



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1726/2022 -APPEAL / 3389 - 3392

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-95/2022-23**
दिनांक Date : **30-08-2022** जारी करने की तारीख Date of Issue : **30-08-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZA2412201188603 DT. 30.12.2020** issued by Superintendent, CGST, Range V, Division-III, Ahmedabad South

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

**M/s. Doshion Water Solution Private Limited, 24 25 26,
GIDC Estate Phase II, Vatva, Ahmedabad-382445**

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| (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 . |



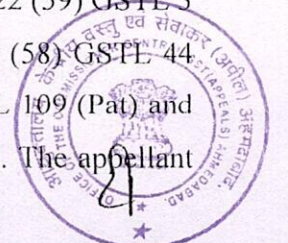
ORDER IN APPEAL

M/s.Doshion Water Solution Private Ltd., 24, 25,26 GIDc Estate, Phase II, Vatva, Ahmedabad (hereinafter referred to as the appellant) has filed the present appeal on dated 12-5-2022 against Order No.ZA2412201188603 dated 30-12-2020 passed by the Superintendent , CGST, Range V, Division III (Vatva II), Ahmedbad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant was registered under GSTIN 24AACCD8958M2Z2. The appellant was issued show cause notice reference number ZA241220057285X dated 16-12-2020 for cancellation of their registration due to non filing of returns for a continuous period of six months. The adjudicating authority vide impugned order ordered cancellation of registration with effect from 29-12-2020 due to non filing of six GSTR3B returns continuously under Section 29 (2) of CGST Act, 2017.

3. Being aggrieved the appellant filed the present appeal on the ground that CBIC issued Notification NO.11/2020-CT dated 21-3-2020 where the registered persons who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code 2016 (31 of 2016) undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals or resolution professions as the class of person who shall follow special procedure. In relation to this procedure, CBIC also issued Circular No.134/04/2020-GST dated 23-3-2020 wherein it was clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration. It is advised that such cancellation may be revoked by taking appropriate steps in this regard. In view of above submissions the appellant urged to set aside the impugned order and further requested to consider their application for revocation of cancellation of GST registration.

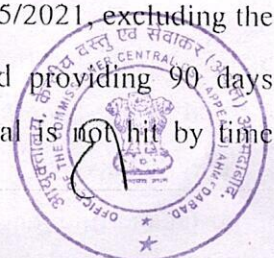
4. The appellant filed additional submission on dated 30-6-2020 wherein they inter-alia contended that the show cause notice is issued without capturing the facts ie insolvency proceedings against the appellant during the disputed period March 2020 to August 2020. That the registration was cancelled on account of non-filing of GSTR3B returns for six months. It is submitted that the Company is under CIRP, since 31-8-2018 and compliance to the GST provisions were carried out till February 2020 and further period, the appellant faced conditional issues to file returns and also the authorized signatory being erstwhile management started non-corporation in terms of denying authenticating/digitally sign the required returns. The appellant relied upon the case Laws in the case of M/s.Shri Rafik Alibhai Makwana Vs State of Gujarat (2022 (59) GSTL 3 (Guj) ; M/s.OPC Assets Solutions Pvt. Ltd Vs State of Tripura reported in 2022 (58) GSTL 44 (Tripura) ; M/s.Brajesh Enterprises Vs State of Bihar reported in 2022 (57) GSTL 109 (Pat) and M/s.Mahadev Trading Company Vs UOI reported in 2020 (42) GSTL 323 (Guj). The appellant



further contended that ex-parte order was passed by the adjudicating authority in violation of principles of natural justice as no personal hearing was accorded to them and no reply was filed on 25-12-2020 by the appellant as mentioned in the impugned order. The impugned was passed in violation of principles of natural justice as neither reply was filed by the appellant nor any personal hearing was provided by the adjudicating authority. The appellant relied upon decision in the case of M/s.Cityneon Holding Ltd Vs State of Bihar reported in 2022 (56) GSTL 163 (Pat) ; M/s.Elevation Medisolutions Ltd Vs State of Bihar reported in 2021 (50) GSTL 455 (Pat) ; M/s.Turrent Industrial Security Pvt.Ltd Vs UOI reported in 2021 (49) GSTL 239 (Jhar) ; M/s.MR Hitech Engineers P.Ltd Vs State Tax Officer reported in 2020 (41) GSTL 29 (Mad). That in terms of Notification NO.11/2020-CT dated 21-3-2020 read with CBIC Circular NO.134/04/2020-GST dated 23-3-2020 it was clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of Section 29 of CGST Act, 2017. That as per Insolvency and Bankruptcy Code 2016, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (CIRP) gets triggered and the management of such entity (Corporate Debtor) and its assets vests with an interim resolution professional or resolution professional. It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (NCLT). To address the aforementioned problems, Notification No.11/2020 issued by the Government prescribes special procedure under Section 148 of the CGST Act, for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP which is also clarified vide Circular No.134/04/202-GST. Hence cancellation of registration is without application of mind and deserves to be set aside. That the Department has yet not taken cognizance of the application filed by them for revocation of cancellation of GST registration under Section 30 of CGST Act, 2017 ; that they are ready to file returns along with late fee upon restoration of GST registration. The appellant relied upon the decision in the case of M/s.Vimal Yashwantgiri Goswami Vs State of Gujarat reported in 2021 (49) GSTL 286 (Guj). In view of above submissions the appellant requested to issue order quashing and setting aside the impugned order and issue an order to revoke the cancellation of registration.

5. Personal hearing was held on dated 3-8-2022. Ms Madhu Jain authorized representative appeared on behalf of the appellant on virtual mode. She stated that they have nothing more to add to their written submission till date.

6. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. At the outset, I find that the impugned order was communicated to the appellant on dated 30-12-2020 and present appeal was filed on dated 12-5-2022 ie after a period of one year and four months hence the appeal was filed beyond the time limit prescribed under Section 107 of the Act. However as per Hon'ble Supreme Court's Order dated 10-1-2022 in suo motu writ petition (C) NO.3 of 2020 in MA No.665/2021, excluding the period from 15-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 1-3-2022 for filing appeals, I hold that the present appeal is not hit by time limitation.



7. In the subject case the registration was cancelled with effect from 29-12-2020 due to non filing returns for a continuous period of six months in terms of Section 29 (2) of CGST Act, 2017. The appellant in their grounds of appeal strongly challenged the impugned order referring to Notification No.11/2020-CT dated 21-3-2020 and CBIC Circular No.134/04/2020-GST dated 23-3-2020. I find that under Section 148 of CGST Act, 2017 special procedure was prescribed for certain processes as under :

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered person and the special procedures to be followed by such person including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

8. Accordingly Notification No.11/2020 -CT dated 21-3-202 was issued notifying those registered persons(hereinafter referred to as the erstwhile registered person), who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process. In this regard for further clarification CBIC has issued Circular No.134/04/2020-GST dated 23-3-2020 wherein on the issue of cancellation of registration the following clarification was issued :

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| 2 | Should the GST registration of corporate debtor be cancelled? | It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard. |
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9. From the facts of the case and documents available on record I find that the appellant was undergoing corporate insolvency resolution process since 31-8-2018 before National Company Law Tribunal and vide Order dated 20-9-2021 it was ordered to initiate liquidation process against the appellant. Therefore, as per above Circular the registration of the appellant does not merit cancellation under Section 29 of CGST Act, 2017.

10. I further find that in the impugned order cancellation was ordered giving reference to reply filed by the appellant on dated 25-12-2020. The appellant contended that they had not filed any reply. I have tracked the registration application status under ARN AA241220043383U in GST portal and find that no reply was filed by the appellant against show cause notice. Therefore I find

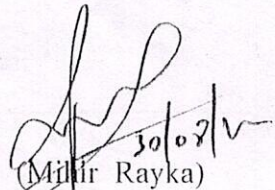
that reference to appellant's letter dated 25-12-2020 given in impugned order is wrong and incorrect. I also notice that the impugned order is also silent with regard to grant of personal hearing before ordering cancellation. As per proviso to Section 29 (2) of CGST Act, 2017 it was provided that *the proper officer shall not cancel the registration without giving the person an opportunity of being heard*. Therefore, I find that impugned order was passed without considering reply of the appellant and without giving opportunity personal hearing, which I find is against the principles of natural justice and against the provisions of proviso to Section 29 (2) of CGST Act, 2017.

11. Regarding the contention that the Department has not yet taken cognizance of application filed for revocation of cancellation of GST registration, I find that during appeal the appellant has not submitted any copy of application filed by them or any other correspondence made in this regard. Therefore, I do not record any findings in this regard.

12. In view of above, I hold that the impugned order passed by the adjudicating authority cancelling GST registration of the appellant is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

अपील कर्थाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है |

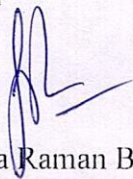
13. The appeal filed by the appellant stands disposed of in above terms.


(Millir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad



By RPAD

To,

M/s.Doshion Water Solution Private Ltd.,
24, 25,26 GIDC Estate, Phase II,
Vatva, Ahmedabad 382 445

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 Assistant Commissioner, CGST, Division III (Vatva II), Ahmedabad South.
- 5) The Superintendent, CGST, Range V, Division III, (Vatva II) Ahmedabad South
- 6) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 7) Guard File
- 8) PA file

