

Item no. 08

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 44 of 2023
with
IA No. CAN 1 of 2023

Bidhan Mondal

vs.

Assistant Commissioner, Bureau of Investigation, South Bengal
(Headquarters) & ors.

Appearance:

For the Appellant : Mr. Sumit Ghosh
Mr. Souradeep Majumdar

For the State : Mr. A. Ray, learned G.P.
Mr. T. M. Siddiqui
Mr. D. Ghosh
Mr. D. Sahu

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 27502/2022. 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 and only interest rates to be paid. 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 and any other statutory compliance, 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.)