



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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DIN- 20220964SW000022602A

रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/2422/2022 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-119/2022-23**

दिनांक Date : **13-09-2022** जारी करने की तारीख Date of Issue : **13-09-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. **ZA2403211616502 DT. 17.03.2021**

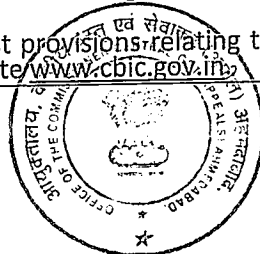
issued by Superintendent, CGST, Ghatak 5, Range II, Division-VI, Ahmedabad South

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

**M/s. Tarmac Infra Projects Private Limited 22/A, Shakri Enclave,
Near Judges Bungalow Road, Bodakdev, Ahmedabad-380054**

(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

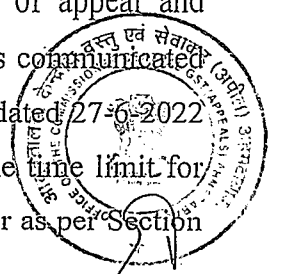
M/s.Tarmac Infra Projects Private Limited 22/A. Shakri Enclave, Near Judges Bunglow Road, Bodakdev, Ahmedabad 380 054 (hereinafter referred to as the appellant) has filed the present appeal online on dated 27-6-2022 against Order No.ZA2403211616502 dated 17-3-2021 (hereinafter referred to as the impugned order) passed by the Superintendent, CGST, Ghatak 5, Range II, Division VI (Vastrapur), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. The appellant was registered under GSTIN 24AANCM0222C1Z3. The appellant was issued show cause notice reference No.ZA241220057378Q for cancellation of registration due to non filing of returns for a continuous period of six months. The adjudicating authority vide impugned order ordered cancellation of registration with effect from 17-3-2021 on the above reason.

3. Being aggrieved the appellant filed the present appeal on the ground that in the interest of natural justice where the applicant could not file reply to SCN due to lack of knowledge and also absence of staff in COVID 19 atmosphere. The error of non-filing of returns occurred unintentionally in the extraordinary Covid 19 situation, where many industries have suffered beyond limits. Therefore, the simple request is to the effect that the registration may be ordered to be restored and all dues (late fee) as applicable may be accepted. For the purpose the cash ledger has already been credit with funds to meet the late fee liabilities. They also undertake that on restoration of registration they will file all NIL returns within five working days pay late fee as applicable. Their issue is not like other issues of GST litigation. The delay has caused due to non-understanding of provisions of Law and having no work in Covid times. They are not ready to meet the liability of late fee. The required funds have been credited into Cash Ledger to meet the late fee and therefore the appellant requested to take lenient view and to restore their registration.

4. The appellant vide letter dated 26-8-2022 further submitted that their late fee liability for the period from April 2021 to March 2022 comes to Rs.57,750/- and they had credit into their cash ledger this amount to meet the late fee charges and the same would be revised upward from 23-6-2022 to the date of actual filing of return as and when the registration is restored. The returns for the month of June and July 2022 shall also be added. They further undertaken that upon restoration of the registration necessary filing of required returns shall be completed within five days of receipt of the order. They further submitted that since they need to commence their business activity, they prayed that their appeal may be decided at the earliest and they also waived the requirement of personal hearing.

5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. At the outset I find that the impugned order was communicated to the appellant on dated 17-3-2021 and the present appeal was filed online on dated 27-6-2022 i.e after of period of 15 months. As per Section 107 (1) of CGST Act, 2017, the time limit for filing of appeal is three months from the date of communication of order. Further as per Section



107 (4) of CGST Act, 2017, the appellant authority is empowered to condone delay in filing of appeal within three months and allow further period of one month subject to sufficient cause shown by the appellant. In their appeal, the appellant has given reasons for delay which is due to slackness in business and shortage of funds due to Covid 19 situation and requested to condone delay. I find the reason given by the appellant satisfactory to allow further extension of one month for filing appeal in terms of Section 107 (4) of CGST Act, 2017. However, even after allowing one month extension the present appeal filed on 27-6-2022 is very much beyond the statutory time limit prescribed under Section 107 of CGST Act, 2017.

6. However, I find that Hon'ble Supreme Court vide Order dated 10-1-2022 in suo motu Writ Petition (C) No.3 of 2020 in Re-Cognizance for Extension of limitation has ordered that in cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all person shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply. As per above Order 90 days time limit with effect from 1-3-2022 is provided for computing time limitation in filing appeal and where balance period of limitation with effect from 1-3-2022 is greater than 90 days then such longer period is available. I find that Section 107 (1) provide for 90 days time limitation and Section 107 (4) provide for one more month time period in filing appeal subject to sufficient cause shown. Thus, in effect total time period of four months or 120 days is provided under Section 107 for filing appeal and accordingly in terms of Hon'ble Supreme Court's Order allowing extension for longer period beyond 90 days with effect from 1-3-2022, the time limit for filing of appeal under Section 107 expires on 30-6-2022. Since I find the reason for delay in filing of present appeal within three months satisfactory for allowing further extension of one month under Section 107 (4), the time limit till 30-6-2022 is available in filing the present appeal. Therefore, I find that the present appeal filed on 27-6-2022 is not hit by time limitation and hence I proceed to decide the appeal on merits.

7. I find that the in the present case the GST registration was cancelled with effect from 17-3-2021 due to non filing of returns for continuous period of six months. As per Rule 23 of CGST Rules, 2017, in case of cancellation of registration the registered person is required to file an application for revocation of cancellation with the proper officer within the time limit prescribed therein. Proviso to Rue 23 further provides 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. From the facts of the case I find that the appellant has not filed any application for revocation of cancellation. However, in compliance to proviso to Rule 23 I find that they had filed GSTR3B and GSTR1 returns for six months period till March 2021. Since present appeal was filed for restoring their GST registration to continue their business activity, to pay tax, to file return and also by giving undertaking to pay late fee as applicable, on waiver of personal hearing proceed with material facts available on records in the interest of justice, fairness and

Government revenue I allow this appeal. I further order the proper officer to consider request for revocation of cancellation of registration made in consequent to this Order in accordance with CGST Act and Rules framed thereunder. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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


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

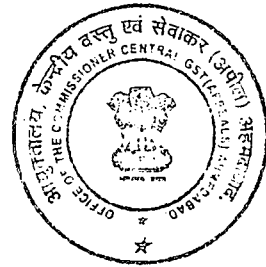

(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


Superintendent
Central Tax (Appeals),
Ahmedabad



By RPAD

To,

M/s.Tarmac Infra Projects Private Limited,
22/A. Shakri Enclave, Near Judges Bunglow Road,
Bodakdev, Ahmedabad 380 054

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

