



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



By Regd. Post

DIN NO.: 20231264SW000050675D

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/3340/2023 / १४४० - ४६
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-107/2023-24 and 30.11.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.12.2023
(ङ)	Arising out of Order-In-Original No. ZA240123033304A dated 06.01.2023 passed by The Superintendent, CGST, Range-III, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Parag Dipakkumar Rao (Classic Sound & Light) (GSTIN: 24AJYPR0584P2Z4), F-504, Arjun Greens, Menarav Hall, K.K.Nagar, Ghatlodia, Ahmedabad, Gujarat-380061

(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 <u>twenty five per cent</u> 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:-

M/s. Parag Drakkumar Rao, (GSTIN- 24AJYPR0584P2Z4), Trade Name: Classic Sound and Light, F-504, Arjun Greens, Menarav Hall, K.K.Nagar, Ghatlodia, AHMEDABAD, Ahmedabad, Gujarat, 380061, (hereinafter referred to as 'the Appellant') has filed the present appeal against Order No. ZA240123033304A dated 06.01.2023 (hereinafter referred to as 'the impugned order'), for Cancellation of Registration issued by the Superintendent, CGST, Range-III, Division-VII S G HIGHWAY EAST, Ahmedabad-North Commissionerate (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant was registered under GSTIN-24AJYPR0584P2Z4. The appellant was issued Show Cause Notice date 09.11.2022 for cancellation of their registration due to failure to furnish returns for a continuous period of six months. The adjudicating authority vide the impugned order dated 06.01.2023 ordered for cancellation of registration with effect from 01-04-2022.

3. Being aggrieved with the impugned order *the appellant* filed the present appeal online on 08-11-2023 for revocation of cancellation of their GST Registration Number.

Personal Hearing :

Personal hearing in the case was held on 30-11-2023. Shri Meet Shah, Chartered Accountant appeared virtually for personal hearing on behalf of the Appellant. He submitted that registration was cancelled due to non-filing of Return. Now Tax has been paid, so requested to allow the appeal in view of the Notification No.53/2023 dated 02.11.2023 . He further reiterated the written submissions and requested to allow the appeal.

Discussion & findings:

5. I have gone through the facts of the case, the impugned order and the grounds of appeal 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 06.01.2023 by the adjudicating authority. It is further observed that the appellant has filed the present appeal online on 27.10.2023 and submitted hard copy along with documents to this office on 08-11-2023.



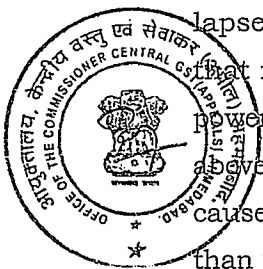
6. I further find it relevant to go through the relevant statutory provisions of Section 107 of the CGST Act, 2017, which is reproduced as under:

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)

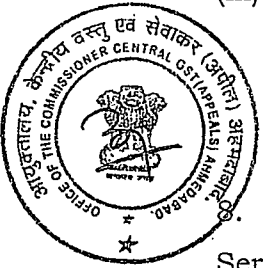
(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month”.

6.1 Accordingly, I observed that the Appellant was required to file appeal within three (3) months from the receipt of the impugned order dated 06.01.2023 i.e on or before 06.04.2023. However, in the instant case the appellant has filed the present appeal online on 08.11.2023 i.e. after a lapse of more than seven months from the due date. Further, I also find that in terms of provisions of Section 107(4) *ibid*, the appellate authority has powers to condone the delay of only one month 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 four months in filing the appeal over and above the normal period of three months. 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 (even if, considering one month condonation period). Accordingly, I find that the further proceedings in case of the present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.



7. It is also observed that the appellant has requested for condonation of delay in filing Appeal wherein the reasons for inordinate delay in filing the appeal is stated to be “Out of station”. 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.



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.

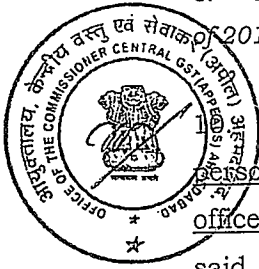
9. Further the Appellant has requested to allow the appeal in view of the Notification No.53/2023-CT dated 02.11.2023. Therefore, I refer the said Notification which is as under:

S.O....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons

F.NO. GAPPL/ADC/GSTP/3340/2023-Appeal

(hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:

2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024: Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.
3. No appeal shall be filed under this notification, unless the appellant has paid- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.
4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub-section (1) of Section 107 of the said Act.
5. No appeal under this notification shall be admissible in respect of a demand not involving tax.
6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.



From the plain reading of the above Notification, I find that the taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act, within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the special procedure for filing appeals in such cases as prescribed therein. Further I find that as per the said Notification, no appeal shall be admissible in respect of a demand not involving tax.

11. In the present case, I find that the present case of the Appellant does not fall under the above Notification as the order against which the appeal is filed, is not under the provisions of Section 73 or 74 of the CGST Act, 2017,

F.NO. GAPPL/ADC/GSTP/3340/2023-Appeal

further the impugned OIO does not involve demand of Tax, hence the benefit of this Notification is not available to the Appellant.

12. By following the above judgments and provisions of law, I hold that this appellate authority cannot condone the delay beyond the period as prescribed under Section 107 of the CGST Act, 2017 / Rule 108 of CGST Rules, 2017 as the appeal is filed beyond the prescribed time limit under the law. Also the Appeal cannot be allowed as per the Notification No.53/2023 dated 02.11.2023, in view of the above discussions and findings. 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 view of the above discussion and findings, I reject the present appeal filed by *the appellant* on time limitation factor.

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

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

Adesh Kumar Jain
30/11/2023

(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

Date: 30-11-2023.

ATTESTED.

Sunita D. Nawani
(SUNITA D. NAWANI)
SUPERINTENDENT
CGST & C.EX.(APPEALS),
AHMEDABAD.

By R.P.A.D.

To :

M/s. PARAG DRAKKUMAR RAO, Trade Name: CLASSIC SOUND AND LIGHT,
F-504, ARJUN GREENS, MENARAV HALL,
K.K.NAGAR, GHATLODIA, AHMEDABAD,
Ahmedabad, Gujarat, 380061 (GSTIN- 24AJYPR0584P2Z4).

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C.Ex., Ahmedabad.
3. The Commissioner, CGST & C.Ex., Ahmedabad-North Commissionerate.
4. The Deputy / Assistant Commissioner, CGST & C. Ex., Division-VII, SG Highway East, Ahmedabad-North Commissionerate.
5. The Superintendent, CGST & C. Ex., Range-III, Division- VII, Ahmedabad North Commissionerate.
6. The Superintendent [Systems], CGST & C.Ex., Appeals, Ahmedabad.
7. Guard File/P. A. File.

