



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065-

टेलिफैक्स 07926305136



DIN- 20240164SW0000920303

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/270/2024-APPEAL / ४९९ - १००

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC- 212 /2023-24**

दिनांक Date : **25.01.2024** जारी करने की तारीख Date of Issue : 29.01.2024

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. ZA240320028212E dated 11.03.2020 issued by The Superintendent, CGST Ahmedabad.

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

Appellant	Respondent
M/s. Alif Tours of International (Legal Name: Sajid Faridmohammed Rollwala), First Floor, 8, Sagar Tower Nagina Owners Association, Near Nagina Masjid, Nadiyawad Jamalpur, Ahmedabad, Gujarat, 380001	The Superintendent, CGST Ahmedabad

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (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। 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. Alif Tours of International, (Legal Name: Sajid Faridmohammed Rollwala)** 1<sup>st</sup> floor, 8, Sagar Tower, Nagina Owners Association, Near Nagina Masjid, Nadiyawad Jamalpur, Ahmedabad, Gujarat - 380001 (hereinafter referred to as "**Appellant**") against the Order No. ZA240320028212E dated 11.03.2020 (hereinafter referred to as "**Impugned Order**") passed by the Superintendent, CGST, Ahmedabad (hereinafter referred to as "**the Adjudicating Authority/Proper Officer**").

2. Brief facts of the case are that the *appellant* is registered under the Central Goods and Services Tax Act, 2017 vide GST Registration GSTIN 24AETPR1787G2ZW. A Show Cause Notice dated 12.02.2020 was issued to the appellant, wherein it was proposed that registration is liable to be cancelled for the reasons of failure to furnish returns for a continuous period of six months. Thereafter, the registration was cancelled vide *impugned order* for the reason *per Instruction No.01/2018-19 dated 11.12.2018 issued by Joint Commissioner,(Tech) vide F.No.IV/16-06/MP/18-19 and under Section 29(2) of the CGST Act, 2017 not furnished returns for a continuous period of six months, hence this registration liable to reject. Further, you are directed to filed all due return/annual return and GSTR-10 return..* The registration is cancelled with effect from 11.03.2020.

3. Being aggrieved with the *impugned order* dated 12.12.2022 the *appellant* has preferred the present appeal on 06.12.2023. In the appeal memo the appellant has submitted that -

- ❖ That they were not aware of the GST system, due to which were not able to fulfill compliance properly. As of now have hired a consultant for technical and compliance guidance.
- ❖ That they have made all the pending compliance. With these submissions, have requested to dismiss the cancellation order and issue GST Registration Certificate.

**Personal Hearing**

4. Personal hearing was held on 24.01.2024, whereby Ms.Nisha Vora, C.A. appeared before me on behalf of the appellant as authorized representative and stated that they could not file returns and pay taxes due to COVID and

financial issues. Now they are ready to pay all dues with interest and penalty and requested to allow their appeal.

### Discussion and Findings

5. I have carefully gone through the facts of the case and appeal memorandum/grounds of appeal. In the instant matter the present appeal is filed by appellant on 05.01.2024 against the Order-in-Original dated 11.03.2020. Therefore, 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.**

6. I observed that in the instant case that as against the impugned order of dated 11.03.2020, the appeal has been filed on 05.01.2024 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. In the present matter, the "impugned order" and date of communication of order is of 11.03.2020 so, the normal appeal period of three months was available up to 10.06.2021 whereas, the present appeal is filed on 05.01.2024. 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 provisions of condonation of delay, 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 10.07.2021, whereas the present appeal is filed on 05.01.2024.



8. 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 in 2021, in SMW(C) No.3 of 2020. The 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 03.10.21 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.

9. I find that on the subject matter Notification No.13/2022-Central Tax dated 05.07.2022, has also been issued by the CBIC. The relevant para is reproduced as under:

(iii) *excluded the period from the 1<sup>st</sup> day of March, 2020 to the 28<sup>th</sup> day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.*

*This notification shall be deemed to have come into force with effect from the 1<sup>st</sup> day of March, 2020.*

In view of the foregoing facts, I find that in respect of any issue for which due date for filing appeal falls during period from 01.03.2020 to 28.02.2022, three months time period to file appeal under Section 107 of the CGST Act, 2017 is to be reckoned, excluding the said period. 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.

11. 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.

12. 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.

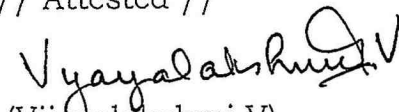
13. By following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the *appellant* is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, dismiss the present appeal.

14. 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.

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)

Date: .01.2024

// Attested //

  
(Vijayalakshmi V)  
Superintendent (Appeals)  
Central Tax, Ahmedabad.



**By R.P.A.D.**

To

M/s. Alif Tours of International  
Legal Name :Sajid Faridmohammed Rollwala  
1<sup>st</sup> floor, 8 Sagar Tower, Nagina Owners Association,  
Near Nagina Masjid, Nadiawad, Jamalpur  
Ahmedabad, Gujarat 380 001.

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/Asstt. Commissioner, CGST, Division-I, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

