



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)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/3121/2023 / 2619 - 25
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-75/2023-24 and 29.10.2023
(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	30.10.2023
(ङ)	Arising out of Order-In-Original No. ZA2407230203780 dated 04.07.2023 passed by The Superintendent, CGST, Range-V, Division-V, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Chetanbhai Kalubhai Prajapati (Poonam Engineering and Contractor) (GSTIN: 24BSCPP4852Q2Z4), Village- Bhamasara, Hadvani Faliyu, Bavla, Ahmedabad, Gujarat-382240

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> 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 Chetanbhai Kalubhai Prajapati (Legal Name) & (Trade Name : M/s. Poonam Engineering and Contractor (GSTIN 24BSCPP4852Q2Z4) Village - Bhamasara, Hadvani Faliyu, Bavla, Ahmedabad, Gujarat, 382240 (hereinafter referred to as "the appellant") has filed the present appeal against the Order for Cancellation of Registration issued vide Order No. ZA2407230203780 dated 04.07.2023 (hereinafter referred to as "the impugned order") passed by the Superintendent, Range-V, 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 24BSCPP4852Q2Z4. The appellant was issued Show Cause Notice dated 09-05-2023 for cancellation of registration due to failure to furnish returns for a continuous period of six months. Subsequently, the Superintendent, Central GST, Range-V, Division- V Ahmedabad-North Commissionerate, has passed the impugned order as under:-

The effective date of cancellation of your registration is 01.10.2022.

It may be noted that a registered person furnishing return under sub-section (1) of Section 39 of the CGST Ac, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.

You are requested to furnish all your pending returns.

It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made there under 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".

3. Being aggrieved, the appellant filed the present appeal on 23.10.2023, against the impugned order, wherein they have submitted that:-

- (i) They could not file appeal in time because all their payments were blocked.
- (ii) They are ready to pay all GST arrears and late fees and interest. They have paid all the taxes till 31.03.2023 and willing to pay the remaining returns and taxes from 1.04.2023 to 30.09.2023.

Personal Hearing

4. Personal hearing in the case was held on 26.10.2023. Shri Chetanbhai Kalubhai Prajapati, proprietor himself appeared in person. He submitted that

due to shortage of funds, couldn't file GSTR-3B Returns. Now they have paid all the dues and all Returns will be filed as soon as GST Registration is re-started. They want to continue business and requested to allow the appeal.

Discussion & Findings:

5. I have gone through the facts of the case, available records and the 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. I find that the impugned order was issued on 04.07.2023 by the adjudicating authority. It is further observed that the appellant has filed the present appeal on 23.10.2023.

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**".

7. Accordingly, I observed that the Appellant was required to file appeal within three (3) months from the receipt of the impugned order dated 04.07.2023 i.e on or before 04.10.2023. However, in the instant case the appellant has filed the present appeal on 23.10.2023 i.e. after a lapse of 19 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 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 less than one month 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, however, filed within the condonation period (i.e. considering one month condonation period) as per Section 107(4) of the CGST Act, 2017. I find that the reasons expressed by the Appellant for delay in filing appeal in their condonation of delay letter dated 19-10-2023, due to financial issue, is condonable. Therefore as per the provisions of Section 107(4) of the CGST Act, 2017, I condone the delay of the 19 days in filing appeal by the appellant and consider the appeal as filed within the time. Accordingly, I am proceeding to decide the case.

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 01.10.2022 as the "Appellant" failed to file the GST Returns.

8.1 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 Act, 2017. Therefore, I refer the said provisions of Section 30 and Rule 23, the text of the same is reproduced here 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.

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).]

(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.

* Enforced w.e.f. 22nd June, 2017.

** Kindly also refer to Notification No. 34/2021 – CT dated 29th Aug, 2021.

1. Substituted for the proviso "Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31.03.2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22.07.2019"

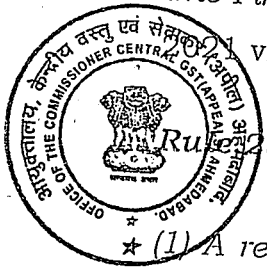
(which was Inserted vide Order No. 05/2019-GST dated 23.04.2020) by s. 122 of

The Finance Act, 2020 (No. 12 of 2020) - Brought into force w.e.f. 01st January, 2020 vide Notification No. 92/2020-C.T. dated 22nd December, 2020.

Rule 23. Revocation of cancellation of registration. –

★ (1) A registered person, whose registration is cancelled by the proper officer on his own motion, may ¹[subject to the provisions of rule 10B] 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 ²[or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30,] 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:



³[**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.

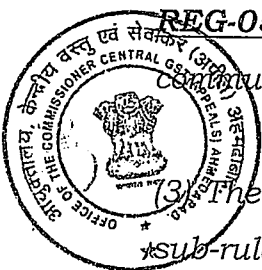
(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in **FORM GST REG-23** requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the 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.

1. Inserted vide Notification no. 35/2021-CT dated 24.09.2021. Brought into force on 01.01.2022 vide Notification No. 38/2021-C.T., dated 21.12.2021.

2. Inserted vide Notification No. 15/2021-CT dated 18.05.2021.

3. Inserted vide Notification No. 20/2019-CT dated 23.04.2019.

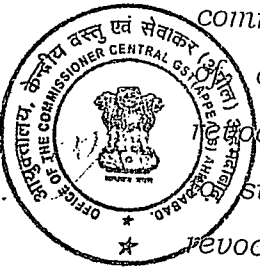


8.2 Further, I find that the Central Board of Indirect Taxes & Customs, New Delhi has clarified the issue vide circular No.99/18/2019-GST dated 23.04.2019. Para 3 of said circular read as under:

"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.

4. Where the registration has been cancelled with retrospective effect, the common portal does not allow furnishing of returns after the effective date of cancellation. In such cases it was not possible to file the application for revocation of cancellation of registration. Therefore, a third proviso was added to sub-rule(1) of rule 23 of the said Rules enabling filing of application for revocation of cancellation of registration, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of thirty days from the date of order of such revocation of cancellation of registration."

8.3. On going through the records/submissions, I find that the "Appellant" has filed the GST Returns up to September-2022 i.e. up to the date of cancellation of registration. However, I find that the appellant have committed to pay all GST arrears and late fees and interest has submitted challans for payment of Tax and late fee totaling Rs.5,62,619/- and Tax, interest and late fee totaling Rs.1,80,488/- dated 18.10.2023 and 19.10.2023 respectively and submitted that they have paid all taxes till 31.03.2023 and willing to pay the remaining taxes and returns from 01.04.2023 to 30.09.2023. Hence, I find that the "Appellant" shall be given opportunity for revocation of their registration as per the above said provisions in the instant case. Needless to say that the "Appellant" 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.

9. In view of above discussions, I am of the view 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.

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.

Aadesh Kumar Jain
29/10/2023

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

Date: -10-2023.

ATTESTED.

Sunita D. Nawani

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



By R.P.A.D.

To :

M/s.Chetanbhai Kalubhai Prajapati (Legal Name),
(Trade Name : M/s. Poonam Engineering and Contractor
Village - Bhamasara, Hadvani Faliyu, Bavla, Ahmedabad,
Gujarat, 382240 (GSTIN 24BSCPP4852Q2Z4)

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

