



आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी, अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015.

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DIN NO. : 20220364SW0000000AD7

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/577/2022-APPEAL / 7095

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-108/2021-22**

दिनांक Date : **30-03-2022** जारी करने की तारीख Date of Issue : 30-03-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZA240121070558S** dated **17.01.2021** issued by Superintendent, Central Goods and Services Tax, Rang-IV, Division-VII (S G Highway East), Ahmedabad North

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

M/s. D. K. Enterprise (GSTIN 24DNMPS1189E1ZP)

(Legal Name – Nikita Deepak Kumar Sharma),

M-201, Vandemataram City, Nr. Railway Crossing,

Gota, Ahmedabad, Gujarat – 382481

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| (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 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 ::

M/s DK Enterprises (Legal Name - Nikita Deepak Kumar Sharma) (GSTIN-24DNMPS1189E1ZP), M-201, Vandemataram City, Nr. Railway Crossing, Gota, Ahmedabad, Gujarat-382481 (hereinafter referred to as 'appellant') has filed present appeal against Order for Cancellation of Registration bearing Reference No. ZA240121070558S dated 17.01.2021 (hereinafter referred to as 'impugned order'), issued by the Superintendent, Central GST, Range-IV, Division-VII (S G Highway East), Ahmedabad North Commissionerate (hereinafter referred to as 'adjudicating authority/proper officer').

2. The brief facts of the case are that appellant was registered under GST, having registration number as 24DNMPS1189E1ZP. The appellant was issued a show cause notice on 05.01.2021 asking as to why registration should not be cancelled for not filing returns for a continuous period of six months. Subsequently, the registration was cancelled by the Superintendent, Central GST, Range-IV, Division-VII (S G Highway East), Ahmedabad North Commissionerate vide Order reference No. ZA240121070558S dated 17.01.2021 citing the following reason - 'NOT FILED REPLY, NOT ATTENDED PH AND NOT FILED RETURNS.'

3. Being aggrieved, the appellant filed the present appeal on 24.02.2022, against the impugned order, *inter alia*, contending that:-

- (i) They could not file the GST returns in time due to some medical trouble in the family.
- (ii) Appellant has filed the pending returns i.e. up to December - 2020.

Personal Hearing

4. Personal hearing in the case was held on 08.03.2022 in virtual mode. Shri Anand K Panchal, Legal Practitioner, appeared on behalf of appellant and, he reiterated the submissions made in appeal memorandum.

Discussion & Findings

5. I have gone through the facts of the case and the written submissions made by the appellant. Before deciding the matter it is to be verified whether the appeal has been filed within the prescribed time-limit or not.

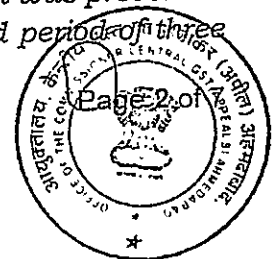
The relevant statutory provisions are reproduced as under:

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 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.

In view of above I observed that the Appellant was required to file appeal within 3 months from the receipt of "the impugned order" i.e. on or before 17.04.2021, as stipulated under Section 107(1) of the Act. Further, I find that in terms of the provisions of Section 107(4) *ibid*, the appellate authority has powers to condone delay of one month in filing of appeal i.e. up to 17.05.2021, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown.

6.2 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 MA 665/2021, 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 purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceedings.*

6.3 Further, I also find that the CBIC, New Delhi has issued Circular No. 157/13/2021-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.*



6.4 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.

7. In the present matter, I find that the appellant had obtained registration under the CGST Act, but had not filed returns for more than 6 consecutive months. Therefore, the appellant's registration was cancelled under provision of Section 29(2)(c) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act'), on *suo moto* basis by the jurisdictional proper officer, vide the 'impugned order' citing the following reason - 'NOT FILED REPLY, NOT ATTENDED PH AND NOT FILED RETURNS.'

8. Looking into facts of the case, I find it germane to refer the provisions of revocation of cancellation of registration. The relevant Section 30 of the CGST Act, 2017 and Rule 23 of the CGST Rules, 2017 are reproduced 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)

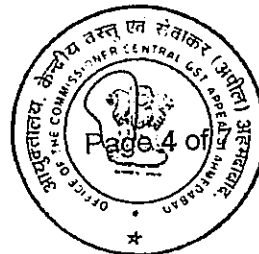
Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31.03.2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22.07.2019.

(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. On perusal of above Section 30(1), I find that 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. Further, as per first proviso to Rule 23(1) of the CGST Rules, no such application can be filed in cases where registration has been cancelled for the failure of the registered person to furnish

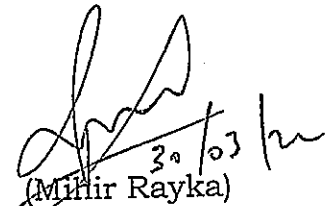


returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns. Furthermore, as per second proviso to the said rule, it is provided also that where the registration has been cancelled, the registered person shall furnish 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 within a period of thirty days from the date of order of revocation of cancellation of registration.

10. I find that registration of the appellant has been cancelled w.e.f. 18.12.2020. On going through the status of filing of GST Returns, I find that the appellant had filed returns up to tax period December-2020 in the form of GSTR-3B and GSTR-1. It is obvious that the system does not allow for filing returns for the period falling after the date of cancellation of registration. Therefore, second proviso to Rule 23(1) mandates filing of returns for such periods within 30 days from date of revocation of cancellation of registration.

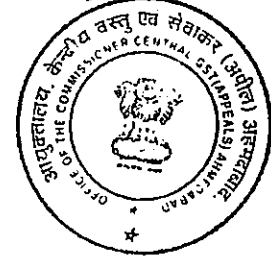
11. Looking into the facts involved in the matter as discussed in foregoing paras, I am of the opinion that the appellant should not be made to suffer any more. Accordingly, I direct the adjudicating authority to take necessary steps to revoke the GST registration of the appellant. Needless to say, the 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. Further, payment particulars (including tax liability, interest, penalty & late fee etc.) and the status of returns filed may be verified by the concerned authority having power to revoke the cancelled registration. Thus, the appeal filed by the appellant is allowed in above terms.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. The appeals filed by the appellants stand disposed of in above terms.



(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 30.03.2022



Attested


(Dilip Jadav) 30/3/2022
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s DK Enterprises (Legal Name – Nikita Deepak Kumar Sharma)
(GSTIN-24DNMPS1189E1ZP),

M-201, Vandemataram City, Nr. Railway Crossing,
Gota, Ahmedabad, Gujarat-382481

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VII (S G Highway East), Ahmedabad North.
5. The Superintendent, CGST & C.Ex., Range-IV, Division-VII (S G Highway East), Ahmedabad North.
6. The Additional Commissioner, Central Tax (System), Ahmedabad North.
7. Guard File.
8. P.A. File

