

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, अम्बावाडी 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/1835/2021-APPEAL / 1183 70 1181

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-56/2021-22**

दिनांक Date : **29-10-2021** जारी करने की तारीख Date of Issue : **29-10-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

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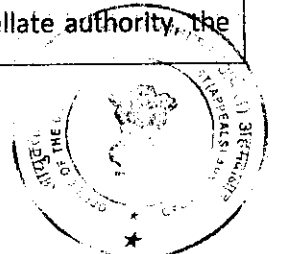
Arising out of Order-in-Original No. No. **ZA240819000608G** दिनांक: **01-08-2019** issued by
The Superintendent Ghatak-5, Range-2, Division-I, Ahmedabad South

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

**M/s. Divya Hi-Tech Solar Project Private Limited, 19, Satellite Bungalows, Opp.
Sarthal Tower, Ramdenagar X-Road, Satellite, 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. Divya Hi-Tech Solar Project Private Limited, 19, Satellite Bungalows, Opp. Sarthak Tower, Ramdenagar X-Road, Satellite, Ahmedabad-380015 (hereinafter referred to as 'the appellant') engaged in the business of green energy solar power for commercial and industrial use has filed the present appeal against Order No. ZA240819000608G dated 01.08.2019 (hereinafter referred to as 'the impugned Order') passed by the Superintendent Ghatak-5, Range-2, Division-I, Ahmedabad South (hereinafter referred to as the 'adjudicating authority').

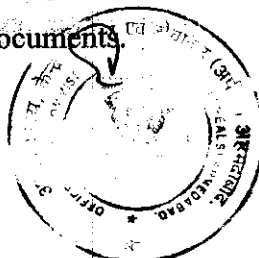
2. The brief facts of the case are that the appellant is registered under GST Registration No. 24AAFCD5957M1Z7. The appellant was issued show cause notice dated 31.5.2019 for cancellation of their registration by the Superintendent Ghatak-5, Range-2, Division-I, Ahmedabad South for the reason that the appellant has not filed returns for a continuous period of six months. The show cause notice was decided by the adjudicating authority vide impugned Order wherein the adjudicating authority has cancelled their GST registration with effect from 01.08.2019 due to following reasons:

The tax payer did not turn up for PH. On examination of the show cause reply dated 09.06.2019 and written submission made at the time of hearing, I proceed to cancel the GST registration by virtue of Section 29 of CGST Act, 2017.

3. Being aggrieved the appellant filed the present appeal on the ground inter alia that owing to suffering from the diseases i.e., Hypertension, B.P. and frequent visit to abroad for treatment they had not filed the returns. On account of cancellation of GST registration, they are losing entire market and suffering huge loss in business. Therefore, they requested to consider their plea and revoke their GST registration so that they can continue their business.

4. Personal hearing in the matter was held on 22.10.2021 through virtual mode. Shri Hitendra H Sheth has attended the hearing as an authorized representative of the appellant. He sought time for additional submission. Shri Arvind Patel director of M/s. Hi-Tech vide his letter dated 22.10.2021 submitted the medical prescriptions and reiterated the grounds of appeal memorandum filed on 19.08.2021 and stated that applicant is now trying to re-establish his business and is in urgent need of restoration of his GST registration number. Applicant is willing to file all the pending returns along with reduced late fees and penalty if any imposed.

5. I have carefully gone through the records of the case, the impugned order and the grounds of appeal as well as oral submission of the appellant. I find that the impugned order was issued on 01.08.2019 by the adjudicating authority. As submitted by the Appellant, the said order was also communicated to them on the same day of 01.08.2019. It is further observed that the Appellant has filed this present appeal on 09.08.2021 (through online mode) and hard copies manually submitted on 19.08.2021 along with supporting documents.



6. I further find it relevant to go through the statutory provisions of Section 107 of the CGST Act, 2017 which is reproduced hereinbelow:

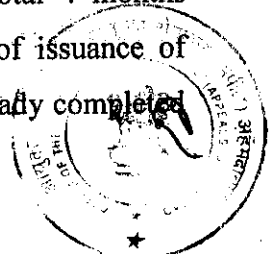
"Sec.107. Appeals to Appellate Authority. —(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within 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."

7. Accordingly, it is observed that the Appellant was required to file appeal within 3 months from the receipt of the said order i.e. on or before 01.11.2019, as stipulated under Section 107(1) of the Act. However, the Appellant has filed the present appeal on 09.08.2021, i.e. after a period of more than one and half year from the due date. Further, I also find that in terms of the provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of 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 a delay of one and half year in filing the appeal over and above the normal period of 3 months. Thus, appeal filed beyond the time limit prescribed under Section 107(1) *ibid* cannot be entertained.

8. Further, I also find that in terms of the Hon'ble Supreme Court judgment dated 23.03.2020, wherein the Apex Court taking suo-moto cognizance of the situation arising due to COVID-19 pandemic has extended the period of limitation prescribed under the law with effect from 15.03.2020 till further orders. Further, the Hon'ble Supreme Court vide order dated 27.04.2021 has restored the order dated 23rd March 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 15.03.2020. The CBIC, New Delhi also vide Circular No. 157/13/2021-GST dated 20.07.2021, has clarified at para-5 that "In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws."

However, I find in the present case that the period of limitation of total 4 months (including condonable period of 1 month) for filing of appeal from the date of issuance of impugned order, as prescribed under Section 107 of the CGST Act, 2017 was already completed



on 01.12.2019 and hence, the present case would not be eligible for the relaxation/extension granted by the Hon'ble Supreme Court in respect of period(s) of limitation as mentioned above. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

9. It is also observed that the appellant has not filed any application for condonation of delay. Even otherwise, filing of a COD application is not going to change the factual position in the present case. 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 delay beyond the period permissible under the CGST Act. When the 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 as 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."

(ii) In the case of Makjai Laboratories Pvt Ltd reported as 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 as 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.

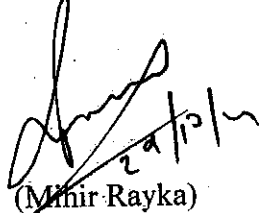
10. I find that the provisions of Section 107 of the Central Goods and Services Act, 2017 are pari materia with the provisions of Section 85 of the Finance Act, 1994 and Section 35 of the Central Excise Act, 1944 and hence, the above judgements would be squarely applicable to the present appeal also.



11. By respectfully following the above judgements, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. 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, dismiss the present appeal.

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


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

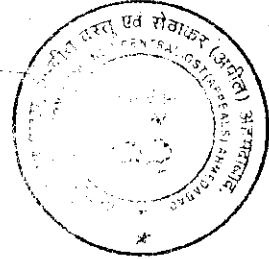

(Mihir Rayka)

Joint Commissioner (Appeals)

Date :

Attested


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



By RPAD

To,

M/s. Divya Hi-Tech Solar Project Private Limited,
19, Satellite Bungalows,
Opp. Sarthak Tower,
Ramdenagar X-Road,
Satellite, Ahmedabad 380 015

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 Assistant Commissioner, CGST, Division VII, Ahmedabad South
- 5) The Superintendent, CGST, Range II, Division VII, Ahmedabad South
- 6) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 7) Guard File
- 8) PA file