सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडीअहमदाबाद३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079 26305136
E Mail : commrappl1-cexamd@nic.in

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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2646/2023 / 3652 -58
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-CGST-003-APP-JC-40/2023-24 and 16.10.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	27.10.2023
(ङ)	Arising out of Order-In-Original No. ZA2404230284950 dated 06.04.2023 passed by The Superintendent, CGST & C.Ex, Range I, Division- Himmatnagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Krishna Enterprise (Legal Name – Rathore Dikandrasingh Lalitsingh), 7, Riddhi-Siddhi Bunglows, Behind Dev Bhoomi, Himatnagar, Sabarkantha, Gujarat - 383001

(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 remainingamount 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.

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइटwww.cbic.gov.inको देख सकते हैं।

(C) For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the websitewww.cbic.gov.in.

ORDER IN APPEAL

Brief Facts of the Case :-

This appeal has been filed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as *"the Act"*) by M/s. Krishna Enterprise, (Legal Name – Rathore Dikandrasingh Lalitsingh), 7, Riddhi-Siddhi Bunglows, Behind Dev Bhoomi, Himatnagar, Sabarkanth, Gujarat - 383001(hereinafter referred to as "***Appellant***") against the Order No. ZA2404230284950 dated 06.04.2023 (hereinafter referred to as ***"Impugned Order"***) passed by the Superintendent, CGST, Range-I, Himmatnagar Division, Gandhinagar Commissionerate (hereinafter referred to as "***the Adjudicating Authority/Proper Officer***").

2. Facts of the case, in brief, are that the *appellant* is registered under the Central Goods and Services Tax Act, 2017 vide GST Registration GSTIN 24CCXPR2742F1Z8. The appellant was issued show cause notice dated 03.02.2023 and subsequently, the adjudicating authority /proper officer has passed the impugned order dated 06.04.2023 on the following grounds:

1. *"Failure to furnish return for a continuous period of Six month. Hence registration is cancelled with effect from 01.07.2022".*

Being aggrieved with the *impugned order* dated 06.04.2023 the *appellant* has preferred the present appeal online on 01.09.2023 alongwith certified copies of the relevant documents against the impugned order, inter alia, contending that:

(i) request to restore the registration;

(ii) ready to pay all pending dues after revocation of registration.

Personal Hearing:-

4. Personal hearing in the case was held on 27.09.2023, but no one appeared for hearing. Next personal hearing was fixed on 13.10.2023 on request of the appellant for early hearing in the matter. Shri Pranav Kumar O Vyas, CA, appeared in person in the personal hearing on 13.10.2023 on behalf of the 'Appellant' as authorized representative. During the PH, he stated that due to lack of knowledge, the appellant couldn't file appeal in time, so he requested for condonation of delay. He further submitted that all the dues have been paid and requested to allow the appeal.

Discussion and 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 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 that as against the *impugned order* of dated 06.04.2023, the appeal has been filed online on 01.09.2023 i.e. appeal 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). In the present matter, the "*impugned order*" is of 06.04.2023 so, the normal appeal period of three months was available up to 06.07.2023 whereas, the present appeal is filed online on 01.09.2023. However, considering 90 days from 06.04.2023, the last date for filing of appeal comes to 06.07.2023. In the present matter the appeal is filed on 01.09.2023. Accordingly, in view of foregoing I find that the present appeal is filed beyond the time limit as prescribed under Section 107(1) of the CGST Act, 2017. Further, looking to the condonation of delay request of Appellant, I observed that even after condoning delay of filing of appeal for a further period of one month as per provisions of sub section (4) of

Section 107 of the CGST Act, 2017 the last date for filing of appeal comes on 06.08.2023, whereas the present appeal is filed on 01.09.2023.

8. In view of foregoing, I find that the present appeal is filed beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

9. 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 the 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 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.

Section 107 of the CGST Act, 2017 the last date for filing of appeal comes on 06.08.2023, whereas the present appeal is filed on 01.09.2023.

8. In view of foregoing, I find that the present appeal is filed beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

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(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.

10. I find that the provisions of Section 107 of the Central Goods and Services Tax Act, 2017 are *parimateria* 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.

11. By following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. 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. I, accordingly, dismiss the present appeal.

अपीलकर्ताद्वारादर्जकीगईअपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।

The appeal filed by the appellant stands disposed of in above terms.

16/10/2023

(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date:16.10.2023

Attested

(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. M/s. Krishna Enterprise,
(Legal Name – Rathore Dikandrasingh Lalitsingh),
7, Riddhi-Siddhi Bunglows,
Behind Dev Bhoomi, Himatnagar,
Sabarkanth, Gujarat - 383001.

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, Gandhinagar Commissionerate.
4. The Deputy / Asst. Commissioner, CGST, Div-Himmatnagar, Gandhinagar Commissionerate.
5. The Superintendent, CGST, Range-I, Div- Himmatnagar, Gandhinagar Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publishing on website.
7. P.A. File
8. Guard File.