



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/2275/2023 -APPEAL

11829-35

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अपील आदेश संख्या Order-in-Appeal Nos. **AHM-CGST-001-APP-JC-95/2023-24**

दिनांक Date : **21.08.2023** जारी करने की तारीख Date of Issue : **23-08-2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No **ZA240223050588N DT. 08.02.2023** issued by The Superintendent, CGST, Division-I, Ahmedabad South

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

Appellant	Respondent
M/s. Shree Ganesh Enterprise (Legal Name - Pandya Bhavini Nikunj Kumar), D-303, Vrundava Vatika, Nr Alok-5, Baps Mandir Road, Vastral, Ahmedabad, Gujarat, 382418	The Superintendent, CGST, Range-I, Division-I, 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) 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

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. Shree Ganesh Enterprise, (Legal Name – Pandya Bhavani Nikunj Kumar), D-303, Vrundavan Vatika, Near Alok-5, Baps Mandir Road, Vastral, Ahmedabad, Gujarat – 382418(hereinafter referred to as "**Appellant**") against the Order No. ZA240223050588N dated 08.02.2023 (hereinafter referred to as "**Impugned Order**") passed by the Superintendent, CGST, Range-1, 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 24ERYPP0111A1Z3. Due to personal issues, the appellant was not available to continue their business and not filed GST returns. Accordingly, department has Suo-moto issued Show Cause Notice 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 w.e.f. 01.08.2021, vide *impugned order* under Section 29 of the CGST Act, 2017 for the reasons "GSTR 3B not filed from August 2021"

3. Being aggrieved with the *impugned order* dated 08.02.2023 the *appellant* has preferred the present appeal on 08.08.2023 (online on 15.06.2023).

Personal Hearing:-

4. Personal Hearing in the matter was held on 17.08.2023 wherein Ms. Pandya Bhavini Nikunj Kumar appeared on behalf of the '*Appellant*' as authorized representative. During P.H. she submitted that they have not done any business since August 2021, so could not file GST returns and registration was cancelled. Now want to start business and requested to allow the appeal. As regards the late filing of appeal, their C.A. has not filed appeal within time and request to condone delay. No dues are pending and ready to pay late fee.

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 08.06.2023, whereas the present appeal is filed on 15.06.2023.

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.



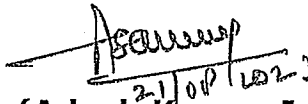
(iii) The Hon'ble High Court of Delhi in the case of Delta Impex reported as 2004 (173) E.L.T. 449 (Del) held that the Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days.

10. I find that the provisions of Section 107 of the Central Goods and Services Tax Act, 2017 are *parimateria* 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.

अपीलकर्ताद्वारा 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: 21-08-2023



Attested


(Sandheer Kumar)
Superintendent (Appeals)
By R.P.A.D.

To,
M/s. Shree Ganesh Enterprise,
(Legal Name-Pandya Bhavani Nikunj Kumar),
D-303, Vrundavan Vatika,
Near Alok-5, Baps Mandir Road,
Vastral, Ahmedabad, Gujarat - 382 418.

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-1-Rakhial, Ahmedabad South.
5. The Superintendent, Range - 1, Division -1-Rakhial, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File. / P.A. File

