



# आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाडी, अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015.

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DIN NO. : 20220364SW000000C910

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2087/2021-APPEAL / 2130-38

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-107/2021-22**

दिनांक Date : **29-03-2022** जारी करने की तारीख Date of Issue : 29-03-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZA241019073817B** dated **23.10.2019** issued by Superintendent, Central Goods and Services Tax, Rang-IV, Division-I (Naroda), Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**  
M/s. Kanak Foods Pvt. Ltd. (GSTIN 24AAGCK4188E1ZJ)  
Phase - II, B - 13 & 14, GIDC Industrial Area, Naroda,  
Ahmedabad, Gujarat - 382330

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .





**:: ORDER-IN-APPEAL ::**

M/s Kanak Foods Pvt. Ltd. (GSTIN-24AAGCK4188E1ZJ), Phase – II, B - 13 & 14, GIDC Industrial Area, Naroda, Ahmedabd, Gujarat-382330, (hereinafter referred to as 'appellant' has filed present appeal against Order for Cancellation of Registration bearing Reference No. ZA241019073817B dated 23.10.2019 (hereinafter referred to as '**impugned order**'), issued by the Superintendent, Central GST, Range-IV, Division-I (Naroda), Ahmedabad North Commissionerate (hereinafter referred to as '**adjudicating authority/proper officer**').

2. The brief facts of the case are that appellant was registered under GST, having registration number as 24AAGCK4188E1ZJ. The appellant was issued a show cause notice on 30.08.2019 asking as to why registration should not be cancelled for not filing returns for a continuous period of six months. Subsequently, the registration was cancelled by the Superintendent, Central GST, Range-IV, Division-I (Naroda), Ahmedabad North Commissionerate vide Order reference No. ZA241019073817B dated 23.10.2019 citing the following reason – '**RETRUNS NOT FILED.**' The effective date of cancellation of GST registration is 23.10.2019.

3. Being aggrieved, the appellant filed the present appeal on 30.09.2021 i.e. after the delay of normal period prescribed under Section 107(1) of CGST Act, 2017, against the impugned order dated 23.10.2019, *inter alia*, contending that:-

- (i) They could not file the GST returns in time due to ongoing Covid-19 pandemic and financial crisis.
- (ii) they have already filed the pending GST retruns.

Considering the above facts, the "appellant" has accordingly requested to condone the delay and, allow the appeal for revocation of their cancelled GST Registration.

**Personal Hearing**

4. Personal hearing in the case was held on 09.03.2022 in virtual mode. Ms. Nidhi Jain, Authorised Representative, appeared on behalf of appellant and, she reiterated the submissions made in appeal memorandum.

**Discussion & Findings**

5. I have gone through the facts of the case and the written submissions made by the appellant. Before deciding the matter it is to be verified whether the appeal has been filed within the prescribed time-limit or not.

The relevant statutory provisions are 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** In view of above I observed that the Appellant was required to file appeal within 3 months from the receipt of "the impugned order" i.e. on or before 23.01.2020, as stipulated under Section 107(1) of the Act. Further, I find that in terms of the provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal i.e. up to 23.02.2020, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown.

I observed that in the instant case the appeal has been filed on 30.09.2021, i.e. after the delay of more than one and half year from the normal period prescribed under Section 107(1) of the CGST Act, 2017. Further, looking to the 'COD' application of 'Appellant' the present appeal if condoned for one month as per Section 107(4) *ibid*, the last date for filing of appeal comes to 23.02.2020. Accordingly, I find that there is a delay of more than one and half year in filing the appeal over and above the period of 4 months also. Thus, appeal filed beyond the time limit prescribed under Section 107(1) & (4) *ibid* cannot be entertained.

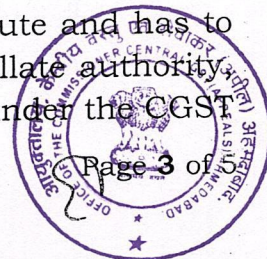
**6.2** Further, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in MA 665/2021, in SMW(C) No. 3 of 2020. The relevant para No. 5 (I) of said order is reproduced as under:

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 quasijudicial proceedings.***

However, I find in the present case that the period of limitation of total 4 months (including condonable period of 1 month) for filing of appeal from the date of issuance of impugned order, as prescribed under Section 107 of the CGST Act, 2017 was already completed on 23.02.2020 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. 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.

**7.** 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.

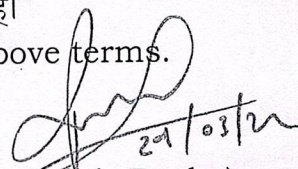
(iii) The Hon'ble High Court of Delhi in the case of **Delta Impex** reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

8. I find that the provisions of Section 107 of the Central Goods and Services Tax 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, 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.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

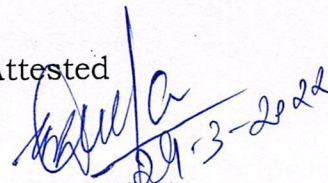
10. The appeals filed by the appellants stand disposed of in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 29.03.2022

Attested

  
(Dilip Jadav)

Superintendent

Central Tax (Appeals), Ahmedabad





By R.P.A.D.

To,

M/s Kanak Foods Pvt. Ltd. (GSTIN-24AAGCK4188E1ZJ)  
Phase – II, B -13 & 14, GIDC Industrial Area,  
Naroda, Ahmedabd, Gujarat-382330

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., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-I (Naroda), Ahmedabad North.
5. The Superintendent, CGST & C.Ex., Range-IV, Division-I (Naroda), Ahmedabad North.
6. The Additional Commissioner, Central Tax (System), Ahmedabad North.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
- ✓ 8. Guard File.
9. P.A. File

