



सत्यमेव जयते

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

0792630506- टेलीफैक्स 07926305136



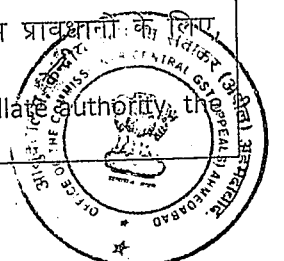
DIN NO. : 20230464SW0000000B34

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/1068/2023 / ४७७ - ४६३
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-02/2023-24**
दिनांक Date : **28-04-2023** जारी करने की तारीख Date of Issue : 28-04-2023
- श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)
- ग Arising out of Order-in-Original No **ZA2401230451462** dated **09.01.2023** issued by the Superintendent, Central Goods and Service Tax, Range-III, Division Gandhinagar, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Kirandevi Sujitkumar Tiwari
[Trade Name: Aman Construction]
[GSTIN: 24AIPPT1993C1ZY]
E-304, Aaradhya Homes, B/h. Satyamev Hospital,
Zundal, Gandhinagar, Gujarat - 382424

(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 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:-

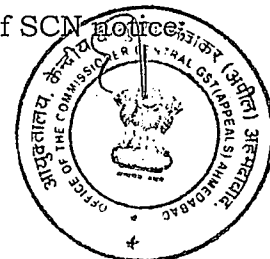
Kirandevi Sujitkumar Tiwari (Trade Name : M/s. Aman Construction) (GSTIN-24AIPPT1993C1ZY), E-304, Aaradhya Homes, B/h. Satyamev Hospital, Vill Zundal, Ganadhinagar, Gujarat : 382 424 (hereinafter referred to as '*the Appellant*') has filed the present appeal against Order No. ZA2401230451462, dated 09.01.2023 (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 - 24AIPPT1993C1ZY. The appellant was issued Show Cause Notice dated 09.12.2022 for cancellation of their registration on the grounds that "*Failure to furnish returns for a continuous period of six months.*" Subsequently, the adjudicating authority vide *the impugned order dated 09.01.2023* ordered for cancellation of registration with effect from 01-05-2022 on the following reason(s): "*Party not responded to SCN dtd 09.12.2022 nor appeared for hearing as per schedule. Thus, the notice for cancellation is approved and registration is cancelled in terms of Section 29(2) of CGST Act, 2017 w.e.f next date of period for which last GSTR-3B is filed. However, though cancellation, liability to pay all the pending tax, interest, penalty, fee, fine or any other dues, if any, and other legal liabilities, if any, also remain continue and assessee are required to pay the same in terms of Section 29(3) & (5) of CGST Act, 2017. Also, the assessee is required to file final return in GSTR-10 within 3 months from date of cancellation. They are advised to file all returns not filed and apply for revocation to Divisional AC/DC by login from System after payment of all tax, late fee, interest etc.*"

The effective date of cancellation is 01.05.2022

3. Being aggrieved with the impugned order *the appellant* filed the present appeal on **27.03.2023** for revocation of cancellation of their GST Registration Number, wherein, inter-alia, contending that

- (i) Action of the adjudicating authority rejecting registration certificate suo moto is contrary to the provisions of Act and rules made thereunder;
- (ii) The appellant handed over all necessary documents to his accountant in due time and relevant period, but accountant failed to prepare and submit GST return due to his bad health;
- (iii) The appellant may be given proper opportunity for the hearing;
- (iv) The appellant is not educated person and not aware regarding email and other technologies matter. Due to unawareness of technologies, they have not regularly checked email and not taken care of SCN notice.



- (v) The appellant has filed all returns upto 30.04.2022;
- (vi) Due to financial crunch, they were not in a position to make the GST payment regularly and without GST payment, GSTR-3B cannot be filled, hence, not able to filled GSTR-3B returns in time;
- (vii) The appellant has ensured from now onwards they will submit GST returns along with GST, interest and late fees as applicable and cannot repeat this mistake again;
- (viii) They filed returns upto month of April 2022 i.e upto the month of cancellation of registration i.e 01.05.2022 and submitted Tax alongwith interest and late fees upto Feb 2023 as per challan dated 13.02.2023;
- (ix) Requested to restore the cancellation of GST registration;

Personal Hearing :

4. Personal hearing in the case was held on 13.04.2023, but no one appeared for hearing. Next personal hearing was fixed on 17.04.2023 on request of the appellant for early hearing in the matter. Shri Jaykishan K Vidhwani, Chartered Accountant, appeared in person in the personal hearing on 17.04.2023 on behalf of the 'Appellant' as authorized representative. They have nothing more to add to their written submission till date.

Discussion& findings:

5. I have gone through the facts of the case, written submissions made by 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.

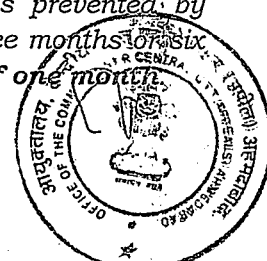
6. First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

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, as the case may be, allow it to be presented within a further period of one month.



7. In the present matter, the "impugned order" is of 09.01.2023, so, the normal appeal period of three months is available up to 09.04.2023 whereas, the present appeal is filed on 27.3.2023. In terms of the Section 107(4) of CGST Act, 2017, 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". I find that the *adjudicating authority/proper officer* has cancelled the registration with effect from 01.05.2022 as the "Party not responded to SCN dtd 09.12.2022 nor appeared for hearing as per schedule. Thus, the notice for cancellation is approved and registration is cancelled in terms of Section 29(2) of CGST Act, 2017 w.e.f next date of period for which last GSTR-3B is filed. However, though cancellation, liability to pay all the pending tax, interest, penalty, fee, fine or any other dues, if any, and other legal liabilities, if any, also remain continue and assessee are required to pay the same in terms of Section 29(3) & (5) of CGST Act, 2017. Also, the assessee is required to file final return in GSTR-10 within 3 months from date of cancellation. They are advised to file all returns not filed and apply for revocation to Divisional AC/DC by login from System after payment of all tax, late fee, interest etc."

9. 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 :

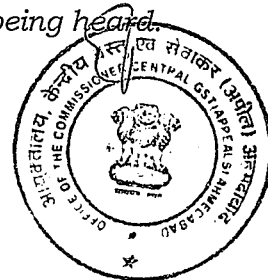
[**Provided** that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended, -

(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.

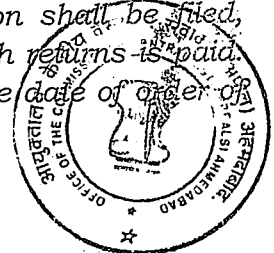
(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in **FORM GST REG-05***, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(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

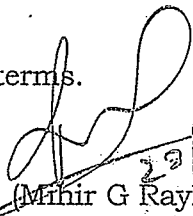


cancellation of registration, all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed. Further, in such cases, in terms of the second proviso to sub-rule (1) of rule 23 of the said Rules, all returns required to be furnished in 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, I find that the appellant stated that they have filed their GST returns upto April 2022 on 21.07.2022 with interest and late fees for restoration of their cancelled registration. On being verified return status on GST portal, I find that the "Appellant" has filed their GST returns upto April 2022 i.e. upto the date of cancellation of registration. Further, the "Appellant" stated that they are assured / committed to pay their all GST liabilities alongwith interest, penalty and late fees till date as per the GST Act. Further, I find that the "Appellant" has complied with the above said provisions in the instant case, I am of the opinion that the appellant should not to suffer any more looking to the interest of revenue. 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.

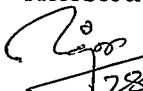
13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellants stand disposed of in above terms.

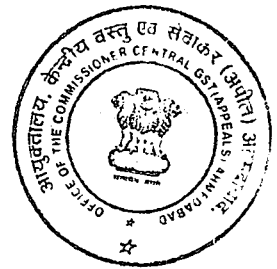

(Mihir G Rayka)

Additional Commissioner (Appeals)

Date: 28.04.2023

Attested


28/4/2023
(Tejas J Mistry)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To

Kirandevi Sujitkumar Tiwari (GSTIN-24AIPPT1993C1ZY)
(Trade Name : M/s. Aman Construction),
E-304, Aaradhya Homes, B/h. Satyamev Hospital, Vill- Zundal,
Ganadhinagar, Gujarat : 382 424

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.



