



सत्यमेव जयते

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

DIN NO.: 20231264SW0000722747

(क.)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/3500/2023/9627-83
(ख.)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-003-APP-JC-55/2023-24 and 11.12.2023
(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	14.12.2023
(ङ.)	Arising out of Order-In-Original No. ZA2401210278513 dated 07.01.2021 passed by The Superintendent, CGST Gandhinagar Commissionerate.	
	Name of the Appellant	Name of the Respondent
(च.)	M/s New Lucky Submersible Service (Legal Name: Mayurbhai Jagdishbh Gajjar), 13/B, Mahakali Trade Center, Station Road, Kadi, Mahesana, Gujarat, 382715	The Superintendent, CGST Gandhinagar Commissionerate

(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 <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 अपीलिय 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 .

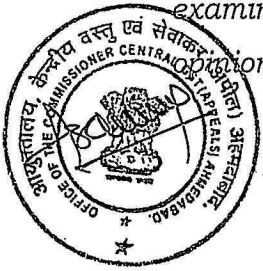


ORDER IN APPEAL**Brief Facts of the Case :-**

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. New Lucky Submersible Service, (Legal Name – Mayurbhai Jagdishbhai Gajjar), 13/B, Mahakali Trade Centre, Station Road, Kadi, Mahesana, Gujarat – 382715 (hereinafter referred to as "**Appellant**") against the Order No. ZA2401210278513 dated 07.01.2021 (hereinafter referred to as "**Impugned Order**") passed by the Superintendent, CGST, Range-II, Division- Kadi, 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 24ANEPG6716G2Z8. The appellant was issued show cause notice dated 25.12.2020 and subsequently, the adjudicating authority /proper officer has passed the impugned order dated 07.01.2021 on the following grounds:

"This has reference to your reply dated 05.01.2021 in response to the notice to Show Cause Notice dated 25.12.2020. Whereas, the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reasons:



1. *"Tax payer neither appeared in PH nor updated the bank account details/submitted the reply to notice, therefore the registration is cancelled. Tax payer directed to file all the pending GST returns / GSTR 10/ update the bank account detail and also pay the Govt. dues, if any".*

3. Being aggrieved with the *impugned order* dated 07.01.2021 the *appellant* has preferred the present online on 22.11.2023 on the following grounds:

- *Order passed without opportunity of hearing as Non speaking order in violation of Principal of natural justice;*
- *Opportunity of being heard is the basic right of the RTP, without this, the order passed by the PO liable to set aside in principal of natural justice, further Rule 2IA(2) let down this process. Hon'ble Court in multiple cases in*

GST Regime also support this matter and set aside the order passed by the PO;

- Reliance is placed on the Hon'ble Madras High court decision in the case of M/s Word Home Textile WP 17471/2020 order dated 10-12-2020, whereas the order passed by the PO for the rejection of refund claim without opp of hearing in Rule 92(3) quashed;
- that any application for refund can be rejected only after affording sufficient opportunity of hearing to the party, who seeks for refund. The first respondent in the impugned order dated 20.08.2020 has also confirmed that no hearing was afforded to the petitioner by the second respondent and despite the same, has dismissed the appeal erroneously;
- .Reliance is placed on the decision of Hon'ble Karnataka High court in the case of M/s MOHALLA TECH PRIVATE LIMITED WRIT PETITION NO.10774/2020 (T/RES) whereas rejection order passed by the PO for the refund application without opp of hearing Rule 62(3) quashed;
- the PO is non speaking order i.e., there is nothing mentioned in the order that why our submission of SCN issued was not considered by PO. As per the process of law, any order passed by the PO should be speaking order, relevant extract of Section 75(6) is reproduced below for your reference. Section 75(6): The proper officer, in his order, shall set out the relevant facts and the basis of his decision;
- Reliance is placed on decision of Hon'ble Punjab and Haryana High court decision in the case of GENPACT INDIA PVT LTD CWP-10302-202C) order dated 29.01.2021 whereas Hon'ble court quash the order passed by PO on basis of non-speaking order.



Personal Hearing:-

4. Personal hearing in the case was held on 08.12.2023. Shri Milanbhai Soni, 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 health issue, the proprietor could not file returns. Now he want to start business so allow appeal. He is ready to pay all dues if any.

Discussion and Findings :-

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



It is observed that in the instant case that as against the *impugned order* dated 07.01.2021, the appeal has been filed online on 22.11.2023 i.e. appeal filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. 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 07.01.2021 so, the normal appeal period of three months was available up to 07.04.2021 whereas, the present appeal is filed online on 22.11.2023. However, considering 90 days from 07.01.2021, the last date for filing of appeal comes to 07.04.2021. In the present matter the appeal is filed online on 22.11.2023. Accordingly, in view of foregoing 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, it is 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 07.05.2021, whereas the present appeal is filed on 22.11.2023.

8. In view of foregoing, the present appeal is filed beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017. Accordingly, 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. 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. The said issues 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.



10. 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.

अपीलकर्ताद्वारा दर्ज की गई अपील कानिपटाराउपरोक्त तरीके से किया जाता है।

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

Adesh Kumar Jain
11/12/2023

(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 11.12.2023

Attested

Sandheer Kumar
(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. New Lucky Submersible Service,
(Legal Name – Mayurbhai Jagdishbhai Gajjar),
13/B, Mahakali Trade Centre, Station Road,
kadi, Mahesana, Gujarat – 382715.

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- Kadi, Gandhinagar Commissionerate.
5. The Superintendent, CGST, Range-II, Div- Kadi, Gandhinagar Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publishing on website.
7. P.A. File
8. Guard File.

