



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2573/2023 / 68 W - SS
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-65/2023-24 and 30.09.2023
(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	05.10.2023
(ङ)	Arising out of Order-In-Original No. ZA240423054820V dated 11.04.2023 passed by The Superintendent, CGST, Range-I, Division-V, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shahrhan Khan (LB Bricks) (GSTIN: 24EQBPK1345D1ZD), Sr.No. 468, Kavitha, Bavla, Ahmedabad, Gujarat-382260

(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 instructions 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. Shahran Khan (Trade name : LB BRICKS) (GSTIN-24EQBPK1345D1ZD) Sr.No 468, Kavitha, BAVLA, Ahmedabad, Gujarat, 382260 (hereinafter referred to as 'the Appellant') has filed the present appeal against Order No. ZA240423054820V dated 11.04.2023 (hereinafter referred to as 'the impugned order'), for Cancellation of Registration issued by the Superintendent, CGST, Range-I, 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-24EQBPK1345D1ZD. The appellant was issued Show Cause Notice date 02.03.2023 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 11.04.2023 approving for cancellation of registration with effect from 01-08-2022 directed for compliance

of the following points:

All pending tax arrears, interest, or penalty must be deposited immediately. The 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 to file a final return within three months of the date of cancellation in FORM GSTR-10 through common portal".

3. Being aggrieved with the impugned order the appellant filed the present appeal online on 09-09-2023 for revocation of cancellation of their GST Registration Number, wherein, inter-alia, contending that :

He could not file GST Returns of last 12 months due to his brother's death for sever cancer, two months back, and that he suffered financial problem. Further, the appellant has prayed to allow their appeal for GST Registration on the above grounds and have promised to pay all taxes, late fees and interest of the said period and file GST Returns regularly.

Personal Hearing :

4. Personal hearing in the case was held on 26-09-2023. Shri Jiggar R. Thakkar, Advocate appeared on behalf of the appellant as authorized person. He submitted that there was time limit for revocation on portal upto 31.08.2023. But portal was not functional, therefore they filed the present appeal and requested to condone the delay and allow appeal.

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 on 11.04.2023 by the adjudicating authority. It is further observed that the appellant has filed the present appeal on 09.09.2023.

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)

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 11.04.2023 i.e on or before 11.07.2023. However, in the instant case the appellant has filed the present appeal on 09.09.2023 i.e. after a lapse of almost two 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 almost two 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.



6.2 It is further observed that the Appellant has cited the reason of time limit for filing revocation of order of cancellation of their GST Registration on GST Portal upto 31/08/2023 and that the same was not functional, therefore they have filed the present appeal.

6.3 I find that the CBIC vide Notification No.3 of 2023 dated 31-03-2023 had notified that *"the registered person, whose registration has been cancelled under clause (b) or clause (c) of sub-section (2) of Section 29 of the said Act, on or before 31st day of December, 2022 and who has failed to apply for revocation of cancellation of such registration within the time period specified in section 30 of the said Act as the class of registered persons who shall follow the special procedure in respect of revocation of cancellation of such registration namely:-*

(a) the registered person may apply for revocation of cancellation of such registration upto the 30th day of June, 2023;

(b) the application for revocation shall be filed only after furnishing the returns due up to the effective date of cancellation of registration and after payment of any amount due as tax, in terms of such returns, along with any amount payable towards interest, penalty and late fee In respect of the such returns;

no further extension of time period for filing application for revocation of cancellation of registration shall be available in such cases."

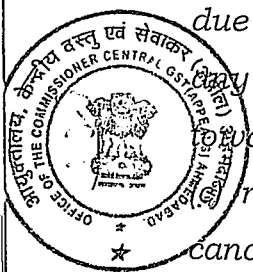
Explanation: For the purposes of this notification, the person who has failed to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section(1) of section 30 of the said Act.

6.4 Further, vide Notification No.23/2023-CT dated 17-07-2023, the words, letter and figure "30th of June, 2023" the words, letter and figure "31st day of August, 2023 was substituted and the said Notification came into force with effect from 30th day of June, 2023.

6.5 Further I refer the following provisions of the Section of the CGST Act, 2017.

***Section 29. Cancellation ¹[or suspension] of registration.-**

(b) a person paying tax under section 10 has not furnished ³[the return for a financial year beyond three months from the due date of furnishing the said return]; or



(c) any registered person, other than a person specified in clause (b), has not furnished returns for a ⁴[such continuous tax period as may be prescribed]; or

⁴Substituted (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022.) by s. 101 by The Finance Act 2022 (No. 6 of 2022). for "a continuous period of six months".

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.

¹**Provided** that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,-

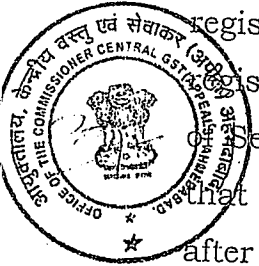
(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

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

6.6 From the plain reading of the above Notification, it is crystal clear that the special procedure in respect of revocation of cancellation of such registration as mentioned therein, is applicable to the registered person whose registration has been cancelled under clause (b) or clause (c) of sub-section (2) of Section 29 of the said Act, on or before 31st day of December, 2022. I find that in the present case the registration of the appellant has been cancelled after the notified date 31-12-2022 vide the impugned order dated 11-04-2023 only, though effective date of cancellation of their registration is 01-08-2022. The appellant could have applied for revocation of cancellation of registration as per the provisions of Section 30 of the CGST Act, 2017, in the prescribed manner within thirty days from the date of service of the cancellation order.

6.7 For the purpose of Notification *ibid*, the person who has failed to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section(1) of section 30 of the said Act.

6.8 In the instant case, the order of cancellation of the Appellant's registration is 11.04.2023. They had an opportunity to apply for the revocation of cancellation of the said order with the proper officer. Hence the reason cited



by the appellant that there is delay in filing appeal due to the time limit for revocation on portal upto 31-08-2023 and the portal was not functional, cannot be considered as the said special procedure in respect of revocation of cancellation of such registration was not applicable in the present case due to the reason the registration was cancelled vide the impugned order dated 11-04-2023 which is after the date as specified in the Notification i.e. 31-12-2022 and after the issuance of the said Notification dated 31-03-2023.

7. It is thus observed that the appellant has not submitted any cogent reasons for such inordinate delay of almost two months in filing the 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 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:

The **Hon'ble Supreme Court** in the case of **Singh Enterprises** reported 2008 (221) E.L.T.163 (S.C.) has held as under:

...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.

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 following the above judgments & 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 well as the appeal is filed beyond the prescribed time limit under the law. 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.

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

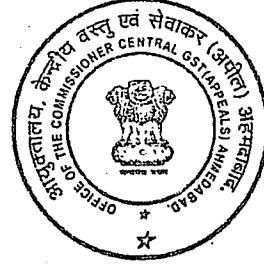
10. The appeal filed by the *appellant* stands disposed of in above terms.

(ADESH KUMAR JAIN)

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

ATTESTED.

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



By R.P.A.D.

To :

M/s. SHAHRAN KHAN (Trade name : LB BRICKS) SR.NO 468, KAVITHA,
BAVLA, Ahmedabad, Gujarat, 382260. (GSTIN-24EQBPK1345D1ZD)

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-V Dholka, Ahmedabad- North Commissionerate.
5. The Superintendent, CGST & C. Ex., Range-I, Division- V Dholka, Ahmedabad-North Commissionerate.
6. The Superintendent [Systems], CGST & C.Ex., Appeals, Ahmedabad .
7. Guard File/P. A. File.



