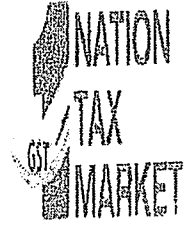




सत्यमेव जयते

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

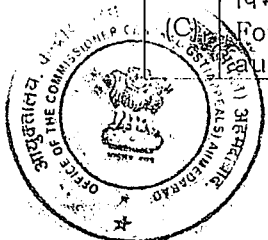


By Regd. Post

DIN NO.: 20230864SW00006176A2

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1942/2023 / मिन - 51
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-34/2023-24 and 31.07.2023
(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	03.08.2023
(ङ)	Arising out of Order-In-Original No. ZA241122071488N dated 15.11.2022 passed by The Superintendent, CGST, Range-V, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Aveon Pharmacy. (GSTIN-24ABAF6421E1Z3), 10, Madhuran Sky, TP 44, Chandkheda, Ahmedabad, Gujarat-382424

(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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
(i)	(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.
	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. Aveon Pharmacy, 19, Parshwanath Nagar, Chandkheda, Ahmedabad, Gujarat: 382 424 (hereinafter referred to as '*the Appellant*') has filed the present appeal against the Order No. ZA241122071488N dated 15.11.2022 (hereinafter referred to as '*the impugned order*') for Cancellation of Registration issued by the Superintendent, Range-IV, Division- V, Dholka, 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 24ABAF6421E1Z3. The appellant was issued Show Cause Notice dated 08.10.2022 for the reason that failure to furnish returns for a continuous period of six months and subsequently, the appellant's registration was cancelled by the adjudicating authority vide *the impugned order dated 15.11.2022* on the following grounds:

"1. Taxpayer has not filed return and replied, therefore registration cancellation is initiated."

The effective date of cancellation of registration is 01.03.2021.

3. Being aggrieved with the impugned order *the appellant* filed the present appeal for revocation of cancellation of their GST Registration Number online on 21.03.2023, wherein the appellant requested for revocation of cancellation of registration.

PERSONAL HEARING:

4. Personal hearing in the case was fixed on 19.07.2023, 26.07.2023 and 31.07.2023, but no one appeared for the personal hearing before the appellate authority. Hence, the matter is required to be decided on ex-parte.

DISCUSSION& FINDINGS:

5. I have gone through the facts of the case, the impugned order and the grounds of appeal as well as written submissions 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 to the appellant on 15.11.2022 by the adjudicating authority and the said order was also communicated to them on the same day i.e on 15.11.2022. It is further observed that the appellant has filed the present appeal online on 21.03.2023.

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 3 months from the communication / receipt of the impugned order dated 15.11.2022. However, in the instant case the appellant has filed the present appeal online on 21.03.2023 i.e. after a lapse of a period more than three months period 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 one month period 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 4 days in filing the appeal over and above the normal period of three months including one month condonation period. 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.

7. It is also observed that the appellant has not made any application for condonation of delay alongwith appeal memorandum on 21.03.2023 and has not submitted any cogent ground for such inordinate delay of more than three months period in filing the present appeal. 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 (i.e one month) 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."

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.

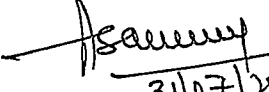
8. I find that the provisions of Section 107 of the Central Goods and Services Act, 2017 are *pari materia* with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgments would be squarely applicable to the present appeal also.



9. By respectfully following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under Section 107 of the CGST Act, 2017. 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, reject the present appeal filed by the appellant on time limitation factor.

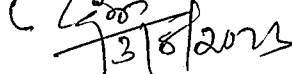
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


31/07/2023

(Adesh Kumar Jian)
Joint Commissioner (Appeals)
Date: 31.07.2023

Attested


31/8/2023

(Tejas J Mistry)
Superintendent (Appeals)
Central Tax, Ahmedabad.

By R.P.A.D.

To,

M/s. Aveon Pharmacy [GSTIN : 24ABAF6421E1Z3],

19, Parshwanath Nagar, Chandkheda, Ahmedabad, Gujarat: 382 424

(Present Address : 10, Maduram Sky, TP 44, Chandkheda, Ahmedabad : 382 424)



Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C.Ex., Ahmedabad.
3. The Commissioner, CGST & C.Ex., Ahmedabad North Commissionerate.
4. The Additional Commissioner, Central Tax (Systems), A'bad North Comm'te.
5. The Assistant Commissioner, CGST & C. Ex., Division- VII [S G Highway], Ahmedabad North Commissionerate.
6. The Superintendent, CGST & C. Ex., Range-V, Division- VII [S G Highway], Ahmedabad North Commissionerate.
7. The Supdt. (Systems), CGST Appeals, Ahmedabad for publication on website.
8. ~~Guard File / P. A. File.~~

