



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1902/2022 / 3102-09

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-86/2022-23
दिनांक Date : 17-01-2023 जारी करने की तारीख Date of Issue : 17-01-2023

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

ग Arising out of Order-in-Original No ZA2401220484423 dated 12.01.2022 issued by the Superintendent, Central Goods and Service Tax, Range-I, Division Mehsana, Gandhinagar Commissionerate

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

M/s Chaudhary Engineering [GSTIN:24AANFC9773B1ZB]
Ground, 1121, Opp. Tanu Motors,
Mehsana Palanpur Highway, 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) <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 अपीलिय 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 appropriate authority, appellant may refer to the website www.cbic.gov.in .



:: ORDER-IN-APPEAL ::

M/s. Chaudhary Engineering (GSTIN-24AANFC9773B1ZB), Ground, 1121, Opp. Tanu Motors, Mehsana Palanpur Highway, Mehsana, Gujarat – 384 002 (hereinafter referred to as the 'appellant') has filed present appeal against Order for Cancellation of Registration bearing Reference No. ZA2401220484423 dated 12.01.2022 (hereinafter referred to as 'impugned order'), issued by the Superintendent, Central GST, Range-I, Division-Mehsana, 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 24AANFC9773B1ZB. The appellant was issued a show cause notice on 02.12.2021 asking that "your registration is liable to be cancelled for the following reasons: Returns furnished by you under Section 39 of the Central Goods and Services Tax Act, 2017, Failure to furnish returns for a continuous period of six months." Subsequently, the GST registration was cancelled by the Superintendent, Central GST, Range-I, Division- Mehsana, Gandhinagar Commissionerate vide impugned order dated 12.01.2021 citing the following reasons:- "Response not received. Registration cancelled as per provision of Section 29(2) and Section 45 of CGST Act, 2017."

The effective date of cancellation of GST registration was 31.01.2021.

3. Being aggrieved, the appellant filed the present appeal on 29.06.2022, against the impugned order, *inter alia*, contending that:-

- (i) Mismatch in PAN CARD and AADHAAR CARD details, to make efforts for correction in AADHAAR CARD;
- (ii) due to serious illness, they were unable to file returns;
- (iii) ready to pay all tax liability with interest, penalty & late fee;
- (iv) request for revocation of cancellation of GSTIN registration;

Personal Hearing

4. Personal hearing in the case was fixed on 23.11.2022, 01.12.2022, 28.12.2022, but no one appeared for personal hearing. However, personal hearing in the case was held on 11.01.2023. Mr. Rahi M Patel, Partner of the firm appeared before the appellate authority; he submitted that they have nothing more to add to their written submissions 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 12.01.2021 by the adjudicating authority and the said order was also communicated to them on the same day of 12.01.2021. It is further observed that the appellant has filed the present appeal on 29.06.2022.

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 (i). 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 (ii). However, 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 M.A. 665 of 2021, in SMW(C) No. 3 of 2020. Hon'ble Supreme Court vide Order dated 10.01.2022 ordered that for computing period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 28.02.2022 shall stand excluded and consequently balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022 and that in cases where the limitation would have expired during the period from 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.

7 (iii). In the present matter, the "impugned order" is of 27.12.2021 and appeal is filed on 29.06.2022. Accordingly, in view of above order of the Hon'ble Supreme Court the last date for filing of appeal comes to 29.05.2022 (considering 90 days from 01.03.2022). Further, I find that in the COD application the appellant has submitted that the reason for being delayed in appeal was due to mismatch of PANCARD and AADHAAR Card details which took much time for correction process in their AADHAAR CARD as well as serious illness of the appellant. The appellant furnished photocopy of corrected AADHAAR CARD. Accordingly, the appellant has requested to condone the delay. Looking to the COD application in the light of Section 107(4) of the CGST Act, 2017 by condoning the delay of one month the last date for filing of appeal comes to 29.06.2022. In the present case the appeal is filed on 29.06.2022. In view of the above order of the Hon'ble Supreme Court as well COD application in terms of Section 107(4) as discussed in above paras, the present appeal is considered to be filed in time.

8. In view of above and also looking into the Covid-19 pandemic situation in the instant matter, I am inclined and lenient 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.

9. I have carefully gone through the facts of the case, written submissions made by the "Appellant" and available records. I find that the *adjudicating authority/proper officer* has cancelled the registration with effect from 31.01.2021 as the "Appellant" failed to file their GST Returns for a continuous period of 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.

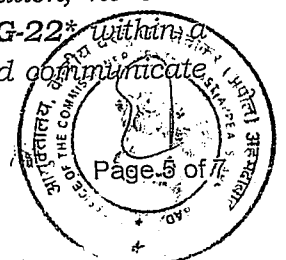
RULE 23. Revocation of cancellation of registration. — (1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in **FORM GST REG-21***, to such proper officer, within a period of thirty 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.

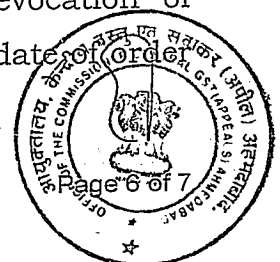
(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in **FORM GST REG-23*** requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the 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.

10. 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.”

11. On going through the records/submissions and status on GST portal, I find that the “Appellant” has stated that they have filed the GST Returns upto January 2021 i.e. upto the date of cancellation of registration. Further, the “Appellant” submitted that that they assured to pay, duty / GST liability along with interest, penalty and Late Fees and will file all pending returns. They also assured not to repeat such mistake in future. Hence, I find that the “Appellant” has complied with the above said provisions in the instant case. Needless to say that the “Appellant” shall furnish all the 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.



12. In view of above discussions, 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.

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

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

(Handwritten signature)
17/01/23

(Mihir G Rayka)

Additional Commissioner (Appeals)

Date: .1.2023

Attested

(Handwritten signature)
7/1/2023
(Tejas J Mistry)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To

M/s. Chaudhary Engineering (GSTIN-24AANFC9773B1ZB),
Ground, 1121, Opp. Tanu Motors, Mehsana Palanpur Highway,
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. Guard File.
9. P A File.

