



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.

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DIN- 20230364SW0000832B3

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/49/2023 -APPEAL / 0912 - 128
 ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-267/2022-23**
 दिनांक Date : **27-03-2023** जारी करने की तारीख Date of Issue : **28-03-2023**

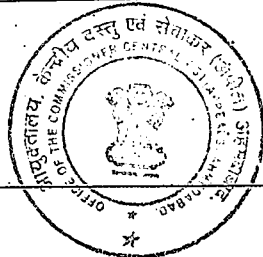
श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZA240822104837J DT. 24.08.2022** issued by The Superintendent, CGST, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. RMD Hotels & Resorts private Limited, Executive Lounge, Retiring Room,
 Ahmedabad Railway Station, Ahmedabad-380002**

(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 .



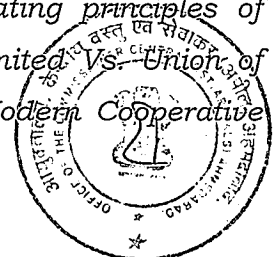
ORDER IN APPEAL**Brief Facts of the Case :-**

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. RMD Hotels & Resorts Private Limited**, Executive Lounge, Retiring Room, Ahmedabad Railway Station, Ahmedabad - 380 002 (hereinafter referred to as "**Appellant**") against the Order No. ZA240822104837J dated 24.08.2022 (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 No. 24AADCR7484B1ZG. A Show Cause Notice was issued to the *appellant*, wherein it was proposed that registration is liable to be cancelled for the reason that GST Returns not filed for a continuous period of six months. Thereafter, the registration was cancelled by the '*Proper Officer*' vide '*impugned order*' dated 24.08.2022 on the grounds that - '*Failure to furnish returns for a continuous period of six months. Query not responded/No documents submitted and PH not attended*'. The registration was cancelled with effect from 01.07.2021.

3. Being aggrieved with the '*impugned order*', the '*appellant*' has preferred this appeal. The appellant in the appeal memo has stated that -

- *Before July 2021 they have filed all returns and discharged applicable taxes. Since, July 2021 they could not file returns since the restaurant was under lockdown and there was non-availability of staff due to Covid 19 crisis during the said period. Further, there was shortage of funds and financial crunch incurred to the business due to Covid 19 crisis due to which they could not arrange required funds to discharge GST Payments and consequently leading to non filing of GST Returns.*
- *Unaware of issuance of SCN, hence, could not file reply and without appreciating the reply, the department has issued the impugned order, ordering for cancellation of registration.*
- *Impugned order is non speaking order, passed violating principles of natural justice. Referred case of Oudh Sugar Mills Limited Vs. Union of India (1978 (2) ELT 172(SC) and Santlal Gupta Vs. Modern Cooperative G.H. Society Ltd. [2010 (262) E.L.T. 6 (SC)].*



- *Impugned Order is invalid since Form GST REG-17 was not issued.*
- *All pending returns filed till date of cancellation of registration.*

Further, the *appellant* has also filed the application for Condonation of Delay (COD) in filing appeal. The *appellant* in the COD application stated that due to unavailability of their tax consultant during the tax audit period they filed the present with delay of 27 days and accordingly, requested to condone the delay and admit their appeal. They *appellant* have further stated that they are not negligent and had nothing to gain by not filing appeal within the due date. In this regard referred the case of *Commissioner, Land Acquisition V. MST Katiji reported in [1987 (28) ELT 185 (SC)]*.

4. Personal Hearing in the matter was held on 24.03.2023 wherein Mr. Yash Shah, C.A. appeared on behalf of the '*Appellant*' as authorized representative. During P.H. he has informed 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



*aforsaid 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 from the submission of appellant that in the instant case the appeal has been filed online on 23.12.2022 and submitted the copy of order appealed against, within 7 days of filing appeal. Accordingly, in light of provisions of Rule 108 of the CGST Rules, 2017 I observed that in the instant case the appeal has been filed on 23.12.2022 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). In the present matter, the "*impugned order*" is of 24.08.2022 so, the normal appeal period of three months was available up to 23.11.2022 whereas, the present appeal is filed on 23.12.2022. In this regard, I find that in the present matter the appellant has submitted the application for condonation of delay and requested to condone the delay. In light of Section 107(4) of the CGST Act, 2017 by condoning the delay of one month the last date for filing of appeal comes to 23.12.2022. In the present matter the appeal is filed on 23.12.2022. Accordingly, in view of above request of appellant to condone the delay in filing present appeal, I hereby condone the delay. Accordingly, the present appeal is considered to be filed in time.

Accordingly, I am proceeded to decide the case.

8. 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 01.07.2021 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.

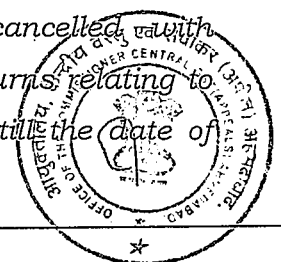
(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

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.

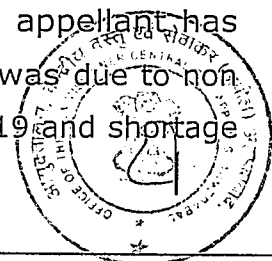
(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in **FORM GST REG-23*** requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in **FORM GST REG-24***.

(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.

9. 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.

10. On going through the records/submissions, I find that the "Appellant" has filed the GSTR 1 and GSTR 3B up to June'2021 i.e. up to the date of cancellation of registration. Further, the appellant has stated in the present appeal that delay in filing return was due to non availability of employees due to spread of Pandemic COVID 19 and shortage



of funds due to COVID 19 pandemic. Further, the appellant promises to file the pending returns and discharge tax liability along with interest for such belated payment of tax and fine immediately, once the registration is restored. Accordingly, I find that the "Appellant" has complied with the above said provisions in the instant case. Needless to say that the "Appellant" 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.

11. In view of above discussions, I am of the opinion that the registration of "Appellant" may be considered for revocation by the proper officer subject to due compliance of the conditions by the "Appellant" under Rule 23(1) of CGST Rules, 2017. Accordingly, I allow the appeal of the "Appellant" and order to the proper officer to consider the revocation application of the "Appellant" after due verification of payment particulars of tax, penalty, late fee, interest and status of returns.

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

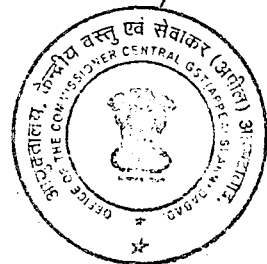
The appeal filed by the appellant stands disposed of in above terms.

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 27.03.2023

Attested
(Dilip Jaday) 28/03/23
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.
To,
M/s. RMD Hotels & Resorts Private Limited,
Executive Lounge, Retiring Room,
Ahmedabad Railway Station,
Ahmedabad - 380 002

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 Dy/Asst. Commissioner, CGST, Division-I Rakhial, Ahmedabad South.
5. The Superintendent, Range - IV, Div. I Rakhial, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File

