



मन्त्रालय भवन

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- 20231064SW0000717003

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2902/2023 -APPEAL 178su-60

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-140/2023-24**
दिनांक Date : **27.10.2023** जारी करने की तारीख Date of Issue : **27.10.2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZA240623164544K** dated **21.06.2023** issued by
The Superintendent, Division-IV, CGST Ahmedabad South

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

Appellant	Respondent
Rohit Vijaybhai Chauhan (Legal Name: Rohit Vijaybhai Chauhan), B-30, Siddhida Co-Operative Society Ltd, Krushnadhaivi Row House Ahmedabad, Gujarat, 382443	The Superintendent, Division-IV, CGST Ahmedabad South

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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

This appeal has been filed under Section 107 of the Central Goods and Services Tax Act, 2017 by **Rohitkumar Vijaybhai Chauhan** (Legal Name – **Rohitkumar Vijaybhai Chauhan**), B-30, Siddhida Cooperative Society Ltd., Krushnadhama Row House, Ahmedabad-382443 (hereinafter referred to as the '**Appellant**') on dated 09.10.2023, against the Order No.ZA240623164544K dated 21.06.2023 (hereinafter referred to as the '**Impugned Order**') passed by the Superintendent, Division-IV, 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. 24AJPPC0761L1Z6. A Show Cause Notice was issued to the appellant, wherein it was proposed that registration is liable to be cancelled for the reason of "failure to furnish returns for a continuous period of six months". Thereafter, the registration was cancelled by the '*Proper Officer*' vide '*impugned order*' dated 21.06.2023 with effect from 01.01.2022 and with a direction to furnish a final return in FORM GSTR-10 within three months of the date of the order as required under sub-section (1) of Section 39 of the CGST Act, 2017.

3. Being aggrieved with the *impugned order*, the *appellant* preferred this appeal on 06.10.2023. The appellant in the appeal memorandum has submitted that;

- (i) they are engaged in the labour contract service and are registered with GST.
- (ii) they filed GST Returns regularly till the month of December, 2021 since July 2017.
- (iii) Due to financial imbalance crisis he was unable to file his GST return due to insufficient fund for the payment of tax and other liabilities.
- (iv) that they are ready and in a position to clear the dues related to tax liability and furnished a declaration to this effect, and requested for restoration of GST registration.

4. Personal Hearing in the matter was held on 16.10.2022 wherein Sh. Akash C. Nayak, Advocate appeared as authorized representative of the Appellant. During P.H. he has stated that due to some medical emergency of his father, they could not file GST Returns. Now they want to start business and their current liabilities is Rs.32.53 lakhs which they are ready to pay along with interest and penalty. Also requested to condone delay and requested to

allow appeal. In support of their contention furnished copies of invoices etc. to show that their business is active.

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.

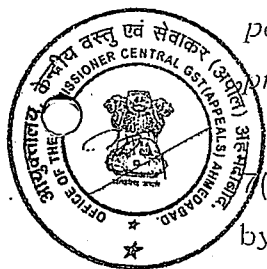
6. First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

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.

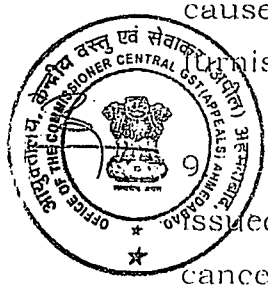


(i). I observed that in the instant case the appeal has been filed by delay of 17 (seventeen) days from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant 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 21.06.2023, so, the normal appeal period of three months is available up to 21.09.2023 whereas, the present appeal is filed on 09.10.2023. In terms

Of the Section 107(4) of CGST Act, 2017 as mentioned above, appeal period is further condonable with one month period after showing sufficient cause. The appellant has filed a condonation of delay (COD) application in terms of Section 107(4) of CGST Act, 2017 and submitted that due to some financial imbalance crisis in his family, he has not filed returns and due to medical emergency in his family not able to file appeal. Now, he wants to start business and ready to pay all dues, interest, penalty and late fees. In view of the above in the instant matter, I am inclined to condone the delay of filing of appeal for 17 (seventeen) days period in the interest of revenue. Therefore, I find that the present appeal is filed within stipulated time limit. Accordingly, I am proceeding 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 01.01.2022 without giving any reason in the impugned order. The show cause notice issued on 09.05.2023 alleges that the appellant failed to furnish returns for a continuous period of six months.



I find in the impugned order, the adjudicating authority has issued the order in hurry and in a casual manner, as no reason for cancellation of registration of the appellant has been mentioned in the order though the SCN dated 05.09.2023 gives reason as "*failure to furnish returns for a continuous period of six months*". Further, the impugned order is not supported by any provisions of GST Law in respect of the cancellation of registration of the appellant. I find that the adjudicating Authority is mute on this point. The impugned order is fully silent on the reasoning while passing the order and is also not backed by any Rules/Laws/provisions, allegedly, contravened by the appellant. Thus, looking to the above, I very strongly feel that the impugned order is quite incomplete and a non-speaking one. The orders passed by the authorities should give reason for arriving at any conclusion showing proper application of mind.

10. However, I proceed further to decide the instant case on the appeal filed by the appellant and submissions made by them. 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;

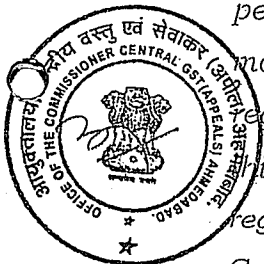
(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).]

(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} 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.

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.

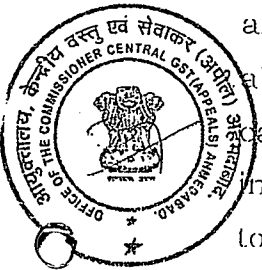
11. Further, I find that the Central Board of Indirect Taxes & Customs, New Delhi has clarified the issue vide circular No. 99/18/2019-GST dated 23.04.2019. Para 3 of said circular read as under:

"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."

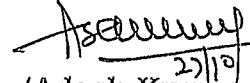
12. On going through the records/submissions and status on GST portal, I find that the "Appellant" has filed the GST Returns up to December 2021 i.e. up to the date of cancellation of registration. Further, the "Appellant" stated that they want to start business activity and ready to pay all dues with interest, applicable penalty and late fees. Hence, I find that the "Appellant" has complied with the above said provisions in the instant case. Further, the "Appellant" submitted that the non-compliance of the filing of GST returns more than six months, since they faced some financial imbalance i.e. due to lack of sufficient funds the appellant inadvertently not filed the GST returns. Now, they have agreed to and ready to pay their all GST liabilities along with interest, penalty and late fees till date as per the GST Act. So, I find that the "Appellant" has complied with the above said provisions in the instant case, I am of the opinion that the appellant should not to suffer any more looking to the interest of government revenue. In view of the above, since the appellant has filed this appeal for restoration of their cancelled registration for continuing their business activity, so, in the interest of justice, fairness and government revenue, I allow this appeal to consider revocation of cancellation of their registration. Needless to say that the "Appellant" shall furnish all the 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.

13. In view of above discussions, I allow the appeal of the "Appellant" and order the proper officer to consider the revocation application of the "Appellant" subject to due compliance of the conditions by the "Appellant" under Rule 23(1) of CGST Rules, 2017.



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

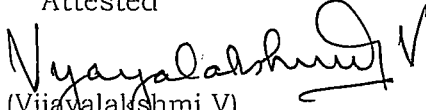
The appeals filed by the appellants stand disposed of in above terms.


(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: .10.2023

Attested


(Vijayalakshmi V)
Superintendent
CGST Appeals, Ahmedabad

By R.P.A.D.

To

Shri Rohitkumar Vijaybhai Chauhan
B-30 Siddhida Co-operative Society Ltd.,
Krushnadhan Row House,
Isanpur, Ahmedabad 382481

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C.Ex, Ahmedabad South Commissionerate.
4. The Deputy/Asst. Commissioner, CGST, Div-IV, Ahmedabad South Commissionerate.
5. The Superintendent, CGST, Range-II, Div-IV, Ahmedabad South Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publishing on website.
7. P.A. File / Guard File.

