Item no. 07

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 43 of 2023

with

IA No. CAN 1 of 2023

Suresh Ganguli

vs.

Assistant Commmissioner, State Tax, Purulia Charge & ors.

Appearance:

For the Appellant	:	Mr. Sumit Ghosh Mr. Souradeep Majumdar
For the State	:	Mr. A. Ray Mr. T. M. Siddiqui Mr. D. Ghosh Mr. N. Chatterjee
Heard on	:	17.02.2023
Judgment on	:	17.02.2023

T.S. Sivagnanam J.:

1) This intra Court appeal is directed against the order dated 20.12.2022 passed by the learned Single Judge in WPA 27800/2022. The said writ petition was filed by the appellant challenging the order passed by the Senior Joint Commissioner of

Commercial Taxes, Asansol Circle, who is the appellate authority who exercised powers under Section 107 of the GST Act read with Rule 108 of the GST Rules. The appeal was dismissed on the ground that it is barred by limitation. As rightly pointed out by the learned Government Counsel, the law on the subject is well settled that if the statute prescribes an outer time limit for condonation of delay in filing appeals, then the learned writ Court is not entitled to extend such period by applying Section 5 of the Limitation Act.

2) Therefore, we find that there is no error in the order passed by the appellate authority in rejecting the appeal as time barred. However, considering the peculiar facts and circumstances of the case, we feel that a slightly different approach can be taken so that not only the appellant would be entitled to get his registration revived but it will also enure in favour of the revenue as it will pave the way for collection of taxes. Therefore, we are inclined to pass the following order making it clear that this order shall not be treated as a precedent and it has been passed considering the peculiar facts and circumstances of the case.

3) In the result, the appeal stands **disposed of** by directing the assessee to take note of the fact that the assessee has filed all the returns during the Financial Year 2021 onwards and according to the assessee, the taxes have been paid alongwith the interest for the belated payment of tax. The Assessing Officer is directed to verify all the facts and if the assessee has filed all the returns for all the relevant periods, paid the taxes as well as the interest for the belated payment of taxes,

then if there is no other legal impediment, the registration of the assessee shall be restored. This direction shall be complied with by the Assessing Officer within a period of 15 days from the date of receipt of the server copy of this order.

4) Consequently, the connected application also stands disposed of. There shall, however, be no order as to costs.

5) Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

Pallab/Amitava (AR. CT.)