



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in

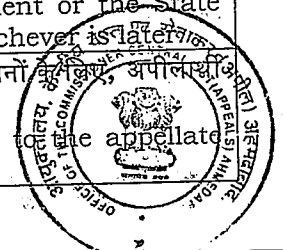


By Regd. Post

DIN NO. : 20230264SW00000050BE

(क)	फाइल संख्या / File No.	APPEAL REF. NO.ZZ24012310000008 (AIO MODULE) 8239-45
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-003-APP-ADC-95/2022-23, dtd 10.02.2023
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, संयुक्त आयुक्त अपील Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	13.02.2023
(ङ)	Arising out of Order-in-Original No. ZA2410220406064 dated 10.10.2022 issued by Superintendent of CGST, Central GST, Range-I Palanpur, Division- Palanpur, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Shree Radheshyam Trading Co. (Jayantilal Dalubhai Patel Boka) (GSTIN - 24ACBFS5424K1Z4) Address : F 16, New Market Yard, Dairy Road, Palanpur, Banaskantha, Gujarat - 385 001

(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 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 ::

M/s. Shree Radheshyam Trading Co (GSTIN- 24ACBFS5424K1Z4), F 16, New Market Yard, Dairy Road, Palanpur, Banaskantha, Gujarat - 385 001 (hereinafter referred to as the 'appellant') has filed present appeal against Order for Cancellation of Registration bearing Reference No. ZA2410220406064 dated 10.10.2022 (hereinafter referred to as 'impugned order'), issued by the Superintendent, Central GST, Range-I, Division- Palanpur, 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 24ACBFS5424K1Z4. The appellant was issued a show cause notice on 28.09.2022 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- Palanpur, Gandhinagar Commissionerate vide impugned order dated 10.10.2022 citing the following reasons:- "Tax payer has not filed monthly GST return for continuous period of more than 6 months."

The effective date of cancellation of GST registration was 09.04.2022.

3. Being aggrieved, the appellant filed the present appeal on 10.01.2023 through online portal, against the impugned order, *inter alia*, contending that:-

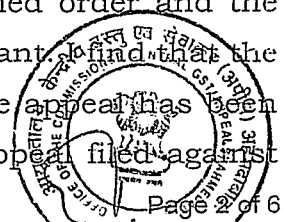
- (i) due to acute financial crunch in the business they were unable to file returns;
- (ii) no tax payable was determined by the officer;
- (iii) ready to pay all tax liability with interest, penalty & late fees;
- (iv) request for revocation of cancellation of GSTIN registration;

Personal Hearing

4. Personal hearing in the case was fixed on 31.1.2013 in person. Mr. Jayantibhai D Patel and Mr. Pravinbhai N Patel, Authorized Representative & Partners of the firm appeared for personal hearing before the appellate authority, they 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 10.10.2022 by the adjudicating authority and the said order was also communicated to them on the same day i.e 10.10.2022 on common portal. It is further observed that the appellant has filed the present appeal on 10.01.2023.

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 observed that in the present case the appeal is filed on 10.01.2023, hence, in terms of the Section 107(1) & 107(4) as discussed in above para, the present appeal is considered to be filed in time. Therefore, I find that the present appeal is filed within stipulated time limit. Accordingly, I am proceeded to decide the case.

8. 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 09.04.2022 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: -



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 :

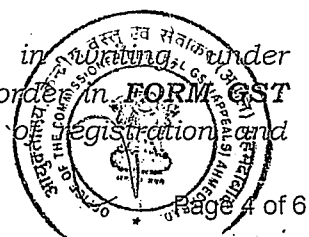
Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, 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.

9. 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.”

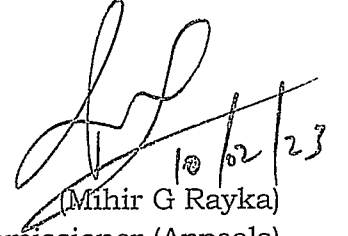
10. On going through the records/submissions and status on GST portal, I find that the “Appellant” has stated that they have filed the GST Returns upto March 2022 i.e. upto the date of cancellation of registration. Further, the “Appellant” submitted that they have paid their GST liability alongwith interest & late fees for the pending returns from April 2022 to November 2022. They submitted copies of challans CPIN :23012400061063 dated 10.01.2023 amounting to Rs. 505380/- (CGST Rs. 242690/-, SGST Rs. 242690/-, late fees Rs. 5000/- and CPIN : 23012400634834 dated 30.01.2023 amounting to Rs. 51770/- (Interest Rs. 14,535/- and Late fees Rs. 11,350/-) and also that they assured to pay, duty / GST liability along with interest, penalty and Late Fees, if any and will file all pending returns on revocation of registration. 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.



11. 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.

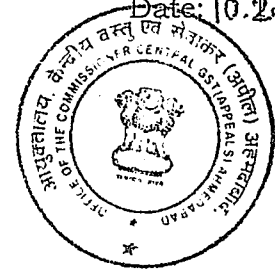
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

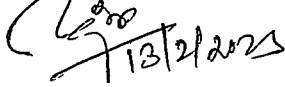

(Mihir G Rayka)

Additional Commissioner (Appeals)

Date: 10.2.2023



Attested


13/2/2023

(Tejas J Mistry)

Superintendent

Central Tax (Appeals)

Ahmedabad

By R.P.A.D.

To

M/s. Shree Radheshyam Trading Co (GSTIN- 24ACBFS5424K1Z4),

F 16, New Market Yard, Dairy Road, Palanpur, Banaskantha,

Gujarat - 385 001

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 - Mehshana, 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.