



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/1392/2023 -APPEAL / 3098 3104

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-53/2023-24**
दिनांक Date : **10-07-2023** जारी करने की तारीख Date of Issue : **12-07-2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

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

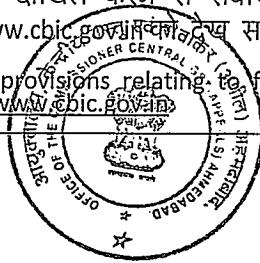
ग Arising out of Order-in-Original No. **ZA240123024677S DT. 05.01.2023**

issued by The Assistant Commissioner, CGST, Ahmedabad South

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

**Nicos Sales India Private limited, 40/A, Bhagwati Nagar,
B/H Lal Bungalow, Amraiwadi, Ahmedabad-380026**

(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 पर जा 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



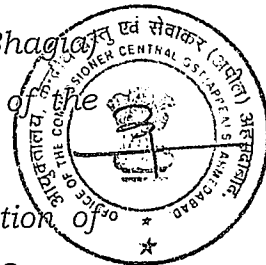
ORDER IN APPEAL**Brief Facts of the Case :-**

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. Nicos Sales India Private Limited**, 40/A, Bhagwati Nagar, B/h. Lal Bunglow, Amraiwadi, Ahmedabad – 380 026 (hereinafter referred to as "**Appellant**") against the Order No. ZA240123024677S dated 05.01.2023 (hereinafter referred to as "**Impugned Order**") passed by the Assistant Commissioner, 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 24AAGCN4955Q1ZS. A Show Cause Notice dated 24.11.2022 was issued to the appellant, wherein it was proposed that registration is liable to be cancelled for the reasons that "*In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts*". Thereafter, the registration was cancelled by the Superintendent of CGST, Ahmedabad South vide Order dated 20.12.2022 on the grounds/reasons that "1. As per letter F. No. GEXCOM/AE/VRFN/ARM/1622/2022-CGST-RANGE-2-DIV-1-COMMRTE-AHMEDABAD(S) dated 12.10.2022 of the (Haresh K Bhagat) regarding cancellation of GSTN under Section 29(2) read with Rule 21 of the CGST Rules, 2017 directing to cancel the GSTN ab-initio".

3. The appellant has accordingly filed 'application for Revocation of Cancellation'. In response to said application a SCN dated 27.12.2022 was issued to the appellant, wherein it was proposed that application is liable to be rejected for the reasons "Reason for revocation of cancellation – Others (Please specify) – Please reply : (1) On physical verification dated 10.10.2022 of the principal place of business it was found that the address is a residential address and no business activity was carried out there. The enquiry was also made from neighbours and surroundings and it was found that no one knows and heard about the said company (2) how can take place inverted supply in absence of place of business?" Thereafter, the adjudicating authority has rejected the said application vide *impugned order* for the following reasons :

"you have not replied to the notice issued vide reference no. ZA241222194107T dated 27/12/2022 within the time specified therein. Therefore, your application is hereby rejected in accordance with the provisions of the Act."



4. Being aggrieved with the *impugned order* dated 05.01.2023 the *appellant* has preferred the present appeal online on 22.03.2023 and submitted the appeal offline on 18.04.23 along with relevant documents. In the appeal memo the appellant has submitted that -

- They are private limited company, carrying on business of trading, manufacturing and job work of all kind of incense sticks (agarbattis) and raw materials thereof.
- They received SCN for cancellation of their GST registration indicating reason as "In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts". In this regard, appellant submits that at the time of physical verification, they were out of city with a view to attending religious function and accordingly Appellant could not be available at the time of physical verification.
- The proper officer had erroneously passed order for cancellation of registration by wrongly mentioning as per field visit carried out and directions from the Assistant Commissioner, Div-I, CGST Ahmedabad South, without visiting business premises of the appellant.
- Proper Officer had uploaded SCN dated 24.11.22 and suspended their registration w.e.f. 24.11.22 is illegal and bad in law. As per sub-rule (3) of Rule 22 the authority concerned is required to cancel Registration within period of 30 days of date of reply of SCN. Reliance placed on judgment delivered by Hon'ble High Court of Rajasthan in the case of Avon Udhog V/s. State of Rajasthan S. B. Civil Writ Petition No. 7463 of 2021 on July 5, 2021 reported at [2021] 128 taxman.com 122 (Rajasthan).
- They had made an application for amendment on 29.03.2022. The proper officer had issued notice to the appellant seeking additional information. They had handed over all documents to the Consultant which were demanded by learned proper officer. However, the proper officer has rejected application for amendment categorically contending that the reply has been examined and the same has not been found to be satisfactory for the reason "no response for the query raised". They have again made an application for amendment on 14.10.22 which was also rejected for the same reason, which is bad in law.

In view of above submissions the appellant has filed the present appeal on the grounds that Proper Officer had erroneously suspended Registration with immediate effect is bad in law.

4. Personal Hearing in the matter was held on 19.05.2023, wherein Mr. Harish V. Panchal, Advocate was appeared and requested for

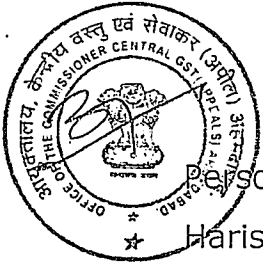


adjournment of matter for four days, which was duly granted. Thereafter, on 29.05.2023 the appellant has submitted additional written submission as under :

- *The learned Superintendent had grossly erred in law by issuing vague and non-speaking SCN and consequential erroneously passed order for cancellation of registration.*
- *The learned Superintendent erroneously issued vague SCN dated 02.11.22 without recording and reason and consequential passed Order for cancellation of Registration, which is bad in law.*
- *The application for additional place of business made on 23.09.22 was rejected without granting an opportunity of being heard, which is bad in law. As regards to charges made in SCN that "In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts" they submits that at the time of physical verification, they were out of station and accordingly could not be available at the time of physical verification. Thus, the order of cancellation of registration was liable to be set aside as it was a reckless exercise of power which lead to denial of the right of the freedom and business guaranteed under Article 19.*
- *Reliance placed on judgment delivered by Hon'ble High Court of Allahabad in the case of Viraj Polymers (P) Ltd. reported at [2023] 148 taxmann.com 465 (Allahabad) dated 16.03.2023.*
- *The proper officer had issued SCN for cancellation of registration without assigning proper reasons was wholly mechanical and categorically contended in SCN in Para-1 "In case, Registration has been obtained by means of fraud, willful misstatement or suppression of the facts". Cancellation of registration without assigning reasons was wholly mechanical and stereotype, which is bad in law. Reliance placed on judgment delivered by Hon'ble High Court of Gujarat in case of Aggarwal Dying and Printing Works reported at [2022] 137 taxmann.com 332 (Gujarat) dated 24.02.2022 and also in case of Jatin Bhagwatlal Shah reported at [2023] 147 taxmann.com (Gujarat) dated 22.12.22.*
- *The proper officer is the Registering Authority of the present appellant. The Proper Officer, as such, ought not to have proceed ahead with cancellation of registration on the basis of Letter received from the Office of the Assistant Commissioner. The Ld. Proper Officer ought to have independently assessed the situation to prove authenticity of his stand and it is done by the Proper Officer. The Appellant submits that Registration could not be cancelled merely on the basis of report of Assistant Commissioner. Relied upon case of F R Trade Links reported at [2022] 137 taxmann.com 134 (Kerala) dated 05.08.2021.*



- *The Learned Proper Officer had grossly erred in law by passing non-speaking order for cancellation of registration of the present appellant without recording any reason therein and passed vague and cryptic order, and made an unfair endeavour to debar the appellant from depriving present appellant from constitutional right to do business guaranteed under Article 19(1)(g) of the Constitution of India and also violated Article 14 and Article 21 of the Constitution of India, which is bad in law.*
- *The provisions of the CGST Act, 2017 cannot be interpreted in such a manner, so as to debar an Assessee, either from obtaining registration or reviving the lapsed/cancelled registration as such an interpretation would be not only contrary to the Article 19(1) (g) of the Constitution of India but also in violation of Article 14 and Article 21 of the Constitution of India. Relied upon case of TVS Suguna Cutpiece Centre reported at [2022] 135 taxmann.com 234 (Madras) dated 31.01.2022.*
- *Registration could not be cancelled with retrospective effect when not mentioned about it in SCN. Relied upon case of Aditya Polymers reported at [2023] 150 taxman.com 223 (Delhi) dated 28.03.23.*
- *In light of above facts and circumstances, appellant has made prayer that impugned order may please be set aside as it is being vague, nonspeaking and denial of Rights of Freedom and Business guaranteed under Constitution of India. Their registration may be restored.*



Personal Hearing in the matter was again held on 30.06.2023, wherein Mr. Harish, V. Panchal, Advocate appeared on behalf of the 'Appellant' as authorized representative. During personal hearing he has stated that the order passed by the original authority is without following the principle of natural justice and order passed based on letter of another authority, which is bad in law ; that therefore, the impugned order may be set aside and their appeal may be allowed.

Discussion and Findings :-

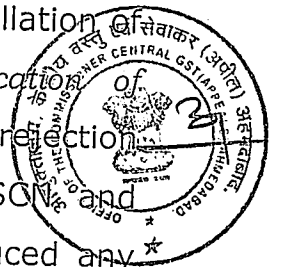
5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the *appellant* and documents available on records. I find that the issue involved in the present matter is that the GST registration of Appellant is cancelled on the basis of field visit report as well as subsequent directions of Assistant Commissioner, Div. I, CGST Ahmedabad South. Further, I find that the '*application for revocation of cancellation*' made by *appellant* against aforesaid registration cancellation order has been rejected by the *adjudicating authority* vide *impugned order* on the grounds that *appellant* has not replied to the notice dated 27.12.2022

within time specified therein.

The *appellant* in the present appeal has mainly contended that at the time of physical verification they were out of station and therefore could not available during physical verification. The *appellant* has further contended that the proper officer had erroneously passed order for cancellation of registration by wrongly mentioning as per field visit carried out and directions from the Assistant Commissioner, without visiting business premises of the *appellant*.

6. In view of above, I find that the registration of *appellant* is mainly cancelled on the ground that during physical verification it was noticed that the Principal Place of Business of appellant found residential premises and no business activity carried out there. Further, the *adjudicating authority* has passed *impugned order* vide which rejected the appellant's application for revocation of cancellation on the grounds that the appellant has not replied to notice within specified time mentioned in notice.

7. Further, I find that the appellant in the present appeal proceedings stated that for additional business premises they made an application for amendment, however, the Learned Proper Officer had rejected said application indicating reason that '1. No response for the query raised'. I find that the present appeal is pertains to matter of cancellation of registration and subsequent rejection of 'application for revocation of cancellation', therefore, I am of the view, that the matter pertains to rejection of amendment application is beyond the scope of impugned SCN and Impugned Order. Further, I find that the appellant has not produced any substantial evidence in support of their claim that they carry out their business from declared Principal Place of Business only. Instead of producing such evidence the appellant has stated in the present appeal that they made amendment application in connection with additional business premises, which has no relevance with impugned SCN and Impugned Order. Further, the appellant has mainly contended that they were out of station and therefore not available during physical verification, in this regard, I am of the view that in response to said allegation/charges that no business activity carried out at declared place, the appellant should have produce concrete/firm evidence regarding carrying out their business from said declared place only. However, they failed to produce any such evidence in the present appeal proceedings.



8. Further, I find that during the personal hearing the appellant has made argument that impugned order is passed based on letter of another Authority, however, I find that the order is not only based on letter of another Authority but in fact it is based on Physical Verification that no business is conducted from Principal Place of Business including enquiry from local area residents also. In this regard, I find that the adjudicating authority before rejecting appellant's '*Application for Revocation of Cancellation*' has issued notice to the appellant under Form REG-23 dated 27.12.2022 wherein mentioned that '*On physical verification dated 10.10.2022 of the principal place of business it was found that the address is a residential address and no business activity was carried out there. The enquiry was also made from neighbours and surroundings and it was found that no one knows and heard about the said company*'. In this regard, I have referred Rule 21 of the CGST Rules, 2017, which is reproduced as under :

Rule 21. Registration to be cancelled in certain cases. -

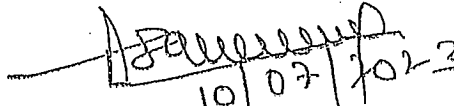
The registration granted to a person is liable to be cancelled, if the said person, -
(a) does not conduct any business from the declared place of business ; or

In view of aforesaid provisions the proper officer has the power to cancel the registration in the matter where the registration granted to a person who does not conduct any business from declared place of business. Further, I find that the appellant has referred various case laws, however, I find that none of the case laws completely matched with the facts and circumstances of present case.

9. In view of the foregoing discussions, I do not find any force in the contentions of the *Appellant*. Therefore, I do not find any reason to interfere with the decision taken by the '*Adjudicating Authority*' vide '*Impugned Order*'. Accordingly, I hereby reject the present appeal of the '*Appellant*'.

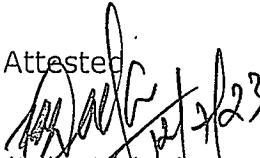
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


 (Adeshkumar Jain)
 Joint Commissioner (Appeals)

Date: 10.07.2023



Attested

 (Dilip Jadhav)
 Superintendent (Appeals)

By R.P.A.D.

To,
M/s. Nicos Sales India Private Limited,
40/A, Bhagwati Nagar, B/h. Lal Bunglow,
Amraiwadi, Ahmedabad – 380 026

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-I, Ahmedabad South.
5. The Superintendent, Range – III, Division – I, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File

