



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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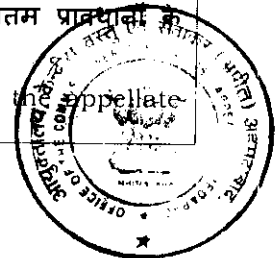


By Regd. Post

DIN NO. : 20211264SW0000116641

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2112/2021-APPEAL/5410705415
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-85/2021-22 and 30.12.2021
(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	31.12.2021
(ङ)	Arising out of Order-in-Original No. ZA240919082579P dated 27.09.2019 issued by The Superintendent, Range-I, Division-VI (S G Highway West), Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Kesar Enterprise (Kanjibhai Chhaganbhai Rabari) (GSTIN-24AKBPR4138D1ZH) Address:- 9, Darshan Bunglows, Near Shri Jubaugh Society, Bopal, Ahmedabad, Gujarat-380058

(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**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. Kesar Enterprise (Legal Name - Kanjibhai Chhaganbhai Rabari)**, 9, Darshan Bungalows, Near Shrijubaugh Society, Bopal, Ahmedabad - 380058 (hereinafter referred to as "*the appellant*") against the Order No. ZA240919082579P dated 27.09.2019 (hereinafter referred to as "*the impugned order*") passed by the Superintendent, Central Goods and Services Tax Range - I, Division-VI - S G Highway West, Ahmedabad North (hereinafter referred to as "*the adjudicating authority/ Proper Officer*").

2. Brief facts of the case are that the "*Proper Officer*" has cancelled the GST Registration - GSTIN : 24AKBPR4138D1ZH of M/s. Kesar Enterprise (Legal Name - Kanjibhai Chhaganbhai Rabari), 9, Darshan Bungalows, Near Shrijubaugh Society, Bopal, Ahmedabad - 380058 due to reason that "*appellant*" has not filed GST Returns for a continuous period of more than six months. As per '*impugned order*' dated 27.09.2019 the '*Proper Officer*' has cancelled the GST registration with effect from 27.09.2019.

3. Being aggrieved with the '*impugned order*' dated 27.09.2019, the "*appellant*" has filed the present appeal on 04.10.2021, i.e. after the delay of normal period prescribed under Section 107(1) of CGST Act, 2017. Accordingly, for the delay in filing of appeal, the "*appellant*" has submitted that -

- Their business was very low from last one and half year
- Party is illiterate due to which unawareness about the procedure to be followed after cancellation of Registration
- Thereafter, filed pending returns with penalty/Fee.

In view of above, the "*appellant*" has requested to condone the delay.

The "*appellant*" has further stated in the appeal memo that the officer has erred in passing the Order for Cancellation of Registration *suo-moto* without considering the facts of the case.



The “*appellant*” has accordingly requested to allow the appeal.

Personal Hearing :-

4. Personal Hearing in the matter was through virtual mode held on 23.12.2021. Shri Urvish V. Patel, Advocate appeared on behalf of the ‘*appellant*’ as authorized representative. During P.H. he has reiterated the written submissions made by them till date in present matter and stated that their appeal may be decided on the basis of said written submissions.

Discussion and 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. 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:

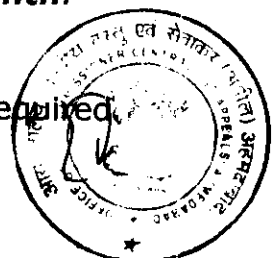
SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within 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.**

7(i). Accordingly, it is observed that the ‘*Appellant*’ was required



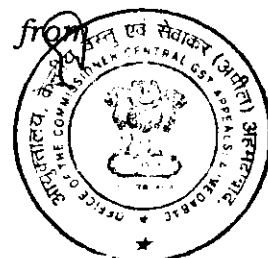
to file appeal within 3 months from the receipt of the said order i.e. on or before 26.12.2019, as stipulated under Section 107(1) of the Act. However, the 'Appellant' has filed the present appeal on 04.10.2021, i.e. after a period of more than one and half year from the due date. Further, I also find 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, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. 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 26.01.2020. Accordingly, I find that there is a delay of 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.

7(ii). Further, I also find that in terms of the Hon'ble Supreme Court judgment dated 23.09.2021 in matter of Miscellaneous Application No. 665 of 2021, in SMW(C) No. 3 of 2020, wherein the Apex Court taking suo-moto cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020. The relevant para No. 8 (I) & (II) of said order is reproduced as under :

8. *Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions:-*

I. *In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.*

II. *In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from*



03.10.2021, is greater than 90 days, that longer period shall apply.

7(iii). 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 26.01.2020 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.

8. 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.

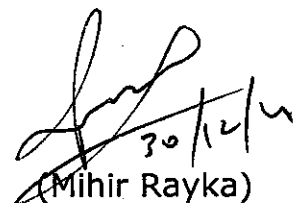
- (iii) The Hon'ble High Court of Delhi in the case of Delta Impex reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

9. 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 judgements would be squarely applicable to the present appeal also.

10. By respectfully following the above judgements, 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.

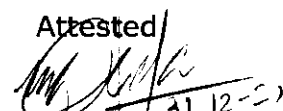
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Joint Commissioner (Appeals)

Date: 30.12.2021

Attested

(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Kesar Enterprise,
(Legal Name – Kanjibhai Chhaganbhai Rabari),
9, Darshan Bungalows, Near Shrijubaugh Society,
Bopal, Ahmedabad – 380058



Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VI – S G Highway West, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File

