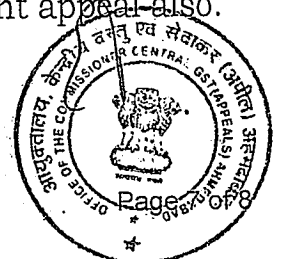
(i) The Hon'ble Supreme Court in the case of **Singh Enterprises** reported as 2008 (221) E.L.T.163 (S.C.) has held as under:

"8. ...The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

(ii) In the case of **Makjai Laboratories Pvt Ltd** reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable in such cases as Commissioner (Appeals) is not a Court.

(iii) The Hon'ble High Court of Delhi in the case of **Delta Impex** reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

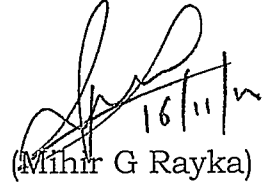
9. I find that the provisions of Section 107 of the Central Goods and Services Act, 2017 are *pari materia* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgements would be squarely applicable to the present appeal also.



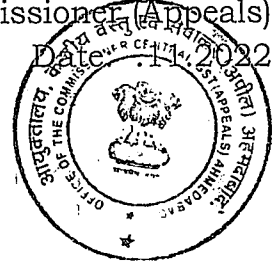
10. By respectfully following the above judgements, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under Section 107 of the CGST Act, 2017 as well as appeal is filed beyond the extension of time limit provided by the H'ble Supreme Court order dated 10.01.2022. Thus, the appeal filed by the appellant is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I do not find any reason to interfere with the decision taken by the adjudicating authority vide "impugned order". I, accordingly, reject the present appeal filed by the appellant on time limitation factor.

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

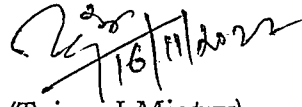
11. The appeals filed by the appellants stand disposed of in above terms.

  
(Mihir G Rayka)

Additional Commissioner (Appeals)



Attested



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

By R.P.A.D.

To,

Vikeshkumar Mukeshkumar Shah [GSTIN-24FEIPS2012P1Z7];  
[Trade Name : SHAH VIKESHKUMAR MUKESHKUMAR,  
At & PO. Vijaynagar, Vagodiya Vadla,  
Vijaynagar, Sabarkantha, Gujarat : 383 460

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., G'nagar Commissionerate.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-Kalol, Gandhinagar Commissionerate.
5. The Superintendent, CGST & C.Ex., Range-I, Division - Kalol, Gandhinagar Commissionerate.
6. The Additional Commissioner, Central Tax (System), G'nagar Comm'te.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. The Superintendent (CPC) (PCCO), CGST Ahmedabad Zone, Ahmedabad.
9. Guard File.
10. P A File.