



सत्यमेव जयते

आयुक्त(अपील) कार्यालय,  
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
बीएसटी भवन, राजवळ मार्ग, अम्बावाडी अहमदाबाद ३८००१५  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
0792630506- टेलिफॅक्स 07926305136



DIN NO. : 20230164SW0000999B50

रजिस्टर्ड टॅक्स एंटी डाय

क फाइल संख्या : File No : GAPPL/ADC/GSTP/131/2023

१११३ - ३०

ख अपील आवेदन संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-93/2022-23  
दिनांक Date : 30-01-2023 जारी कलने की तारीख Date of Issue : 31-01-2023

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

ग Arising out of Order-in-Original No ZA240222085436P dated 18.02.2022 issued by the Superintendent, Central Goods and Service Tax, Range-I, Division Kalol, Gandhinagar Commissionerate

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

M/s Lakhdir Shaharbhai Rabari [GSTIN: 24AWMPR1612H1ZL]  
[Trade Name: Shreeji Engineering]  
1, Indralok Tenament, Kalol, Gandhinagar - 382721

(A)	इस आदेश(अपील) से अभिष्ट कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता 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 <a href="http://www.cbic.gov.in">website www.cbic.gov.in</a> .



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

Lakhdar Shaharabhai Rabari [Trade Name : Shreeji Engineering, GSTIN-24AWMPR1612H1ZL], 1, Indralok Tenament, Kalol, Gandhinagar - 382 721 (hereinafter referred to as 'appellant') has filed present appeal against Order for Cancellation of Registration bearing Reference No. ZA240222085436P dated 18.02.2022 (hereinafter referred to as 'impugned order'), issued by the Superintendent, Central GST, Range-I, Division- Kalol, Gandhinagar Commissionerate (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case are that appellant was registered under GST, having registration number as 24AWMPR1612H1ZL. The appellant was issued a show cause notice No. ZA2412210060983 on dated 02.12.2021. After examination of the reply dated 02.01.2022 by the appellant, the GST registration was cancelled by the Superintendent, Central GST, Range-I, Division-Kalol, Gandhinagar Commissionerate vide impugned order dated 18.02.2022 citing the following reasons:- "Failure to furnish return for a continuous period of six months." The effective date of cancellation of GST registration was 02.12.2021.

3. Being aggrieved, the appellant filed the present appeal on 23.12.2022, against the impugned order, *inter alia*, contending that:-

- (i) Non-awareness of GST law;
- (ii) Only came to know from debtors party;
- (iii) not received hard copy of Cancelled Registration Order;
- (iv) due to some personal and medical reason with dependent family member not able to file returns within time;
- (v) already paid their pending GST liability, interest and late fees;
- (vi) ready to pay remaining liability for pending returns and ensure regular compliance of GST returns if GST number activated;

**Personal Hearing**

4. Personal hearing in the case was held on 24.01.2023 in person. Mr. Pawankumar, Chartered Accountant / Authorized Representative, on behalf of the appellant appeared before the appellate authority, 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 18.02.2022 by the adjudicating authority and the said order was also communicated to them on the same day of 18.02.2022. It is further observed that the appellant has filed the present appeal on 23.12.2022.



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."

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 18.02.2022 and appeal is filed on 23.12.2022. 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 some personal and medical reason with dependent family member; that they were in non-receipt of hard copy of the cancellation order and unaware of GST law. Accordingly, the appellant has requested to condone the delay. Even though 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 28.06.2022. In the present case, the appeal is filed on 23.12.2022.



8. 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 29.05.2022, as stipulated under Section 107(1) of the Act. However, in the instant case the appellant filed the present appeal on 23.12.2022 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 28.06.2022, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. Accordingly, 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 and as per the H'ble Supreme Court's order dated 10.01.2022. Thus, appeal filed beyond the time limit prescribed under Section 107(1) *ibid* cannot be entertained.

9. 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 and as per the Supreme Court's Order dated 10.01.2022 was already completed on 28.06.2022 and hence, the present case would not be eligible in respect of period of limitation as per Section 107 of the CGST Act, 2017 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.

10. It is also observed that the appellant has filed an application for condonation of delay (COD) and has not submitted any cogent ground for such **inordinate delay of 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*

10/12/2022



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.

11. 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 judgments would be squarely applicable to the present appeal also:

12. By respectfully following the above judgments, 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 and as per the Supreme Court's Order. 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.

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.

*[Signature]*  
30/01/23

(Mihir G Rayka)  
Additional Commissioner (Appeals)

Date: 31.1.2023

Attested

*[Signature]*  
31/1/23

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



By R.P.A.D.

To,

Lakhdhir Shaharbhaji Rabari [GSTIN-24BTNPS2935R12R],  
[Trade Name : Shreeji Engineering],  
1, Indralok Tenament, Kalol, Gandhinagar - 382 721

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 QLA on website.
8. ✓ Guard File.
9. P A File.

