



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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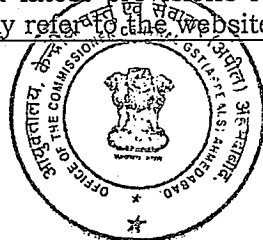


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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/522/2023 / ५६०० - ६८०६
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-003-APP-ADC-97/2022-23 and 24.02.2023
(ग)	पारित किया गया / Passed By	श्रीमिहिररायका, अपरआयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	27.02.2023
(ङ)	Arising out of Order-In-Original No. ZA24012109676S dated 22.01.2021 passed by The Superintendent, CGST, Range-III, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Akbarbhai Muradbhai Kaliya (Muskan Construction), Sanjari Avenue, 12, Near Nilkanth Villa, Pethapur, Gandhinagar, Gujarat-382610

(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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
(i)	(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 <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, अपीलार्थी 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

Brief facts of the case:-

M/s Akbarbhai Muradbhai Kaliya (Trade Name : Muskan Construction) (GSTIN-24BWSPK2602M1ZA), Sanjari Avenue, 12, Near Nilkanth Villa, Pethapur, Gandhinagar, Gujarat : 382 610 (hereinafter referred to as 'the Appellant') has filed the present appeal against Order No. ZA24012109676S, dated 22.01.2021 (hereinafter referred to as '*the impugned order*'), for Cancellation of Registration issued by the Superintendent, CGST, Range-III, Division-Gandhinagar, Gandhinagar Commissionerate (hereinafter referred to as '*the adjudicating authority*').

2. Briefly stated the fact of the case is that the appellant was registered under GSTIN 24BWSPK2602M1ZA. The appellant was issued Show Cause Notice date 08.01.2021 for cancellation of their registration due to failure to furnish returns for a continuous period of six months. The adjudicating authority vide *the impugned order dated 22.01.2021* ordered for cancellation of registration with effect from 22-01-2021 on the ground that inspite of issuing REG-17, the tax payer has neither appeared for PH nor filed the returns.

3. Being aggrieved with the impugned order *the appellant* filed the present appeal online on 31.12.2022 (submitted physically to this office on dated 04.01.2023) for revocation of cancellation of their GST Registration Number, wherein, inter-alia, contending that

- (i) they are provided the service of construction as labour and on contract to their client and the appellant is proprietor and is looking after the entire business i.e Finance, Marketing, Labour, Transport as well as various compliances under govt. law;
- (ii) the compliance of the GST law has been compiled by the C.A. to whom the appellant deployed;
- (iii) the department violated Article 19 "Right to Freedom" of Constitution of India and cancelled the GST registration which appeared to be not proper;
- (iv) requested for revocation of cancellation of GST registration;
- (v) requested for condonation of delay on the grounds that the appellant alone is running the business and the work of compliance of GST law entrusted to C.A, and CA has not complied the notice after 22.01.2021 without informing the appellant, though the same was handover to C.A, but C.A has not initiated necessary action in this regard.

Personal Hearing :

3. Personal hearing in the case was held on 23.02.2023. Shri R R Dave, Tax Consultant, appeared in person on behalf of the 'Appellant' authorized representative. They have nothing more to add to their written submission filed on 14.02.2023.



Discussion& findings:

4. 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 22.01.2021 by the adjudicating authority and the said order was also communicated to them on the same day i.e on 22.01.2021. It is further observed that the appellant has filed the present appeal online on 31.12.2022 and submitted GST APL-01 along with self-certified copy of the impugned order on 04.01.2023.

5. 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.**

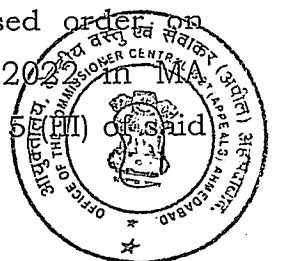
(2)

(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.*“

5.1 Accordingly, I/observed that the Appellant was required to file appeal within three (3) months from the receipt of *the impugned order* dated 22,01.2021. However, in the instant case the appellant has filed the present appeal on 31.12.2022 i.e. after a lapse of period more than one and a half year (1 ½ year) 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 the delay of one month in filing of appeal 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 one and half year (1 ½ year) in filing the appeal over and above the normal period of three months. Thus, I find that the present appeal has been filed beyond the time limit as prescribed under the Section 107(1) of the CGST Act, 2017 cannot be entertained.

5.2 I further find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2021 in MA 665/2021, in SMW(C) No. 3 of 2020. The relevant para No. 5 (I) & 5 (II) 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.

5.3 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 proceedings under GST Laws.



6. Looking to the above, I find in the present case that the period of limitation of 90 days as per the Hon'ble Supreme Court's Order dated 10-1-2022 in suo-moto writ petition SMW(C) NO.3 of 2020 in MA No.665/2021 has also already been completed on 29.06.2022 (even if, considering one month condonation period) and hence, the present case would not be eligible for the relaxation / extension granted by the Hon'ble Supreme Court in respect of period(s) of limitation as mentioned above from the date on which the said decision or impugned order is communicated to such person/ appellant. 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.

7. It is also observed that the appellant has not submitted any cogent ground for such inordinate delay of more than one and half year (1 ½ year) in filing the appeal. 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 the 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 at 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 at 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.

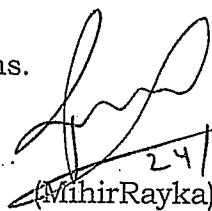
(iii) **The Hon'ble High Court of Delhi in the case of Delta Impex** reported at 2004 (173) E.L.T. 449 (Del) held that the Appellate Authority has no jurisdiction to extend limitation even in a "suitable" case for further period of more than thirty days.



8. 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.

9. By respectfully following the above judgments & provisions of law, I hold that this appellate authority cannot condone the delay beyond the period as prescribed under Section 107 of the CGST Act, 2017 / Rule 108 of CGST Rules, 2017 as well as the appeal is filed beyond the extension of time limit as provided by the Hon'ble Supreme Court vide 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 view of the above discussion and findings, I reject the present appeal filed by the appellant on time limitation factor.

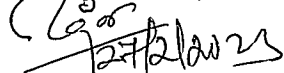
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

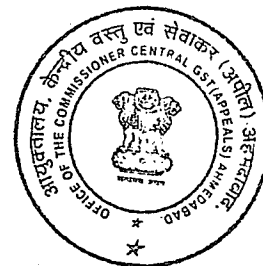

24/02/23

(MihirRayka)
Additional Commissioner (Appeals)

Date: .02.2023

Attested


(TEJAS J MISTRY)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To

M/s Akbarbhai Muradbhai Kaliya (GSTIN-24BWSPK2602M1ZA),
(Trade Name : Muskan Construction)
Sanjari Avenue, 12, Near Nilkanth Villa, Pethapur, Gandhinagar,
Gujarat : 382 610

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C.Ex., Ahmedabad.
3. The Commissioner, CGST & C.Ex., Gandhinagar Commissionerate.
4. The Deputy / Assistant Commissioner, CGST & C. Ex., Division-Gandhinagar, Gandhinagar Commissionerate.
5. The Superintendent, CGST & C. Ex., Range-III, Division-Gandhinagar, Gandhinagar Commissionerate.
6. The Superintendent [Systems] , CGST & C.Ex. (Appeals, Ahmedabad .

7. Guard File.

8. P. A. File.

