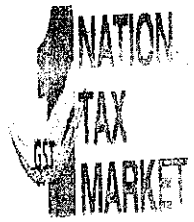




सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
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E-Mail : commrappl1-cexamd@nic.in



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DIN NO. : 20211264SW00000050FE

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2436/2021-APPEAL / 5298 705303
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-83/2021-22 and 24.12.2021
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, संयुक्त आयुक्त अपील Shri Mihir Rayka, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	24.12.2021
(ङ)	Arising out of Order-in-Original No. ZA241021089445R dated 21.10.2021 issued by The Deputy Commissioner, Division-VII (S G Highway East), Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Fortune Construction (GSTIN-24AAFFF6008G1ZS) Address:- Bunglow No. 6, Bhimjipura, Nava Vadaj, Ahmedabad, Gujarat-380013

(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 authority, the appellant may refer to the website www.cbic.gov.in .



:: ORDER-IN-APPEAL ::

M/s Fortune Construction, Bunglow No. 6, Bhimjipura, Nava Vadaj, Ahmedabad, Gujarat-380013 (hereinafter referred to as '**appellant**') has filed present appeal against Order of Rejection of Application for Revocation of Cancellation issued vide FORM-GST-REG-05 bearing Reference No. ZA241021089445R dated 21.10.2021 (hereinafter referred to as '**impugned order**'), issued by the Deputy Commissioner, Central Goods and Service Tax, Division-VII (S G Highway East), Ahmedabad North Commissionerate (hereinafter referred to as '**adjudicating authority**').

2.1 The brief facts of the case are that appellant was registered under GST, having registration number as 24AAFFF6008G1ZS. The appellant was issued a show cause notice on 02.12.2020 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-V, Division-VII (S G Highway East), Ahmedabad North Commissionerate vide Order for Cancellation of Registration having reference no. ZA2406210004819 dated 01.06.2021 citing the following reason - *'The taxpayer did not file GSTR 3B from December 2020 and onwards. They have not paid GST for the same period.'*

2.2 Thereafter, the appellant has filed an Application for Revocation of Cancellation of Registration on 29.09.2021. Subsequently, the appellant was issued a show cause notice on 08.10.2021 asking as to why appellant's application should not be rejected, with mentioning of the following reason - *'As per verification report, interest liability of approx. Rs.65,000/- needs to be paid by the appellant. The revocation can be done after payment of the same as per Rule 23 of CGST Rules, 2017.'*

2.3 Subsequently, the appellant's application for revocation of cancellation of registration has rejected by the '**adjudicating authority**' vide '**impugned order**' dated 21.10.2021 citing no reply within the time specified in the show cause notice dated 08.10.2021.

3. Being aggrieved with the '**impugned order**' dated 21.10.2021, the appellant filed the present appeal on 22.11.2021, *inter alia*, contending that:-

- (i) They could not submit the reply on time, in respect to Show Cause Notice dated 08.10.2021.
- (ii) They had paid the remaining interest amount of Rs.65,000/- vide DRC-03 dated 18.12.2021.
- (iii) They had already filed all the GST returns till the month of May-2021 i.e. till the month of cancellation of registration.

Personal Hearing

4. The appellant vide their letter dated 25.11.2021, has submitted that they do not wish to be heard in person.

Discussion & 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.

6.1 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.**

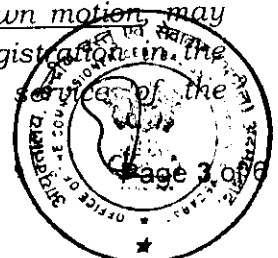
6.2 In view of above, appellant was required to file appeal within 3 months from the receipt of "the impugned order" i.e. on or before 20.01.2022, as stipulated under Section 107(1) of the Act. In the instant case, I observed that the appeal has been filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. **Accordingly, I am proceeded to decide the case.**

7. In the present matter, 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 08.10.2021 issued consequent to their application for revocation of cancellation of registration.

8. Looking into facts of the case, I find it germane to refer the provisions of revocation of cancellation of registration. The relevant Section 30 of the CGST Act, 2017 and Rule 23 of the CGST Rules, 2017 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.

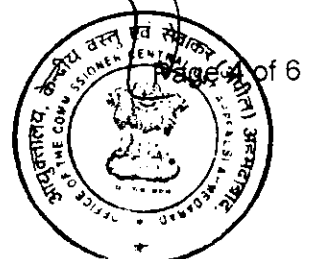
RULE 23. Revocation of cancellation of registration :-

- (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.

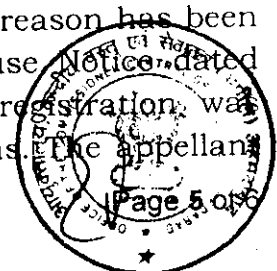
(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply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

9. 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 second proviso to the said rule, it is provided also that where the registration has been cancelled, the registered person shall furnish 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 within a period of thirty days from the date of order of revocation of cancellation of registration.

10. I find that registration of the appellant has been cancelled w.e.f. 01.06.2021. On going through the status of filing of GST Returns, I find that the appellant had filed returns up to tax period May-2021 in the form of GSTR-3B and GSTR-1. It is obvious that the system does not allow for filing returns for the period falling after the date of cancellation of registration. Therefore, second proviso to Rule 23(1) mandates filing of returns for such periods within 30 days from the date of order of revocation of cancellation of registration.

11. 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 say, payment of tax and also interest. The appellant has requested to condone his above defaults and approve the application of revocation of cancellation at the earliest.

12. Looking into the facts involved in the matter as discussed in foregoing paras, 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.

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

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

(M. R. Rayka)
Joint Commissioner (Appeals)
Date: 24.12.2021

Attested

(Dilip Jadav)
24-12-21

Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s Fortune Construction,
Bungalow No. 6,
Bhimjipura, Nava Vadaj, Ahmedabad, Gujarat-380013

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-VII (S G Highway East), Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File.

