



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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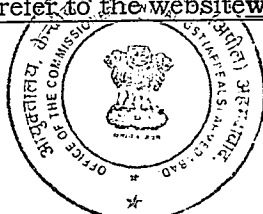


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DIN NO.: 20240564SW000085375E

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2278/2024 / 5364 - 69
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-26/2024-25 and 09.05.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	09.05.2024
(ङ)	Arising out of Order-In-Original No. ZA240424016876I dated 03.04.2024 passed by The Assistant Commissioner, CGST Division-VII Satellite, Ahmedabad South, Ahmedabad.	
	Name of the Appellant	Name of the Respondent
(च)	M/s DNC Infrastructure Private Limited, Flat.No.408, Galaxy Mall, Opp Jhansi Ki Rani BRTS, Satellite Road, Vima Nagar, Ahmedabad, Gujarat, 380015	The Assistant Commissioner, CGST Division-VII Satellite, Ahmedabad South, 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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
(i)	(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 .



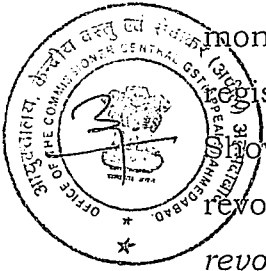
अपीलिय आदेश/ ORDER-IN-APPEAL**Brief Facts of the Case :-**

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. DNC Infrastructure Private Limited**, Flat No.408, Galaxy Mall, Opp. Jhar Ki Rani BRTS Stop, Satellite Road, Vima Nagar, Ahmedabad, Gujarat 380015 (hereinafter referred to as "**Appellant**") against the Order No. ZA2404240168761 dated 03.04.2024 (hereinafter referred to as "**Impugned Order**") passed by the Assistant Commissioner, CGST, Dn.VII, Ahmedabad South Comm'te. (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. 24AAECD6227F1ZY. The GST registration of the appellant has been cancelled by the '*Proper Officer*' vide *order* dated 17.02.2022 for the reason that the appellant had not filed their GSTR-3B since July'2021 ie. more than six months. Subsequently, the appellant filed revocation of cancellation of registration in form GST REG-21 on 24.02.2022. The proper officer issued a Show Cause Notice dated 28.02.2022, for rejection of the application for revocation of registration stating reasons that "*the reasons entered for revocation were inappropriate*". In reply to the show cause notice, the appellant submitted their reply on 07.03.2022. The adjudicating authority vide her impugned order dated 03.04.2024 rejected the application of revocation of the cancellation for the reason "*The Taxpayer filed application for Revocation of cancelled Registration vide ARN AA240222098312L dated 07.03.2022 is filed after 223 days from the date of cancellation ie. 16.07.2021 which is not in the prescribed time limit for filing revocation application under CGST Rule 23 in light of Section 30 of the CGST Act, 2017.*" -

3. Being aggrieved with the impugned order the appellant preferred appeal on 22.04.2024 before the appellate authority on the following grounds:-

- (i) The appellant submitted that as per the provisions of the Rule 23(4) of the CGST Rules, 2017 the proper officer must dispose of the application of revocation of cancellation of registration within 30 days from the date of receipt of clarification on SCN from the applicant. They had submitted reply to SCN on 07.03.2022 and the impugned order has been issued on 03.04.2024 which is delayed by 2 years.
- (ii) The adjudicating authority has stated in the order that the revocation application was filed on 07.03.2022 which is 233 days from the date of cancellation of registration ie. 16.07.2021 and the same is not within the prescribed time limit for filing of revocation



application under Rule 23 of the CGST Rules, 2017. Thus it is evident that the adjudicating authority has not even properly studied the facts of the case before passing the order as the revocation application was filed on 24.02.2022 and not on 07.03.2022.

- (iii) As per Rule 23(1) of the CGST Rules, the appellant filed their revocation application within 30 days from the date of service of order of cancellation of registration ie. 17.02.2022. Accordingly, they filed their application for revocation on 24.02.2022 which is within the period specified. They had also authenticated the Aadhar Card of the Managing Director of their company as required under Rule 10B of the CGST Rules, 2017.
- (iv) The appellant has relied upon the case of Abdul Satar Vs. Principal Commissioner, CGST and CX WP(T) No.827 /2024 dated 06.03.2024 of Hon'ble Jharkhand High Court.
- (v) With the above submissions, the appellant has requested to allow their appeal and order for cancellation of GST registration is withdrawn, set aside and quashed and their GST registration is restored.

PERSONAL HEARING

4. Personal hearing in the matter was held on 30.04.2024 and 03.05.2024, wherein Shri Jitendra Soni, Chartered Accountant appeared before me on behalf of the appellant as authorized representative. It was submitted that the Tax Payer is involved in Infra Projects based in Hyderabad. Due to COVID, they could not file returns and requested for 2.3 days time to submit their liability pending. In the next personal hearing held on 03.05.2024, the same person appeared and submitted that during the period of Cancellation, there was no turnover. However they will pay all dues including late fee within 30 days from the date of activation of Registration. He further reiterated the written submissions and requested to allow appeal.

DISCUSSION & FINDINGS

5. I have carefully gone through the facts of the case. I find that the main issue to be decided in the instant case is (i) 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.***

6.1 In the present case, I find that the date of impugned order is 03.04.2024 and the appellant has preferred appeal on 22.04.2024, which is well within the time limit.

7. I observe from the facts available on record, the appellant's GST registration has been cancelled vide OIO on 17.02.2022 giving retrospective effect from 16.07.2021 for non-filing of GST returns continuous for six months. The appellant applied for revocation of cancellation of GST registration on 24.02.2022, on the reasons that their business is down due to COVID situation and hence they could not file their GST returns. However, a Show Cause Notice dated 28.02.2022 was served to the appellant stating that the reasons entered for revocation of cancellation is not appropriate. The said issue was decided vide impugned order dated 03.04.2024 on the reasons that the appellant filed their application for Revocation of cancelled Registration after 223 days from the date of cancellation i.e., 16.07.2021 which is not in the prescribed time limit for filing revocation application under Rule 23 in light of Section 30 of CGST Act, 2017.

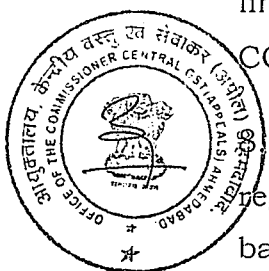
Further, I find that the provisions of revocation of cancellation of registration when the same is cancelled by the proper officer on suo moto basis are contained in Section 30 of the CGST Act, 2017 and Rule 23 of the CGST Rules, 2017. Therefore, I find it pertinent to refer Section 30 and Rule 23 as 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 :

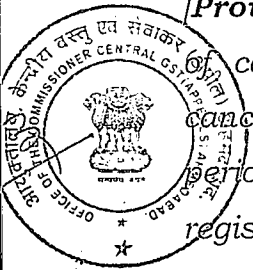
Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation 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 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.

(3) 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.

9. In the present case I observe that the date of SCN is 28.02.2022, however the adjudication order has been issued on 03.04.2024. As per Rule 23(4) the proper officer shall dispose of the application for revocation of cancellation of GST registration within a period of 30 days from the date of the receipt of such information or clarification from the applicant and not as per the date of cancellation effective as decided by the adjudicating authority. In the present issue, as per the documents, it appears that the appellant has given their application for revocation of cancellation of GST registration on 24.02.2022, which I find is within the time limit. Hence, the adjudicating authority has rejected the application for revocation on vague reasons without going through facts of the case.

10. Further, I find that the Central Board of Indirect Taxes and 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.

11. On going through the records/submissions, returns filing status on GST Portal, I find that the "Appellant" has filed the GSTR-1 & GSTR-3B up to July'2021 i.e. up to the date of cancellation of registration. Further, the appellant has submitted that they are ready to

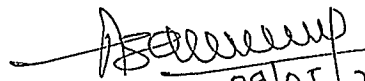


pay all dues including late fees, penalty etc. Since, the appellant has filed the GSTR 1 & GSTR 3B Returns till the date of cancellation of GST Registration, I find that the "Appellant" has complied with the above said provisions in the instant case. Needless to say that the "Appellant" shall furnish 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.

12. In view of above discussions, I am of the opinion that the registration of "Appellant" may be considered for revocation by the proper officer subject to due compliance of the conditions by the "Appellant" under Rule 23(1) of CGST Rules, 2017. Accordingly, I allow the appeal of the "Appellant" and order to the proper officer to consider the revocation application of the "Appellant". The appellant shall file all pending returns and pay all dues as per the provisions of Rule 23 of the CGST Rules, 2017.

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.


09/05/2024
(आदेश कुमार जैन)

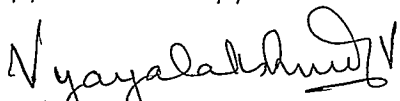
(Adesh Kumar Jain)

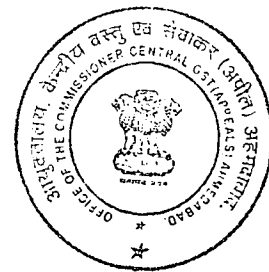
संयुक्त आयुक्त (अपील्स)

Joint Commissioner (Appeals)

Date: .05.2024

// Attested //


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



By RPAD

M/s. DNC Infrastructure Private Limited,
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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-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.

