



सत्यमेव जयते

आयुक्तकाकार्यालय
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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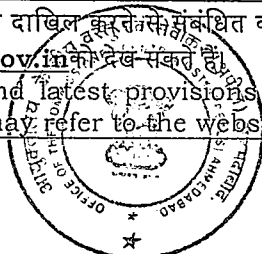


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| (क) | फाइल संख्या / File No. | GAPPL/ADC/GSTP/1765/2023 / 17586 - 95 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-CGST-002-APP-ADC-20/2023-24 and 28.06.2023 |
| (ग) | पारित किया गया / Passed By | श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals) |
| (घ) | जारी करने की दिनांक / Date of issue | 30.06.2023 |
| (ङ) | Arising out of Order-In-Original No. ZA240323082271Y dated 16.03.2023 passed by The Deputy Commissioner, CGST, Division-II, Ahmedabad North Commissionerate | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | M/s Elegance Exclusive, 12, Ma Valiulla Bldg, Nr Gheekanta Char Rasta, Gheekanta, Ahmedabad, Gujarat, 380001 |

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| (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 . |



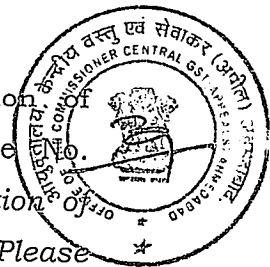
:: ORDER-IN-APPEAL ::

M/s Elegance Exclusive [Legal Name : Prakashkumar Babulal Vohera], 12, M A Valiulla Bldg., Nr. Ghee Kanta Char Rasta, Gheekanta, Ahmedabad, Gujarat - 380 001 (hereinafter referred to as the 'appellant') has filed present appeal against Order of Rejection of Application for revocation of cancellation bearing Reference No. ZA240323082271Y dated 16.03.2023 (hereinafter referred to as 'impugned order'), issued by the Deputy Commissioner, Central GST, Division-II [Naroda Road], Ahmedabad North Commissionerate (hereinafter referred to as 'adjudicating authority/proper officer').

2. The brief facts of the case are that appellant was registered under GST, having registration number as 24ABJPV2929H1ZD. The appellant was issued a show cause notice No. ZA2411220384250 on dated 09.11.2022 asking that "Failure to furnish returns for a continuous period of six months." Subsequently, the GST registration was cancelled by the Superintendent, Central GST, Range-I, Division- II [Naroda Road], Ahmedabad North Commissionerate vide Order reference number ZA240123157494Q dated 24.01.2023 citing the following reasons:-
 "1.Nobody appeared for personal hearing against the suo moto SCN generated on 08.11.2022 for failure to file six monthly returns with a remarks that action under section 29 has been initiated for cancellation of registration and response has not been submitted till date by the tax payer. Therefore, I hereby cancelled the registration w.e.f ab-initio. However, the said taxpayer has not filed their latest GSTR-3B and GSTR-1. Any pending tax arrears, interest or penalty must be deposited immediately. The said cancellation does not affect the liability or other dues for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation. You are therefore requested to file a final return within three months of the date of cancellation in FORM GSTR-10 through GST common portal."

The effective date of cancellation of your registration is 02.07.2017.

Thereafter, the department has issued Show Cause Notice for rejection application for revocation of cancellation of registration vide Reference No. ZA240223092609H dated 15.02.2023 asking that "1. Reason for revocation of cancellation - Others (Please specify) - Six months returns are not filed. Please provide the documents regarding payment of tax liability, interest, penalty, late fees."



Subsequent to the above SCN dtd 15.02.2023, the adjudicating authority has passed the Order of Rejection of Application for Revocation of Cancellation bearing reference number ZA240323082271Y dated 16.03.2023 ("the impugned order") on the grounds that "You have not replied to the notice issued vide reference No. ZA240223092609H dated 15.02.2023 within the time specified therein. Therefore, your application is hereby rejected in accordance with the provisions of the Act."

3. Being aggrieved, the appellant filed the present appeal on 09.05.2023, against the impugned order, *inter alia*, contending that:

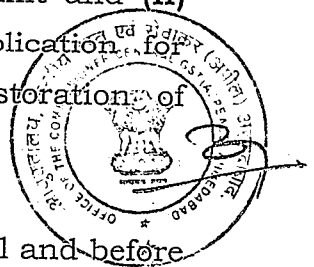
- (i) The appellant was not able to file pending GSTR-3B from October 2022 & GSTR-1 from April 2022 and their business effected badly. Clients of the appellant are not able to take GST credit as their GST number is cancelled;
- (ii) The appellant has paid challan of Rs. 5,640/- (Including interest of Rs. 860/-) and Rs. 30,332/- (Including interest of Rs. 1668/-) via self assessment. So the appellant having bona fide intention to discharge their tax liabilities without waiting for restoration of cancelled GST registration;
- (iii) The appellant wants opportunity of being heard so that they can explain all genuine issues and discharge all pending liabilities of Tax, Interest and Late Fees;
- (iv) Spot verification is already done in April by the center jurisdiction, nothing found objectionable and as per system 2nd time revocation application is not possible so the appellant has only option to file appeal;
- (v) The appellant's plea that now onwards there will be no irregularity from their side and ensured that all the GST compliance will be fulfilled within stipulated dates, if their GST registration number restored by the department;

Personal Hearing:

4. Personal hearing in the case was held on 27.06.2023 in person. Mr. Sourabh Shah, Chartered Accountant, appeared before the appellate authority on behalf of the appellant as authorized representative. He submitted that due to ignorance of their accountant, they failed to file the returns. Their business is held up, and they are ready to pay all dues with interest, penalty and late fees, and requested to re-store registration.

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 rejection of application for revocation of cancellation 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. In the present matter, the "impugned order" is of 16.03.2023, so, the normal appeal period of three months for filing an appeal under Section 107(1) of the CGST Act, 2017 is available with the appellant upto 16.06.2023, whereas, the present appeal is filed on 09.05.2023. Therefore, I find that the present appeal is considered as filed within time limit.

8. I have carefully gone through the facts of the case, written submissions made by the "Appellant". I find that the *adjudicating authority/proper officer* has cancelled the registration with effect from ab-initio i.e w.e.f 02.07.2017 and also rejected the application for revocation of cancellation of registration as the appellant failed to furnish returns for a continuous period of 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).]

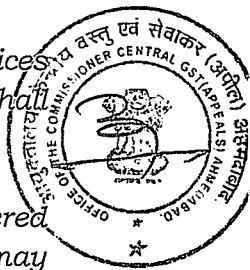
(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application :

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.

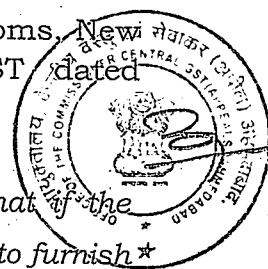
(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in **FORM GST REG-05***, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(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."

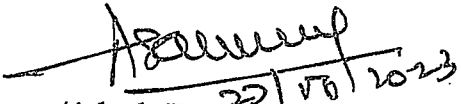


10. On going through the records and submissions made by the appellant, I find that the appellant stated that they have filed their GST returns upto September 2022 on 17.01.2023 and discharged their GST liability amounting to Rs. 30,332/- + Rs. 5,640/- with interest (i.e. Duty Rs. 33,444/- + Interest Rs. 2,540/-) and submitted copies of challans dated 14.02.2023. On being verified return status on GST portal, I find that the "Appellant" has filed their GSTR-3B returns upto September 2022 and GSTR-1 returns upto March 2022, whereas, their GST registration number has been cancelled ab-initio with effect from 02.07.2017 by the jurisdictional officer/proper officer.

Further, the "Appellant" stated that they are assured / committed to pay their all GST liabilities alongwith interest, penalty and late fees till date as per the GST Act assured that now onwards there will be no irregularity from their side and all the GST compliances will be fulfilled within the stipulated due dates. Further, I find that the "Appellant" has complied with the above said provisions in the instant case, I am of the opinion that the appellant should not to suffer any more looking to the interest of government revenue. Needless to say that the "Appellant" shall furnish all the returns relating to period from the effective date of cancellation of registration till order of rejection of application for revocation of cancellation of registration within a period of thirty days from the date of order of rejection of application for revocation of cancellation of registration.

11. In view of above discussions, 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 fees, interest and status of returns.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellants stand disposed of in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: .06.2023

Attested


(Tejas J Mistry)

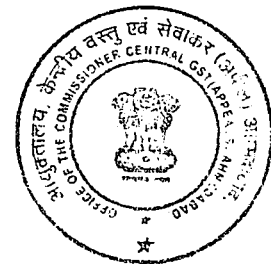
Superintendent

Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To

M/s. Elegance Exclusive [Legal Name : Prakashkumar Babulal Vohera],
12, M A Valiulla Bldg., Nr. Ghee Kanta Char Rasta, Gheekanta,
Ahmedabad, Gujarat - 380 001



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 Commissionerate.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division- II [Naroda Road], Ahmedabad North Commissionerate.
5. The Superintendent, CGST & C.Ex., Range-I, Division - II [Naroda Road], Ahmedabad North Commissionerate.
6. The Additional Commissioner, Central Tax (System), A'bad North Comm'te.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. ✓ Guard File /P A File.

