



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/551/2021 -APPEAL 125 - 31

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-163/2021-22**
दिनांक Date : **31-03-2022** जारी करने की तारीख Date of Issue : **31-03-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZA2412201215860 DT. 31.12.2020** issued by the Superintendent, Range III, Division VII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**M/s. Temple Design, Prop Rushabhdev Chandrakantbhai Sompura,
9/B, Hirakumar Society, Jodhpur, Ahmedabad-380015**

(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. Temple Design, Prop Rushabhdev Chandrakantbhai Sompura, 9/B, Hirakumar Society, Jodhpur, Ahmedabad 380 015 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 2-2-2022 against Order No.ZA2412201215860 dated 31-12-2020 (hereinafter referred to as 'the impugned order') passed by the Superintendent, Range III, Division VII, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant's GST Registration No.24AUKPS5445B1ZN was cancelled by the adjudicating authority with effect from 31-12-2020 on the following grounds :

The tax payer did not turn up for personal hearing nor filed the required returns. It is pertinent to mention here that they also not contested action proposed for the cancellation under Section 29 (2) of CGST Act, 2017. Therefore, I proceed to cancel the GST registration by virtue of Section 29 (2) read with Section 29 (3) of CGST Act, 2017.

3. Being aggrieved the appellant filed the present appeal on following grounds :
The Order is bad in Law and liable to be quashed and set aside ; that the adjudicating authority has erred in Law and of facts in assuming that the business of the dealer was closed with effect from 31-12-2020 ; that an opportunity of being heard is not given to the dealer and the order is against the rule of natural justice and liable to be quashed. In view of above submission the appellant requested to quash and set aside the impugned order and to pass order to restore their GST registration. The appellant vide letter dated 27-1-2022 has also requested to consider and condone delay in filing of appeal on the ground that they had noticed the impugned order on dated 15-11-2021 and hence appeal filed by them within time and within the prescribed time limit of 90 days from the date of receipt of the Order ; that in view of judgment of Hon'ble Supreme Court dated 23-3-2020 and Order in MA No.665 of 2021, excluding the time period from 15-3-2020 to 2-10-2021 and 30 days beyond the specified period of 90 days for filing the appeal, the appeal consider in time after excluding the period of 566 days from 15-3-2020 to 2-10-2021 as decided by Hon'ble Supreme Court and further period of 30 days after 90 days prescribed by the Act ; that Board's Circular No.157/13/2021 dated 20-7-2021 in this respect may also be considered and give benefit thereof by condoning the delay.

4. Personal hearing was held on 22-3-2022 Shri Jainil Shah, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he had nothing more to add to their written submission till date.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. At the outset I find that the impugned order was passed on dated 31-12-2020 but the present appeal was filed only on 2-2-2022. In this regard



I find it relevant to go through the statutory provisions of Section 107 of the CGST Act, 2017 which is reproduced here in below:

"Sec.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.

(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. As per Section 107 of CGST Act, 2017, the appellant was required to file appeal within 3 months from the date of communication of order i.e. on or before 30-3-2021 or within a further period of one month subject to submission of sufficient cause ie latest by 29-4-2021. The subject appeal was filed only on 2-2-2022 ie nearly one year after the statutorily stipulated time period and hence filed beyond time limitation period. However, in the wake of Covid 19 pandemic, Hon'ble Supreme Court's vide its judgment dated 23-3-2020, taking suo motto cognizance of the situation arising due to Covid 19 pandemic, has extended the period of limitation prescribed under the Law with effect from 15-3-2020 till further Orders. Subsequently vide Order dated 27-4-2021, Hon'ble Supreme Court has restored the Order dated 23-3-2020 thereby directing that the period (s) of limitations as prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings, whether condonable or not, shall stand extended till further orders from 15-3-2020. Thereafter Hon'ble Supreme Court vide its Order dated 23-9-2021 in Misc. Application No.665 of 2021 further ordered as under :

In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

7. Thus as per above judgment the time limit for filing appeal for which due date of filing expires during the period from 15-3-2020 till 2-10-2021 was extended till 2-1-2022 only ie 90 days from 3-10-2021. Accordingly, at the material time, the time limit till 2-1-2022 was



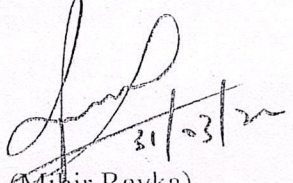
available to the appellant for filing the present appeal. However, the present appeal being filed on 2-2-2022 is even beyond the extension of time provided by Hon'ble Supreme Court.

8. The appellant in their appeal further contended that they had received the impugned order only on 15-11-2021 when their present authorized representative logged on see the status of their registration and informed them about the cancellation of their registration. I find this submission unconvincing. As per Section 107 of CGST Act, 2017 date of communication of order is decisive factor for determining the due date of filing of appeal and not the date of receipt of the Order. As per Section 169 (2) of CGST Act, 2017, every decision, order, summons notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub section (1). Under clause (d) of sub section (1) 'making it available on the common portal' is specified as one mode of serving of order. I find that the impugned order was issued online and made available on common portal on the date of issuance itself. I have also verified from GST portal and find that portal shows issuance of Order on 31-12-2020. However, due to negligence and fault on the part of the appellant that they had not accessed the same for long period of nearly 11 months which caused delay in filing of appeal. Therefore, I do not accept the contention made to consider the date of receipt of impugned order on 15-11-2021 for determining the due date for filing of appeal.

9. In view of above, I hold that the present appeal was filed after statutory prescribed time limit of 3 months and after the extended time period granted by Hon'ble Supreme Court. Therefore any further proceedings in case of present appeal can be taken up for consideration only if the present appeal is filed within the time limit prescribed under CGST Act, 2017. Hence I hold that the present appeal filed by the appellant merit dismissal on the ground of failure to file the appeal within the time limit prescribed under Section 107 of the CGST Act, 2017 read with judgment dated 23-9-2021 of Hon'ble Supreme Court. Accordingly I dismiss the present appeal.

अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

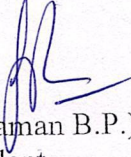
10. The appeal filed by the appellant stands disposed of in above terms.


31/03/22
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad

By RPAD

To,



By RPAD,

To,
M/s. Temple Design,
Prop Rushabhdev Chandrakantbhai Sompura,
9/B, Hirakumar Society,
Jodhpur, Ahmedabad-380015

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) The Deputy Commissioner, Division VII, Ahmedabad South
- 6) The Superintendent, Range III, Division VII, Ahmedabad South
- 7) Guard File
- 8) PA file

