

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.119 of 2023**

M/s Roy Co. and Varieties

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

For Petitioner(s)	:	Mr. B.N. Majumder, Sr. Adv. Mr. B. Paul, Adv.
For Respondent(s)	:	Mr. K. De, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

01.03.2023

Heard Mr. B.N. Majumder, learned senior counsel appearing for the petitioner as well as Mr. K. De, learned Addl. G.A. appearing for the respondents.

2. The petitioner is a sole proprietorship firm and is engaged in the business of sale of different types of glasses. The respondent authorities had seized the vehicle and the goods on 20.09.2019 on the ground of expiry mismatch of E-way bill with tax invoice. The petitioner has prayed for provisional release of the goods and the vehicle on furnishing of Bank Guarantee and prayer was allowed. On 27.09.2019 the final order under Section 138 of CGST Act was passed. The petitioner has preferred an appeal which was dismissed by the appellate authority on the ground of delay in

preferring an appeal ignoring the prescription of Section 107(4) of the CGST Act and hence, the present writ petition has been filed.

3. Mr. B.N. Majumder, learned senior counsel appearing for the petitioner has submitted that as per the provision under Section 107 of CGST Act any person aggrieved by a decision may prefer an appeal to such appellate authority as may be prescribed within three months or six months from the date on which the order is communicated to such appellant. Sub-section 4 to Section 107 of the GST Act further provides that if the appellate authority may allow an appeal to be filed after three months or six months within a further period of one month. Therefore, the appellate authority is empowered to accept an appeal within seven months.

4. Mr. Majumder, learned senior counsel has further submitted that the petitioner had time up to 27.04.2020 to file the appeal on the receipt of the order dated 27.09.2019. Meanwhile, the Corona Virus outbreak effected worldwide from 15th March, 2020. Ultimately, the appeal of the petitioner could be filed on 29.10.2021. Meanwhile, the Hon'ble Supreme Court has extended all statutory limitation up to 28.02.2022. As such, the appeal filed by the petitioner was well within time.

5. Mr. K. De, learned Addl. G.A. appearing for the respondents has submitted that the order was passed 30.09.2019 and ends on 30.01.2020. As per the order of the Supreme Court regarding exemptions start from 15.03.2020 till 28.02.2022 i.e. before starting of this exemption period their limitation was over. Even if one month was considered, then also the limitation

was over. There was no application for condonation before the appellate authority.

6. Mr. Majumder, learned senior counsel has submitted that the respondent No.2 while passing the impugned order although has taken note of the Hon'ble Apex Court but has abstained from exercising the power given to the appellate authority under Section 107(4) of the GST Act hence, the impugned order is liable to be interfered with.

7. Having heard both sides this court is of the considered opinion that the writ petition should be disposed of setting aside the impugned order dated 14.10.2022. The impugned order passed by the appellate authority do not disclose the reasons as to how the said appeal is barred by limitation. The respondent authority ought to have passed a speaking order by computing the limitation in the light of Section 107(4) of the GST Act. The matter is remanded back for consideration.

In terms of the above, the present petition is disposed of.

JUDGE

CHIEF JUSTICE (ACTING)

