आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी, अहमदाबाद३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015.

☎ 07926305065- टेलेफैक्स07926305136

सत्यमेव जयते

आयुक्त का कार्यालय
केन्द्रीय कर एवं सेवा कर, अहमदाबाद उत्तर.
सीआरयू/CRU
02 MAY 2022
आवक रजिस्टर क्रमांक 576

DIN NO. : 20220464SW0000054630

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2437/2021-APPEAL /122

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-CGST-002-APP-ADC-117/2021-22**
दिनाँक Date : **07-04-2022** जारी करने की तारीख Date of Issue : 07-04-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZA240221146328W** dated **10.02.2021** issued by Superintendent, Central Goods and Services Tax, Range-VI, Division-II (Naroda Road), Ahmedabad North

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

M/s. Y. N. Contractor,

(Legal Name – Yasinmohammad Noormohammad Pathan)

136/771, Gujarat Housing Board, Morarji Chowk,

Bapunagar, Ahmedabad, Gujarat – 380024

(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 वेबसाइटwww.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 websitewww.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. Y. N. Contractor (Legal Name – Yasinmohammad Noormohammad Pathan),** 136/771, Gujarat Housing Board, Morarji Chowk, Bapunagar, Ahmedabad – 380024 (hereinafter referred to as "*Appellant*") against the Order No. ZA240221146328W dated 10.02.2021 (hereinafter referred to as "*impugned order*") passed by the Superintendent, CGST, Range- V, Division-II – Naroda Road, Ahmedabad North (hereinafter referred to as "*the adjudicating authority/Proper Officer*").

2. Brief facts of the case are that the "*Proper Officer*" has cancelled the GST Registration - GSTIN : 24AHQPK2351K1Z6 of M/s. Y. N. Contractor (Legal Name - Yasinmohammad Noormohammad Pathan), for the reason that the "*Appellant*" has not filed the GST Returns for a continuous period of six months. As per '*impugned order*' dated 10.02.2021 the *'Proper Officer'* has cancelled the GST registration with effect from 09.02.2021.

3. Being aggrieved with the '*impugned order*' dated 10.02.2021, the "*Appellant*" has filed the present appeal on 15.11.2021, i.e. after the delay of normal period prescribed under Section 107(1) of CGST Act, 2017. The "*Appellant*" has submitted that due to financial problem the GST Return were not filed in time. However, now they have filed the GST returns till February 2021 i.e. up to the date of cancellation of their GST Registration. Further, the *appellant* has submitted that they will file the pending returns from March 2021 with late fees once their registration gets activated. Further, looking to Covid-19 pandemic situation the *appellant* has requested to condone the delay of filing of appeal.

Personal Hearing :-

4. Personal Hearing in the matter was through virtual mode held on 16.12.2021 wherein Shri Hitesh Patel, Consultant appeared on behalf of the *'Appellant'* as authorized representative to defend the case. During P.H. he

has reiterated the written submission made till date and informed that nothing more to add into it. During P.H. he has further informed that the owner of the firm is expired hence the GST number will be surrendered after filing of pending GST Returns with late fees and after payment of outstanding GST liability.

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****.*

7. I observed that in the instant case the appeal has been 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.

8. Further, in the above context, 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 of 2021, in SMW(C) No. 3 of 2020. The relevant para No. 5 (I) of said order is reproduced as under :

> ***5.*** *Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions :*
>
> ***I.*** *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceeding.*

In the present matter, the "*impugned order*" is of 10.02.2021 so, the normal appeal period of three months was available up to 09.05.2021 whereas, the present appeal is filed on 15.11.2021. However, in view of above Para 5(I) of the order of Hon'ble Supreme Court the present appeal is considered to be filed in time.

9. I also find that the CBIC, New Delhi has issued Circular No. 157/13/121-GST dated 20th July, 2021 and clarified as under:-

4(c):- Appeals by taxpayers/ tax authorities against any quasi- judicial order:-Wherever any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority

for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.

10. In view of above and also looking into the **Covid-19 pandemic situation** in the instant matter, I am inclined to condone the delay of filing of appeal. Therefore, I find that the present appeal is filed within stipulated time limit.

Accordingly, I am proceeded to decide the case.

11. I have gone through the facts of the case and the written submissions made by the *appellant*. I find that the adjudicating authority/proper officer has cancelled the registration with effect from 09.02.2021 as the *appellant* failed to file GST Returns for a continuous period of more than six months.

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.*

12. 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.

13. On going through the records/submissions, I find that the *appellant* has filed GST Returns till February – 2021 i.e. till the date of cancellation of registration. In support of same the *appellant* has also produced the copy of status of filing of GST Returns. Hence, I find that the *appellant* has complied with the above said provisions in the instant case.

14. Further, I find that Shri Zahur Mohammad Sher Mohammad Pathan has submitted an affidavit on Non Judicial Stamp paper duly notarized. In the said affidavit Sh. Zahur Mohammad has stated that they are in the business of supply of man power services in the name of M/s. Y. N. Contractor and he is elder brother of the owner of Y. N. Contractor who is expired now. In the affidavit he has given undertaking that the pending GST returns with all pending GST liability will be completed within 5 days once their registration gets activated and thereafter, they will apply for cancellation of GST Registration. In this regard, comments were called for from the jurisdictional GST Office through letter dated 11.01.2022. However, no reply / comments have been received by this appellate authority.

15. Since, the appellant has requested to revoke their cancelled GST Registration for sole purpose of discharging the pending GST liability, 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* for sole purpose of discharging the pending GST liability.

16. **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.

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 01.04.2022

Attested

(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.
To,
M/s. Y. N. Contractor,
(Legal Name – Yasinmohammad Noormohammad Pathan),
136/771, Gujarat Housing Board, Morarji Chowk, Bapunagar,
Ahmedabad – 380024

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-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-II – Naroda Road, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. The Superintendent, CGST & C. Ex., Range – V, Division-II – Naroda Road, Ahmedabad North.
7. Guard File.
8. P.A. File