



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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DIN- 20221264SW00000000F5

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/847/2022 -APPEAL / 5473-98

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-174/2022-23**
दिनांक Date : **08-12-2022** जारी करने की तारीख Date of Issue : **08-12-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **WS0704/CGST/ASMT-13/2019-20/9187 DT. 16.02.2021** issued by Superintendent, CGST & CX, Range-IV, Division-VII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Amrish Narendrabhai Dave, B-130, Tirthraj Complex, Opp V.S. Hospital, Ellisbridge, Ahmedabad-380006

(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.cbtc.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.cbtc.gov.in



ORDER-IN-APPEAL

M/s. Amrish Narendrabhai Dave, B-130, Tirthraj Complex, Opp V.S. Hospital, Ellisbridge, Ahmedabad – 380 006 (hereinafter referred to as the '*Appellant*') has filed the present appeal on dated 08.02.2022 against the Order No. WS0704/CGST/ASMT-13/2019-20 dated 16.02.2021 (hereinafter referred to as the '*Impugned Order*') passed by the Superintendent, CGST, Range-IV, Division VII, CGST, Ahmedabad South (hereinafter referred to as the '*Adjudicating Authority*').

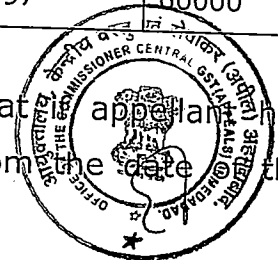
2. Facts of the case in brief is that -

- The Appellant failed to file GSTR-1 and GSTR-3B Returns for the period from January'20 to December'20. Further, as the appellant failed to discharge resultant tax liability for the aforesaid tax period within 15 days of the receipt of the GSTR-3A Notice Reference No. WS070411193A0010 dated 07.08.2020 the Adjudicating Authority has passed the impugned order i.e. Assessment order F. No. WS0704/CGST/ASMT-13/2019-20 Dated 16-02-2021 in form of GST ASMT-13 under Section 62 of CGST Act, 2017.
- As per said impugned order *the Taxpayer is engaged in the supply of Service/goods, has not filed any GSTR-1 for the period Jan'2020 to Dec'2020, for the supplies made. Also, the Taxpayer has failed to furnish GSTR-3B for the said period as well as failed to discharge resultant tax liability for the aforesaid tax period within 15 days of the receipt of the aforementioned GSTR-3A notice.*
- The adjudicating authority has accordingly, assessed the tax liability under Section 62 of the CGST Act, 2017 on best judgment method considering information available with department i.e. based on GSTR-3B of December'2019. In addition to tax so assessed, the adjudicating authority has also held that the tax payer is liable to pay interest and penalty as per provisions of the CGST Act, 2017. The adjudicating authority has accordingly passed the impugned order that tax payer is liable to pay the below mentioned amount so assessed :

Amount in Rupees

Sr. No.	Tax period	Total Taxable Value	Central Tax under CGST Act'2017	State/UT Tax under SGST Act'2017	Interest till 16.02.2021	Penalty (Rs. 5000 per month)
	Jan'20 to Dec'20	1500000	135000	135000	26497	60000

- It is further, mentioned in the impugned order that the appellant has furnished the return within a period of 30 days from the date the



service of the order, the order shall be deemed to have been withdrawn but the liability for payment of interest under section 50(1), penalty and payment of late fee under Section 47 will continue. However, if appellant fail to furnish the said returns, proceeding shall be initiated against the appellant after the aforesaid period to recover the outstanding dues as per the provisions under CGST Act, 2017 and rules there under.

3. Being aggrieved with the impugned order the appellant has filed the present appeal on 08.02.2022 wherein stated that –

- *When the appellant had already applied for cancellation of GST registration,*
 - o *whether they liable to file GST returns after cancellation application or not*
 - o *Whether they liable for penalty or not*
- *They had already applied for cancellation of GST registration on 11.08.2020 w.e.f. 01.01.2020 due to having turnover below threshold limit appellant. Thereafter, again applied for cancellation of GST registration on 25.09.2020, against which the appellant was instructed to file pending returns upto 30.11.2020. As they did not file returns, their application was cancelled by the department.*
- *Further, the appellant had made an application for cancellation of GST registration on 17.12.2020 which has not been considered by the department and passed the Assessment Order in ASMT-13 on 16.02.2021.*
- *The department has issued the order without considering the fact that the cancellation application of GSTN was pending as on date.*
- *Further, the appellant want to state that the act of the department is arbitrary and assumption basis. When they had already applied for cancellation of GSTN w.e.f. 01.01.2020, the act of department asking for demand of tax, interest thereon and penalty is not justifiable at all.*

In view of above submissions, the appellant has made prayer to drop the demand of Tax Rs.2,70,000/- & Penalty Rs.60,000/- and any other order as may deem fit.

4. Personal Hearing in the matter was held on 29.08.2022 wherein Shri Vipul Khandhar, CA appeared on behalf of the 'Appellant' as authorized representative. During PH he has given the written submission dated 29.08.2022. He has further stated that they have nothing more to add.

The appellant through aforesaid written submission dated 29.08.2022 has reiterated the appeal memorandum and provide the copies of SCNs & Orders issued by the department in connection with their application for Cancellation of Registration.



Discussion and Findings:

5(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum as well as through additional submission. I find that the appellant has applied for cancellation of registration w.e.f. 01.01.2020 and the department has instructed them to file the pending GST Returns. Since, the appellant has not filed the pending returns the *Adjudicating Authority* has issued the 'impugned order' dated 16.02.2021 i.e. Assessment Order in terms of provisions of Section 62 of the CGST Act, 2017. The *Adjudicating Authority* has issued the 'impugned order' considering available materials and details of GSTR-3B for the month of December'2019. Accordingly, vide impugned order the adjudicating authority has assessed the tax liability of Rs.2,70,000/- with interest of Rs.26497/- and Penalty of Rs.60,000/-.

5(ii). Further, before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

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.

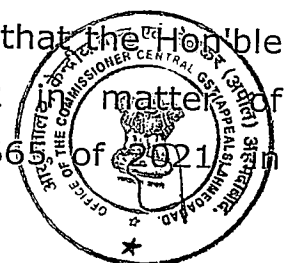
(2)

(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.**

5(iii). I observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.

5(iv). However, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in Miscellaneous Application No. 21 of 2022 in M.A. 66 of 2021



SMW(C) No. 3 of 2020. Hon'ble Supreme Court vide Order dated 10.01.2022 ordered that for computing period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 28.02.2022 shall stand excluded and consequently balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022 and that in cases where the limitation would have expired during the period from 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

5(v). In the present matter, the "impugned order" is of 16.02.2021 so, the normal appeal period of three months was available up to 15.05.2021. Whereas, in the present matter appeal filed on 08.02.2022. However, in view of above order of Hon'ble Supreme Court as discussed in above paras, the present appeal is considered to be filed in time. Therefore, I find that the present appeal is filed within stipulated time limit.

Accordingly, I am proceeded to decide the case.

6(i). The appellant in the present appeal has produced the copies of SCNs and Orders issued by the department in connection with their Applications for Cancellation of Registration. On going through same I find that

- In response to appellant's cancellation application dated 11.08.2020, the department had issued a SCN No. ZA240820062876C dated 19.08.2020 that application is not satisfied with the following reasons:
 - o "GSTR3B return filed up to Aug 2019 only. Pl file remaining returns. Also interest for delayed payment of tax is not paid for returns filed delay. Pl pay up interest @ 18% p.a." you are directed to submit your reply by 28.08.2020.
 - o Thereafter, department has rejected the said application by issuing order bearing No. ZA240820109365T 31.08.2020 for the reason that "response to query not given"
- Thereafter, the appellant has again applied for cancellation of registration on 25.09.2020.
 - o In this connection department has issued SCN No. ZA240920204523Z date 30.09.2020 that the application is not satisfied for the reasons that "1 Cancellation Details-Others (Please specify) GSTR3B returns filed upto December 2019, pl file remaining returns."
 - o Thereafter, department has rejected the said application by issuing order bearing No. ZA241020426450D dated 12.10.2020 for the



reasons that "1 Compliance to query not given, hence request for cancellation of registration is rejected."

- Thereafter, I find that the department has issued SCN No. ZA241220057122B dated 16.12.2020 to the appellant that the registration is liable to be cancelled for the reasons that - "Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months". After examining the reply dated 17.12.2020 of appellant and submissions made at the time of hearing it was opined by the department that registration is liable to be cancelled. Accordingly issued the order No. ZA2412200722915 dated 18.12.2020 as under :

"1 Registration cancelled suomoto" "The effective date of cancellation of your registration is 18.12.2020".

- 6(ii).** Since, the appellant has applied for cancellation of registration and department has issued the ASMT-13 order it is imperative that the statutory provisions be gone through, which are reproduced, as under :

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

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,-

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

²[(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25];

¹**Provided** that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.]

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(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

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

¹**Provided** further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.]

(3) the cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder 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.

(4) The 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 cancellation of registration under this Act.



(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

*** Section 62. Assessment of non-filers of returns.-**

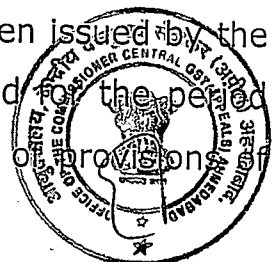
(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

6(iii). In view of above provisions, I find that even if the application for cancellation of registration has been filed under section 29(1) of CGST, Act 2017, I find that as per Para 29(3) the cancellation of registration under this section shall not affect the liability of the person 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. One has to file all the returns before filing application for cancellation of registration.

6(iv). In the present matter I find that when the appellant has filed the application for cancellation of registration w.e.f. 01.01.2020 vide different applications, the Proper officer has issued Show Cause Notices asking the appellant to file the pending returns till date and payment for delay. However, being not satisfied with the replies of the appellant the department has rejected the applications of the appellant.

6(v). Further, I find that the Appellant has filed the return GSTR3B & GSTR-1 till December'2019 only which is evident from the status of GSTIN on Goods and Service Tax Portal. Assessment Order has been issued by the adjudicating authority and tax liability has been ascertained for the period January'20 to December'20 for non filing of return in view of provisions of Section 62 of the CGST Act'2017.



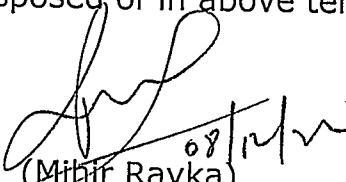
6(vi). It is evident from the available records that many opportunities have been provided to the appellant for filing GST Returns. Appellant didn't appreciate it and filed application repeatedly for cancellation of registration without filing GST Returns. On non filing of GST Returns, Jurisdictional officer resorted to assess tax liability on the basis of relevant material record and information available with the department. Since, the appellant has not filed the required GST Returns, there was no other option with the adjudicating authority except to pass the Assessment Order under Section 62 of the CGST Act, 2017. I find that the adjudicating authority has correctly followed the provisions in case of non filing of returns and I do not find any force in appellant's submissions in this regard.

7. In view of the above, I do not find any force in the contentions of the appellant. Accordingly, I find that the impugned order passed by the adjudicating authority is correct and as per the provisions of GST law. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority vide "impugned order".

8. In view of above discussion, I reject the appeal filed by the appellant.

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

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



(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 08.12.2022



Attested


(Dilip Jadav)

Superintendent (Appeals)
Central Tax, Ahmedabad

By RPAD

To,

Amrish Narendrabhai Dave,
B-130, Tirthraj Complex,
Opp V.S. Hospital Ellisbridge,
Ahmedabad-380006

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 Superintendent, Range-IV, Div-VII, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file