



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 ३८००१९.

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क फाइल संख्या : File No : GAPPL/ADC/GSTP/941/2022 -APPEAL

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ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-215/2022-23

दिनांक Date : 23-01-2023 जारी करने की तारीख Date of Issue : 23-01-2023

श्री मिहिर रायका अप्र आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZA240121052596U DT. 12.01.2021 issued by Superintendent, CGST & CX, Range-III, Division-V, Ahmedabad South

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

Jagdish Shankarlal Jagetia of M/s. Shishnay Enterprise, B/1/11,

Shri Raghukul Society, Opp. Commissioner Office, Shahibag, Ahmedabad-380004

(A)	इस आदेश (अपील) से व्यक्ति 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 दायित्व 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 :-**

This appeal has been filed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") by **M/s. Shishnay Enterprise (Legal Name - Jagdish Shankarlal Jagetia)**, B/1/11, Shri Raghukul Society, Opp. Commissioner Office, Shahibag, Ahmedabad - 380 004 (hereinafter referred to as "Appellant") against the Order No. ZA240121052596U dated 12.01.2021 (hereinafter referred to as "impugned order") passed by the Superintendent, CGST, Range-III, Division-V - Odhav, Ahmedabad South (hereinafter referred to as "the Adjudicating Authority/Proper Officer").

2. Facts of the case, in brief, are that the *appellant* is registered under the Central Goods and Services Tax Act, 2017 vide GST Registration GSTIN 24AIHPJ6820G1ZG. A Show Cause Notice was issued to the appellant, wherein it was proposed that registration is liable to be cancelled for the reason "Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months". Thereafter, the registration was cancelled vide *impugned order* under Section 29 of the CGST Act, 2017 on 12.01.2021 for the reason "Failure to file six monthly returns and also personal hearing not attended". As per the *impugned order* the effective date of cancellation of registration is 12.01.2021.

3. Being aggrieved with the *impugned order*, the *appellant* preferred this appeal on 17.03.2022. In the appeal memo the appellant has submitted that their Tax Consultant has not provided them the details of ITC blocked as well as details of non filing of returns in COVID 19 period. The appellant has also submitted affidavit / undertaking dated 03.03.2022 duly notarized alongwith the present appeal. In the said affidavit/undertaking the appellant has stated that -

- They are holding GST registration since 25.07.2017. They have filed the returns online from 01.07.2017 to 31.01.2020.
- From 01.02.2020 to 31.03.2020 the filing of returns are pending due to cancellation of their GST Registration
- Their GST Number is cancelled from 12.01.2021.



- Any tax liability, interest, late fees arises in future will be discharged immediately within five days from restoration of their GST registration number.

Further, in response to Personal Hearing letter dated 14.09.2022 issued by this appellate authority, the appellant vide letter dated 17.09.2022 has submitted copies of various documents such as Audit Report of 2017-18, Balance Sheet with P&L for 2018-19 and 2019-20. Also submitted copies of GSTR 2A, Purchase Register, Sales Register, Electronic Credit Ledger, GST Working for the period 2017-18, 2018-19 and 2019-20.

Personal Hearing :-

4. Personal Hearings in the matter through virtual mode were offered to the "Appellant" on 22.08.2022 and 07.09.2022. However, no one appeared for the PH through Virtual Mode on the Scheduled dates. Thereafter, Personal Hearing was held on 20.09.2022 wherein, Mr. Alpeshkumar Patel was appeared as authorized representative on behalf of the appellant. During Personal Hearing he has stated that they want to submit additional information, same was approved and 07 working days period was granted for the same. However, till date of 20.01.2023 the appellant has not submitted any additional information or additional submission.

Discussion and Findings :-

5. I have gone through the facts of the case, 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.

6. First of all, I would like to take up the issue of filing the appeal and 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.**

7(i). 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.

7(ii). However, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in 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.

7(iii). In the present matter, the "impugned order" is of 12.01.2021 so, the normal appeal period of three months was available up to 11.04.2021 whereas, the present appeal is filed on 17.03.2022. However, in view of above order of Hon'ble Supreme Court by excluding the period from 15.03.2020 till 28.02.2022 and considering 90 days from 01.03.22, the last date for filing of appeal comes to 29.05.2022. In the present matter the appeal is filed on 17.03.2022. Accordingly, in view of foregoing the present appeal is considered to be filed in time.

8. In view of above and also looking into the **Covid-19**



pandemic situation in the instant matter, I am inclined to condone the delay of filing of appeal. Therefore, I find that the present appeal is filed within stipulated time limit.

Accordingly, I am proceeded to decide the case.

9. 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 12.01.2021 as the "Appellant" failed to file the GST Returns.

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 Rules, 2017. Therefore, I find it pertinent to refer Section 30 and Rule 23 as 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 :

[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.

RULE 23. Revocation of cancellation of registration — (1) A



registered person, whose registration is cancelled by the proper officer on his own motion, may 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 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 :

[**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-23***



(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.

10. 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.

11. On going through the records/submissions, I find that the "Appellant" through an affidavit has stated that they are ready to file pending GST Returns with fine, penalty and interest. However, I find that the appellant has not produced any such documents evidencing that they have filed the pending GST Returns with GST liability. Further, as per the status of filing of GST Returns as available on GST Portal I find that the appellant has filed the GSTR 3B upto January-2020 and GSTR-1 upto February-2020. Accordingly, I find that the appellant has yet not filed the pending GST Returns till the date of cancellation of GST Registration. In this regard, I find it pertinent to refer the first proviso to Rule 23 (1) of the CGST Rules, 2017. The same is reproduced as under :

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 fee in respect of the said returns :



In view of above provisions read with CBIC's Circular 99/18/2019-GST dated 23.04.2019 I find that the appellant has not followed the above provisions even during pendency of this appeal. Therefore, it is very much clear that the appellant is failed to follow the prescribed procedure for revocation of their cancelled GST Registration.

12. In view of the foregoing facts I do not find any force in contentions of the 'Appellant'. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is correct 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*". In view of above discussion, I reject the appeal filed by the '*appellant*'.

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: 23.01.2023

Attested


(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
M/s. Shishnay Enterprise
(Legal Name - Jagdish Shankarlal Jagetia),
B/1/11, Shri Raghukul Society,
Opp. Commissioner Office, Shahibag,
Ahmedabad - 380 004

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST, Division-V, Ahmedabad South.
5. The Superintendent, Range - III, Div. V, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File

