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- 20230364SW000081868B

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/813/2023 -APPEAL /9961 - 67

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-270/2022-23**
दिनाँक Date : **28-03-2023** जारी करने की तारीख Date of Issue : **29-03-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZA2401220552535 DT.13.01.2022** issued by The Superintendent, CGST,Ahmedabad South .

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

Mitesh Manubhai Patel of M/s. Priyank Industries, 7 Narayan Com Complex, Nilkanth Orched Road No. 15, Kathwada GIDC, Ahmedabad-382430

(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 वेबसाइटwww.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. Priyank Industries (Legal Name – Mahesh Manubhai Patel),** 7 Narayan Com Complex, Nilkanth Orched Road No. 15, Kathwada GIDC, Ahmedabad – 382 430 (hereinafter referred to as "***Appellant***") against the Order No. ZA2401220552535 dated 13.01.2022 (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 24AWTPP0051D1ZP. A Show Cause Notice was issued to the appellant, wherein it was proposed that registration is liable to be cancelled for the reasons that GST Returns are not filed for a continuous period of six months. Thereafter, the registration was cancelled vide *impugned order* under Section 29 of the CGST Act, 2017 for the reasons *"Failure to file six Monthly Returns"*

3. Being aggrieved with the *impugned order* dated 13.01.2022 the *appellant* has preferred the present appeal online on 04.02.2023. In the appeal memo the appellant has submitted that they are engaged in business of manufacturing of Trolley Wheels; that they have been served a SCN proposing cancelation of registration as not filed the GST Returns; that an ex-parte order passed vide which cancelled registration; that due to lack of awareness they failed to file application for revocation of cancellation of GST Registration. In view of above submissions, the appellant has requested for revocation of their cancelled registration.

4. Personal Hearing in the matter was held on 24.03.2023 wherein Mr. Akshay Thakkar 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 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 that as against the *impugned order* of dated 13.01.2022, the appeal has been filed online on 04.02.2023 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 13.01.2022 so, the normal appeal period of three months was available up to 12.04.2022 whereas, the present appeal is filed on

04.02.2023. 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 04.02.2023. 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 condonation of delay request 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 04.02.2023.

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.

28/03/23

(Mihir Rayka)
Additional Commissioner (Appeals)

Date:28.03.2023

Attested
29.3.23
(Dilip Jadav)
Superintendent (Appeals)
By R.P.A.D.

To,
M/s. Priyank Industries
(Legal Name – Mahesh Manubhai Patel),
7 Narayan Com Complex,
Nilkanth Orched Road No. 15, Kathwada GIDC,
Ahmedabad – 382 430

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/Assistant Commissioner, CGST, Division-V Odhav, Ahmedabad South.
5. The Superintendent, Range – V, Div. V Odhav, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File. / P.A. File