आयुक्त(अपील)काकार्यालय,

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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DIN NO. : **20221264SW000000BE5C**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/3346/2022/6611 - 19

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-75/2022-23**
दिनाँक Date : **29-12-2022** जारी करने की तारीख Date of Issue : 29-12-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZA2401220493705** dated **12.01.2022** issued by the Superintendent, Central Goods and Service Tax, Range-I, Division Gandhinagar, Gandhinagar Commissionerate

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

M/s Nirmalkumar Manganbhai Raval [GSTIN: 24AMKPR6277N1Z7]
(Trade Name: M/s Mahakali Traders) Shop No. F-6,
Haribhai Market, Ramosana Highway Road, Opp. Uma Petrol Pump,
Mehsana, Gujarat - 384002

(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 वेबसाइटwww.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 websitewww.cbic.gov.in.

:: ORDER-IN-APPEAL ::

M/s Nirmalkumar Maganbhai Raval [GSTIN-24AMKPR6277N1Z7] (Trade Name : M/s. Mahakali Traders), Shop No. F-6, Haribhai Market, Ramosana Highway Road, Opp. Uma Petrol Pump, Mehsana, Gujarat-384 002 (hereinafter referred as the *'appellant'*) has filed present appeal against Order for Cancellation of Registration bearing Reference No. ZA2401220493705 dated 12.01.2022 (hereinafter referred to as *'impugned order'*), issued by the Superintendent, Central GST, Range-I, Division-Gandhinagar, 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 24AMKPR6277N1Z7. The appellant was issued a show cause notice on 14.12.2021 asking 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."* Subsequently, the GST registration was cancelled by the Superintendent, Central GST, Range-I, Division- Gandhinagar, Gandhinagar Commissionerate vide impugned order dated 12.01.2022 citing the following reasons:- *"Response not received. Registration cancelled as per Provision of Section 29(2) and Section 45 of CGST Act, 2017. In terms of Section 29(3) & (4) of the CGST Act, 2017, the cancellation of registration 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 and after to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation. You may apply for revocation of cancellation in terms of Section 30 of the CGST Act, 2017 within a period of 30 days from the date of the service of the order of cancellation of registration, through the common portal. It is compulsory to file GSTR 10 Final returns after cancellation of registration. Pls file GSTR 10 and inform immediately to this office."*

The effective date of cancellation of GST registration was 31.12.2021.

3. Being aggrieved, the appellant filed the present appeal on **11.11.2022**, against the impugned order, *inter alia*, contending that:-

(i) due to financial circumstances which affected their business, they were not filled GST returns;
(ii) request for Condonation of delay;
(iii) request for revocation of cancellation of registration;

Personal Hearing

4. Personal hearing in the case was held on 20.12.2022 on virtual mode. Shri Tushar Pankajbhai Parmar, Authorized Representative appeared before the appellate authority on behalf of the appellant, he submitted that they have nothing more to add to their written submission till date.

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 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. I find that the impugned order was issued on 12.01.2022 by the adjudicating authority and the said order was also communicated to them on the same day of 12.01.2022 on portal as informed by the Superintendent, Range-I, Division-Mehsana through their mail dated 22 & 23.12.2022 as well as the appellant vide their email letter dated 26.12.2022 submitted that date of communication may please be considered as 12.01.2022 instead 21.10.2022. It is further observed that the appellant has filed the present appeal on **11.11.2022.**

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 **12.04.2022**, as stipulated under Section 107(1) of the Act. However, in the instant case the appellant filed the present appeal on **11.11.2022** i.e after a period of more than five months 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 12.05.2022, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. The appellant has made request for delay condonation, however, they failed to submit any cogent reason for delay in filing appeal. I find that there is an inordinate delay of more than five months 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 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. 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 29.05.2022 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 has not submitted any cogent ground for such inordinate delay for more than five months 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. 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.

29/12

(Mihir G Rayka)
Additional Commissioner (Appeals)
Date: 29.12.2022

Attested

29/12/2022

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

By R.P.A.D.

To
M/s. Nirmalkumar Maganbhai Raval [GSTIN-24AMKPR6277N1Z7]
(Trade Name : M/s. Mahakali Traders), Shop No. F-6, Haribhai Market,
Ramosana Highway Road, Opp. Uma Petrol Pump, Mehsana, Gujarat-384 002

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- Mehsana, Gandhinagar Commissionerate.
5. The Superintendent, CGST & C.Ex., Range-I, Division - Mehsana, 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.