



आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 07926305065- टेलीफैक्स 07926305136



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/957/2021-APPEAL/3030703035

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-33/2021-22**

दिनांक Date : **10-09-2021** जारी करने की तारीख Date of Issue : 10-09-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZA240421002513C** dated **01-04-2021** issued by Deputy Commissioner, Central Goods and Service Tax, Range-II, Division- III, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Shri Arifbhai Yunus Bhai Belim

[M/s Kuldevi Enterprise]

14, Rajiv Nagar, Viramgam,

Nr. Seresvar Viramgam, Gangasar Talav,

Ahmedabad, Gujarat-382150

(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 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 ::

M/s. Kuldevi Enterprise, 14, Rajivnagar, Nr. Seresvar Viramgam Gangasar Talav, Virmagam, Ahmedabad - 382150 (hereinafter referred to as '**appellant**') has filed present appeal against Order of rejection of application for revocation of cancellation of GST registration issued in form GST REG-05 bearing reference No. ZA240421002513C dated 01.04.2021 (hereinafter referred to as '**impugned order**'), issued by the Deputy Commissioner, CGST Division III Sanand, Ahmedabad North (hereinafter referred to as '**adjudicating authority**').

2. The brief facts of the case are that appellant was registered under GST, having registration number as 24BJKPB1324A2Z4. The appellant was issued a show cause notice on 28.11.2020 in the form of GST REG-17 asking as to why registration should not be cancelled for not filing returns for a continuous period of six months. Subsequently, as the registration was cancelled the appellant has filed an application for revocation of cancellation of registration on 02.02.2021. In response to said application the appellant has received Show Cause Notice in the form GST REG-23 dated 02.02.2021 that application liable to be rejected for the following reasons :

'It is observed that GSTR-3B returns upto Oct-20 have been filed by you.

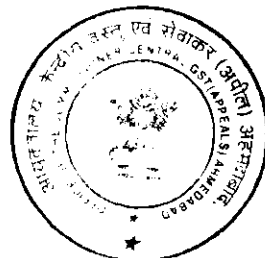
However, Interest on late filing of GSTR-3B returns have not paid.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice."

The appellant has further submitted that in response to above Show Cause Notice they have immediately on 05.02.2021 paid interest of Rs.31939/- total amounting to Rs.63,878/- and has executed DRC 03 on 31.03.2021. The appellant has categorically stated in their appeal memo that only problem on their part was action taken by them was not been properly communicated to officer; but, they have complied with all direction or requirement i.e. to say, payment of tax and also interest. So, ultimately they received order of rejection of application for revocation of cancellation of registration on the reason that the appellant had not replied to the notice reference No. ZA2402210142667 dated 03.02.2021 within time specified therein.

3. Being aggrieved, the appellant filed the present appeal against the impugned order, *inter alia*, contending that:-

- (i) That appellant could not file the return and tax in time due to financial problems as well as accountant left the job so could not able to complete the books of accounts.
- (ii) That the appellant have filed all returns up to October – 2020 and also paid tax with return, only interest was not paid , which they have paid on 05.02.2021 and also filed DRC 03 on 31.03.2021 up to 2020-21.



(iii) That appellant has paid all taxes including taxes for the pending returns i.e. up to March-2021.

(iv) Appellant wants to do the business and also wants to be law compliant, there is not bad intention of non-filing of returns, but due to bad market financial condition, Covid situation and non availability of accountant who left job, appellant could not communicate with department.

4. Personal hearing in the matter was held through virtual mode on 23.08.2021. Mr. Priyam R. Shah, authorized representative of the appellant attended the hearing. He reiterated the grounds of appeal memorandum and particularly emphasizes on tax due and its payment and requested to consider the same and decide the case on the basis of merit.

Discussion & Findings

5. I have gone through the records of the case, the impugned order, and the grounds of appeal as well as oral submission of the appellant. The issue to be decided in the present appeal is whether the impugned order is correct, legal and proper or not.

6. I find that the appellant had obtained registration under the CGST Act, but had not filed returns for more than 6 consecutive months. Therefore, the appellant's registration was cancelled under provision of Section 29(2)(c) of the Central Goods and Service Tax Act, 2017(hereinafter referred to as 'CGST Act'), on suo-moto basis by the jurisdictional proper officer. On cancellation of registration, the appellant applied for revocation of the same before the adjudicating authority. But, the same was rejected vide the impugned order citing the reason of non-submission of reply within specified time by the appellant in response of Show Cause Notice dated 03.02.2021 issued consequent to their application for revocation of cancellation of registration.

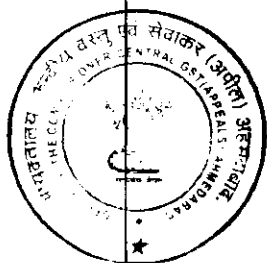
7. Looking into facts of the case, I find it germane to refer the provisions of revocation of cancellation of registration. The relevant Section 30 and Rule 23 are reproduced as under;

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)

Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31.03.2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22.07.2019.

(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:

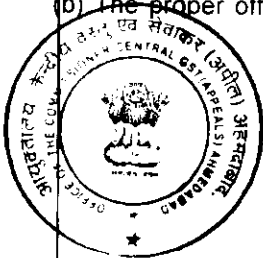
Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, 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.

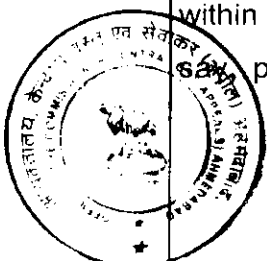
(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply 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.

8. On perusal of above Section 30(1), I find that 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. Further, as per first proviso to Rule 23(1) of the CGST Rules, no such application can be filed in cases where 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. Furthermore, as per third proviso to the said rule, it is 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.

8.1. I note that registration of the appellant has been cancelled w.e.f. 28.11.2020. I also note that the appellant had filed returns up to tax period October 2020 in the form of GSTR3B (monthly basis) and in the form of GSTR-1 (quarterly basis) for the period up to September-2020. It is obvious that the system does not allow for filing returns for the period falling after the date of cancellation of registration. Therefore, third proviso to Rule 23(1) mandates filing of returns for such periods within 30 days from date of revocation of cancellation of registration.

9. Further, I find that as per Rule 23(2)(b), the adjudicating authority was required to record the reasons in writing before rejecting the application for revocation of cancellation of registration. I also find that such reason has been recorded as the appellant has not replied to the Show Cause Notice dated 03.02.2021 within time specified therein. I find that the registration was cancelled due to non-filing of returns for consecutive 6 months. The appellant has pleaded that he failed to reply to department within mentioned time but, they have complied with all direction or requirement i.e. to payment of tax and also interest. Appellant has also pleaded that due to bad




market financial condition, Covid situation and non availability of accountant who left job, they could not able to file returns in time. The appellant has requested to condone his above defaults and approve the application of revocation of cancellation at the earliest. At the same time, the appellant has declared that he has paid all taxes including taxes for the pending returns i.e. up to March-2021.

10. Looking into the facts involved in the matter, I find that the appellant has filed return upto date of cancellation of registration and following the guideline of proviso to Rule 23(1) of the CGST Rules, the appellant is ready to 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. Therefore, I am of the opinion that the appellant should not be made to suffer any more. Accordingly, I direct the adjudicating authority to take necessary steps to revoke the GST registration of the appellant. Needless to say, the appellant 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. Further, payment particulars (including tax liability, interest, penalty & late fee etc.) and the status of returns filed may be verified by the concerned authority having power to revoke the cancelled registration. Thus, the appeal filed by the appellant is allowed in above terms.

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

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

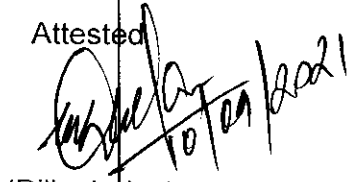

(Mihir Rayka)

Joint Commissioner (Appeals)

Date: 09.09.2021



Attested


(Dilip Jadav)

Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,

M/s Kuldevi Enterprise,
14, Rajivnagar, Nr. Seresvar Viramgam Gangasar Talav,

Virmagam, Ahmedabad - 382150

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, Central GST & C.Ex, Ahmedbad North.
3. The Superintendent, CGST & C.Ex, Range-II, Division-III - Sanand, Ahmedbad North.
4. The Assistant Commissioner, CGST & C.Ex, Division-III - Sanand, Ahmeddabad North.
5. The Additional Commissioner, Central Tax (System), Ahmeddabad North.
6. Guard File.
7. P.A. File

