



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- 20230264SW0000777C99

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2651/2022 -APPEAL

18169-95

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-231/2022-23**

दिनांक Date : **08-02-2023** जारी करने की तारीख Date of Issue : **08-02-2023**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

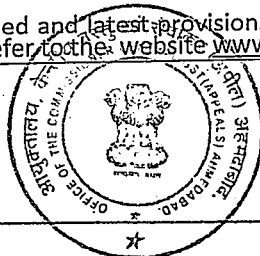
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZA2411211754214** DT. **26.11.2021** issued by  
The Superintendent, CGST, Ahmedabad South

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

**Prashant Bipinbhai Jani of M/s. Krishna Enterprise, 160/2,  
Mukhivas, Mithakhali, Ahmedabad, Gujarat-380006**

|       |   |
|-------|---|
| (A)   | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।<br>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 -<br>(i) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and<br>(ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं।<br>For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .   |



**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. Krishna Enterprise (Legal Name – Prashant Bipinbhai Jani)**, 160/2, Mukhivas, Mithakhali, Ahmedabad – 380 006 (hereinafter referred to as "Appellant") against the Order No. ZA2411211754214 dated 26.11.2021 (hereinafter referred to as "impugned order") passed by the Superintendent, CGST, 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 24ACVPJ6770D1ZC. A Show Cause Notice dated 29.04.2019 was issued to the appellant, wherein it was proposed that registration is liable to be cancelled for the reasons "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 26.11.2021 on the grounds "Not Responded to Query by the Tax Payer". As per the *impugned order* the effective date of cancellation of registration is 26.11.2021.

3. Being aggrieved with the *impugned order*, the *appellant* preferred this appeal. In the appeal memo the appellant has submitted –

- In response to SCN dated 29.04.2019 they had filed all pending Returns with applicable late fees on 27.07.2019.
- They are registered under GST as a Service Provider under Transportation of Goods which attract GST under reverse charge mechanism under GST.
- The taxpayer is not liable to pay tax under GST Act due to nature of service provide by them is covered under reverse charge mechanism, therefore the Registered person not filed Returns in time as per GST Rules but after received notice from Department, the taxpayer has filed all pending GSTR 1 and GSTR 3B with applicable late fees. Also after that the taxpayer has filed all returns on regularly as per GST Act till date of cancellation on 26.11.2021.
- Registration cancelled on the basis of old Notice dated 29.04.2019 and fresh opportunity given to the taxpayer.



- *Cancellation of Registration on incorrect ground that the taxpayer had not responded to the Query, in fact the taxpayer had already filed all pending returns till date of cancellation of registration.*
- *Accordingly, the appellant has requested for revocation of their cancelled registration.*

Further, the appellant has also submitted the application dated 21.12.2022 for condonation of delay of filing of present appeal. In the said application the appellant has stated that after cancellation of their GST registration they have not filed revocation & appeal within prescribed time due to Aadhaar Authentication not done at GST portal; which is because of mobile number not linked in Aadhaar database. Accordingly, the appellant has requested to consider the situation and the delay in filing appeal may be condoned.

**Personal Hearing :-**

4. Personal Hearing in the matter was held on 21.12.2022 wherein, Mr. Yogesh Vyas, Tax Consultant appeared as authorized representative. During Personal Hearing he has stated that they have nothing more to add to their written submissions till date.

**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.

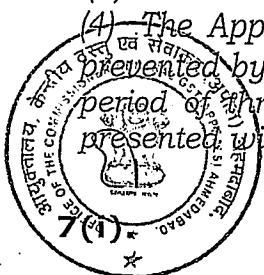
6. First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

**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.



I observed from the submission of appellant that in

the instant case the appeal has been filed online on 07.05.2022 and **submitted the copy of order appealed against on 12.09.2022.**

Accordingly, it is pertinent to refer Rule 108 of the CGST Rules, 2017.

The same is reproduced as under :

**Rule 108. Appeal to the Appellate Authority.-**

(1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in **FORM GST APL-01**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26.

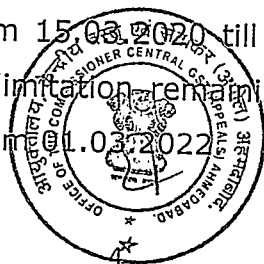
(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing of appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf :

**Provided** that where the certified copy of the decision or order is submitted within seven days from the date of filing the **FORM GST APL-01**, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

**Explanation.** -For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Accordingly, I observed that in the instant case the appeal has been filed on 12.09.2022 i.e. appeal 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 26.11.2021 so, the normal appeal period of three months was available up to 25.02.2022 whereas, the present appeal is filed on 12.09.2022. 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 12.09.2022. Accordingly, in view of foregoing I find that the present appeal is filed beyond the time limit as prescribed under Section 107(1) of the CGST Act, 2017. Further, looking to the COD application of Appellant, I observed that even after condoning delay of filing of appeal for a further period of one month as per provisions of sub section (4) of Section 107 of the CGST Act, 2017 the last date for filing of appeal comes on 29.06.2022, whereas the present appeal is filed on 12.09.2022.

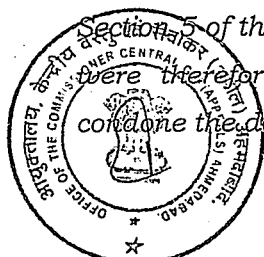
**8.** In view of foregoing, I find that the present appeal is filed beyond the time limit prescribed under the provisions of Section 107 of the CGST Act, 2017. Accordingly, I find that the further proceedings in case of present appeal can be taken up for consideration strictly as per the provisions contained in the CGST Act, 2017.

**9.** 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.”*



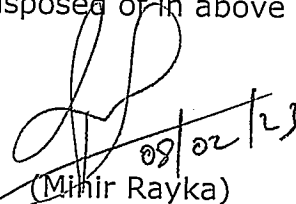
- (ii) In the case of Makjai Laboratories Pvt Ltd reported as 2011 (274) E.L.T. 48 (Bom.), the Hon'ble Bombay High Court held that the Commissioner (Appeals) cannot condone delay beyond further period of 30 days from initial period of 60 days and that provisions of Limitation Act, 1963 is not applicable 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 Tax 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 judgments would be squarely applicable to the present appeal also.

**11.** By respectfully following the above judgments, 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.

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: 08.02.2023

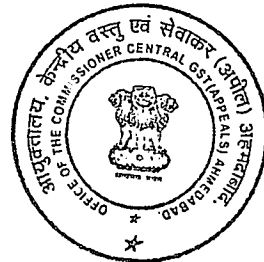
Attested

  
08/02/23

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

By R.P.A.D.

To,  
M/s. Krishna Enterprise  
(Legal Name – Prashant Bipinbhai Jani),  
160/2, Mukhivas, Mithakhali,  
Ahmedabad – 380 006



Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & C. Ex., Appeals, Ahmedabad
- 3) The Commissioner, CGST & C. Ex., Ahmedabad South
- 4) The Asst./Deputy Commissioner, CGST, Division-VI, Ahmedabad South
- 5) The Superintendent, Range-V, Div-VI, Ahmedabad South
- 6) The Superintendent (Systems), CGST Appeals, Ahmedabad
- 7) Guard File
- 8) PA file

