

GAHC010211432024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5205/2024

M/S JIYA COMMUNICATION
A PROPRIETORSHIP CONCERN HAVING ITS REGISTERED OFFICE AT
BRINDABAN DHAM, RUPNAGAR, INDRAPUR, KAMRUP ASSAM 781032M
ASSAM REP. BY ITS SOLE PROPRIETOR SRI TAPAN LAHKAR,

2: SRI TAPAN LAHKAR
S/O LATE PRADIP CH. LAHKAR
RESIDENT OF BRINDABAN LAHKAR
RUPNAGAR
INDRAPUR
KAMRUP ASSAM 78103

VERSUS

THE UNION OF INDIA AND ORS
REPRESENTED BY BY THE SECRETARY OF GOVERNMENT OF INDIA ,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, ROOM NO. 66-A,
NORTH BLOCK NEW DELHI 110001

2:THE PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICE
TAX.
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI
781001

3:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
CENTRAL EXCISE
GUWAHATI DIVISION I
GST BHAWAN
KEDAR ROAD
GUWAHATI 781001

4:THE COMMISSIONER (APPEALS)
CGST CENTRAL EXCISE AND CUSTOMS
3RD FLOOR
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI 78100

For the Petitioner(s) : Mr. R.S. Mishra, Advocate

For the Respondent(s) : Mr. S.C. Keyal, SC GST
Mr. S.K. Medhi, CGC

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 04.10.2024

Heard Mr. R.S. Mishra, the learned counsel appearing on behalf of the petitioner. Mr. S.C. Keyal, learned Standing Counsel GST appears on behalf of the respondent Nos. 2, 3 and 4 and Mr. S.K. Medhi, Central Government Counsel appears on behalf of the respondent No. 1.

2. The petitioner herein has approached this Court challenging the order dated 11.09.2024 passed by the Commissioner (Appeals) whereby the appeal filed by the petitioner was dismissed as barred by the time prescribed.

3. It is seen from the records as well as the impugned order that the order-in-original was passed on 10.04.2024 and the same was communicated on 17.04.2024 to the petitioner.

4. In terms with Sub-Section (3A) of Section 85 of the Finance Act, 1994 the period for filing an appeal prescribed is 2(two) months.

5. Taking into account that the petitioner was communicated in 17.04.2024, the appeal ought to have been filed on 16.06.2024. However, it is relevant to take note of that 16th and 17th of June, 2024 were holidays on account of being Sunday as well as *Id-ul-Zuha(Bakrid)* and as such, the petitioner filed the appeal on 18.06.2024. This aspect however, was not taken into consideration by the Commissioner (Appeals) in passing the impugned order and merely on the fact that there was no application for condonation of delay the said appeal was dismissed.

6. It is a well settled principle of law that when the last day is a holiday, the next day is required to be counted for the purpose of computation of the period prescribed. In the instant case, 16th and 17th of June, 2024 being holidays, the last day for filing the appeal would be 18.06.2024 and on that date, the appeal was duly filed. Accordingly, in the opinion of this Court the Appeal was filed within the period prescribed. Therefore, this Court sets aside the order dated 11.09.2024 and directs the Commissioner (Appeals) who is the respondent No. 4 herein to decide the Appeal filed by the petitioner on merits.

7. The records of the Appeal No. 325/GHY(A)/COM/ST/GHY/2024 dated 11.09.2024 are restored to the file of the Commissioner (Appeals).

8. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant