



सत्यमेव जयते

आयुक्तकार्यालय
Office of the Commissioner
केन्द्रीय 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

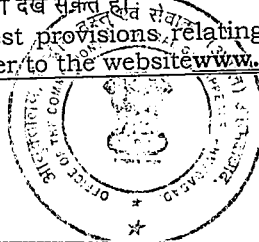


By Regd. Post

DIN NO.: 20230464SW000032323E

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1192/2023 / 905 - 911
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-02/2023-24 and 28.04.2023
(ग)	पारित किया गया / Passed By	श्रीमिहिररायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	28.04.2023
(ङ)	Arising out of Order-In-Original No. ZA2401230331185 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 Nirav Bharatkumar Gandhi (Arihant Gruh Udhyog), A 1/403, 4 th Floor, Kamdhenu Appt., Arjun Ashram Road, Nirnay Nagar, Shivdarshan Appt. Ahmedabad-382481.

(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 अपील प्रधिकारी 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

Nirav Bharatkumar Gandhi [GSTIN : 24AQPPG8679J1Z3], [Trade Name : M/s. Arihant Gruh Udyog], A 1/403, Forth Floor, Kamdhenu Appt., Arjun Ashram Road, Nirnaynagar, Shivdarshan Appt., Ahmedabad, Gujarat : 382 481 (hereinafter referred to as the 'Appellant') has filed present appeal against Order bearing reference No. ZA2401230331185 dated 06.01.2023 for cancellation of Registration (hereinafter referred to as the 'impugned order'), issued by Superintendent, Range-III, DIVISION-VII - S.G.HIGHWAY EAST, Ahmedabad North Commissionerate- (hereinafter referred to as the 'adjudicating authority/proper officer').

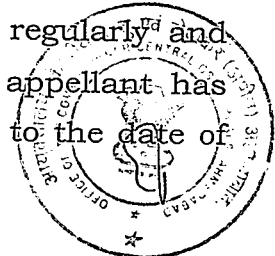
2. Brief facts of the case are that the "Proper Officer" has issued SCN reference No. ZA2411220388650 dated 9.11.2022 to the appellant alleging that 1. "Failure to furnish returns for a continuous period of six months". After considering the reply submitted by the appellant, the adjudicating authority vide Order reference No. ZA2401230331185 dated 06.01.2023 cancelled the registration on the grounds that "1. Taxpayer has not filed GSTR-3B from April-2022. Registration is hereby cancelled subject to condition that the taxpayer will file GSTR-3B returns and also will pay taxes, interest, penalty etc. if arises."

The effective date of cancellation of registration is 01.04.2022.

3. Being aggrieved with the 'impugned order' dated 06.01.2023, the "appellant" has filed the present appeal on 12.04.2023, i.e. after the delay of normal period prescribed under Section 107(1) of CGST Act, 2017. The "appellant" has submitted the reason for delay in filing the appeal is that they had financial problems and lack of knowledge of GST Act and could not file the GST returns in prescribed time but now the appellant is ready to pay all their pending tax dues, interest and penalty. The Appellant has requested to restore the cancelled GST registration number and oblige.

Personal Hearing :-

4. The Appellant vide their letter dated 26.04.2022 has submitted that due to Financial problems, the appellant could not pay tax in time and regularly so as per GST Act GST number was cancelled suo-moto notice, but now they will pay all tax dues and file the returns regularly and requested to restore the cancelled GST registration. The appellant has further submitted that they have filed GSTR-3B return up to the date of



cancellation. The appellant has further submitted vide their email letter dated 24.04.2023 that they don't require any personal hearing in this matter.

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:

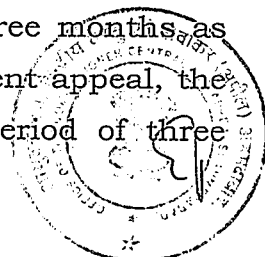
SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within 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 observed that in the instant case the appellant was required to file appeal within three months from the receipt of the "impugned order" i.e on or before 6.4.2023, as stipulated under Section 107(1) of the CGST Act, 2017. However, in the instant case the appellant filed the present appeal on 12.04.2023 i.e after a delay of 6 days 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 delay of one month in filing of appeal upto 6.5.2023 over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. In the present appeal, the "impugned order" is of 6.1.2023 so the normal appeal period of three



months was available upto 6.4.2023. Further, looking to the 'COD' application of *appellant* the present appeal is condonable for one month as per Section 107(4) of the CGST Act, 2017. Accordingly, the appeal was required to be filed before 6.5.2023, however in the present case the appeal is filed on 12.04.2023 i.e delay by 6 days which is within the condonation period of one month and within the powers of the appellate authority as per Section 107(4) of the CGST Act, 2017. In view of above and looking to the financial problem facing by the appellant as sufficient cause and taking lenient view in interest of the revenue, I am condoning the delay of filing of appeal. Therefore, I find that the present appeal is filed within stipulated time limit. Accordingly, I am proceeded to decide the case.

8. I have gone through the facts of the case and the written submissions made by the *appellant*. I find that the adjudicating authority/proper officer has cancelled the registration with effect from 01.04.2022 as the *appellant* failed to file GSTR-3B returns from April 2022 i.e for a continuous period of more than six months.

Further, I find that the provisions of revocation of cancellation of registration when the same is cancelled by the proper officer on suo moto basis are contained in Section 30 of the CGST Act, 2017 and Rule 23 of the CGST Rules, 2017. Therefore, I find it pertinent to refer Section 30 and Rule 23 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, -

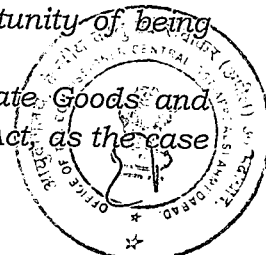
(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).]

(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.

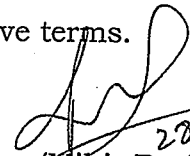
9. Further, I find that the Central Board of Indirect Taxes & Customs, New Delhi has clarified the issue vide circular No. 99/18/2019-GST dated 23.04.2019. Para 3 of said circular read as under:



3. First proviso to sub-rule (1) of rule 23 of the said Rules provides that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished and any amount in terms of such returns is paid. Thus, where the registration has been cancelled with effect from the date of order of cancellation of registration, all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed. Further, in such cases, in terms of the second proviso to sub-rule (1) of rule 23 of the said Rules, all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of thirty days from the date of the order of revocation.

10. On going through the records/submissions, I find that the *appellant* has declared in the appeal memorandum that they have filed GSTR-3B returns till the date of cancellation of registration and also informed that they are ready to pay all pending tax dues, interest and penalty. On verification from the GST portal it is found that the *appellant* has filed their returns upto March -2022 i.e till the date of cancellation of registration 1.4.2022. Hence, I find that the *appellant* has complied with the above said provisions in the instant case. Therefore, I am of the opinion that the registration of *appellant* may be considered for revocation by the proper officer subject to due compliance of the conditions by the *appellant* under Rule 23(1) of CGST Rules, 2017. Accordingly, I allow the appeal of the *appellant* and order to the proper officer to consider the revocation application of the *appellant* after due verification of payment particulars of tax, penalty, late fee, interest and status of returns.

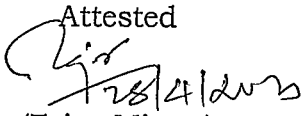
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. The appeal filed by the appellant stands disposed of in above terms.


28/04/23

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 28.04.2023

Attested


28/4/23
(Tejas Mistry)
Superintendent,
Central Tax (Appeals)



By R.P.A.D.

To

Nirav Bharatkumar Gandhi [GSTIN : 24AQPPG8679J1Z3]

[Trade Name : M/s. Arihant Gruh Udyog], A 1/403, Fourth Floor,
Kamdhenu Appt., Arjun Ashram Raod, Nirnaynagar, Shivdarshan Appt.,
Ahmedabad, Gujarat : 382 481.

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 Commissionerate.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VII S G Highway East, Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Gandhinagar
6. The Superintendent, CGST, Range-III, Div.-VII S G Highway East, Ahmedabad North Commissionerate.
7. Guard File.
8. P.A. File.

