

03-01-2022
ct no. 13
Sl. 23
sp

**WPA 14739 of 2021
(Through Video Conference)**

Abhirup Ghosh & Ors.

-Versus-

The State of West Bengal & Ors.

**Mr. Krishnendu Sarkar,
Ms. Meghla Das**

....for the petitioners

**Mr. Anirban Ray, Id. G.P.,
Mr. Raja Saha,
Mr. Debasish Ghosh**

...for the State

Affidavit of service filed in Court today is taken on record.

The writ petitioners are aggrieved by non-consideration of appeal filed before the Excise Commissioner against an order dated November 21, 2019 passed by the Additional District Magistrate (G) & Collector of Excise, North 24 Parganas.

Mr. Raja Saha, learned counsel for the State, Excise Commissioner, submits that the appeal is hopelessly bared by delay of more than 300 days. It was actually required to be filed within 30 days of the impugned order. It is, therefore, submitted that there is no question of the appeal being considered.

Counsel for the petitioners, however, relies upon a decision of a Co-ordinate bench of this

Court dated January 8, 2016 in WP No. 30420 (W) of 2015 (Sri Harbindar Singh vs. The State of West Bengal & Ors.), where it was held that the provisions of Section 5 of the Limitation Act, would also apply to the Bengal Excise Act since there is no expressed exclusion of Section 5 of the Limitation Act, within the Bengal Excise Act.

Reference is made in the said decision to the case of ***Gopal Sardar vs. Kalpana Sardar*** reported in ***AIR 2004 SC 3068***.

In that view of the matter, this Court directs the Excise Commissioner to consider the petitioners' prayer for condonation of delay in accordance with law and the applicable rules and if necessary, dispose of the appeal in accordance with law preferably within a period of three months from the date of communication of a copy of this order.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)