



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. : 20230764SW0000778557

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/1989/2023 / 3281 - ६४
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-JC-09/2023-24**
दिनांक Date : **20-07-2023** जारी करने की तारीख Date of Issue : 21-07-2023
श्री **आदेश कुमार जैन** संयुक्त आयुक्त (अपील) द्वारा पारित
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **ZA2402231106238** dated **20.02.2023** 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 Akash Sankhwal [GSTIN: 24KCXPS0193B1Z6]
(Trade Name: Shivaya Wireless Communication)
Kumthunagar, D-235, Zundal,
Gandhinagar - 382421

| | |
|-------|---|
| (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 अपीलार्थी 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:-

Akash Sankhwal (Trade Name: M/s Shivaya Wireless Communication), Kumthunagar, D-235, Zundal, Gandhinagar, Gujarat : 382 421 (hereinafter referred to as 'the Appellant') has filed the present appeal against Order No. ZA2402231106238 dated 20.02.2023 (hereinafter referred to as 'the impugned order'), for Cancellation of Registration issued by the Superintendent, 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 24ANUPS9706N1ZY and was issued Show Cause Notice dated 15.01.2023 for the reason that "Failure to furnish returns for a continuous period of six months" and subsequently, the appellant's registration was cancelled by the adjudicating authority vide the impugned order dated 20.02.2023 on the following grounds:

"1. No response. Party not responded to SCN dt 15.01.2023 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 CGT Act, 2017. Also, the assessee is required to file final return in GSTR-10 within 3 month from date of cancellation.

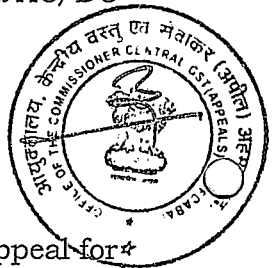
They are advised to file all returns not filed and apply for revocation to Divisional AC/DC by login from System after payment of all tax, late fee, interest etc."

The effective date of cancellation of registration is 01.01.2022.

3. Being aggrieved with the impugned order the appellant filed the present appeal for revocation of cancellation of their GST Registration Number, wherein they contended to request for revocation of cancellation of registration.

PERSONAL HEARING:

4. Personal hearing in the case was held on 19.07.2023 in virtual mode. Mr. Akash Sankhwal, Proprietor of the firm appeared virtually on behalf of the 'Appellant'. During the personal hearing, he submitted to condone the delay of filing appeal. He further submitted that they are ready to pay late fees, penalty and all dues. Their Chartered



Accountant did not inform them about the cancellation and not filing returns. Now they want to re-start the business and requested for revocation of cancelled registration.

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 20.02.2023 by the adjudicating authority and the said order was also communicated to them on the same day i.e on 20.02.2023. It is further observed that the appellant has filed the present appeal online on 04.07.2023 and submitted the copy of the impugned order and relevant documents.

6. 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.*



6.1 Accordingly, I observed that the Appellant was required to file appeal within 3 months from the communication / receipt of *the impugned order dated 20.02.2023*. However, in the instant case the appellant has filed the present appeal on 04.07.2023 i.e. after a lapse of a period more than three months period from the due date (due date on or before 20.05.2023). 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 period 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 14 days in filing the appeal over and above the normal period of three months including one month condonation period. 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.

7. It is also observed that the appellant has not submitted any cogent ground for such inordinate delay of more than three months period in filing the present 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:

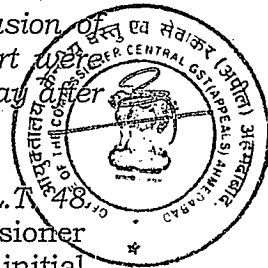
- (i) The **Hon'ble Supreme Court** in the case of **Singh Enterprises** reported at 2008 (221) E.L.T.163 (S.C.) has held as under:

"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 a 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.

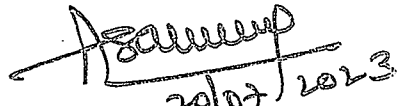



F.NO. GAPPL/ADC/GSTP/1989/2023

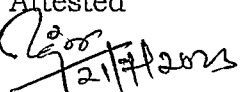
9. By respectfully following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under Section 107 of the CGST Act, 2017. Thus, the appeal filed by the appellant is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, 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 appeals filed by the *appellant* stands disposed of in above terms.


(Adesh Kumar Jian)
Joint Commissioner (Appeals)
Date: 07/07/2023


Attested


(Tejas J Mistry)
Superintendent (Appeals)
Central Tax, Ahmedabad.

By R.P.A.D.

To,
Akash Sankhwal [GSTIN: 24KCXPS0193B1Z6],
(Trade Name: M/s Shivaya Wireless Communication),
Kumthunagar, D-235, Zundal, Gandhinagar, Gujarat : 382 421

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 Additional Commissioner, Central Tax (Systems), Gandhinagar Comm'te.
5. The Assistant Commissioner, CGST & C. Ex., Division- Gandhinagar, Gandhinagar Commissionerate.
6. The Superintendent, CGST & C. Ex., Range-III, Division- Gandhinagar, Gandhinagar Commissionerate.
7. The Supdt. (Systems), CGST Appeals, Ahmedabad for publication on website.
8. Guard File / P. A. File.

