05 11.08.2023
RP Ct. No. 01
AN

MAT 73 of 2023
with
IA No. CAN 1 of 2023

Priyashree Construction
Vs.
The State of West Bengal & Ors.

Mr. Saroj Banerjee
Mr. Srinjoy Das
Ms. Jui Jana
... For the Appellant

Mr. Anirban Ray, Ld. G.P.
Mr. T.M. Siddiqui
Mr. S. Sanyal
... For State

1. This intra-Court appeal is directed against the order dated 13th December, 2022 passed in WPA 26857 of 2022. The said writ petition was filed by the appellant challenging the order dated 31st August, 2022 passed by the Appellate Authority under the provisions of WBGST Act dismissing the appeal petition filed by the appellant on the ground that it was delayed by the period of 31 days. Learned Single Bench while granting interim order has directed the appellant to pay 20% of the demand in order to be entitled to an order of interim stay. Aggrieved by such condition imposed while granting stay, the appellant has filed the present appeal.

2. We have heard the learned counsel for all the parties elaborately.

3. With the consent of the learned advocate of the either side, the writ petition as well the appeal are taken up for hearing and disposal.

4. As could be seen from the order passed by the Appellate Authority, the appeal was not dismissed on the ground on merits but on the ground that it is time barred. Admittedly, the period of limitation would fall within the period during which the order of the Hon'ble Supreme Court was in operation which directed that the period while computing the limitation for presenting the appeal would stand excluded though it may be true that there were a marginal delay. Thereafter, such appeal was presented on 31.07.2022. We find that the case on hand is a peculiar case where facts can be considered so that the appellant is non suited on a technicality but would have an opportunity to put forth the case on merit. The appellant has enclosed medical records of his partner, who had been managing the business, who suffered certain ailments and was hospitalized. That apart, already the appellant had voluntarily paid a sum of Rs.71,23,536/- towards the tax liability under the provisions of CGST/SGST Act. Over and above the said amount, the department has recovered a sum of Rs.31,15,094/- by setting aside from the credit ledger and cash ledger on 29.06.2022. Apart from that the appellant has also made a pre-deposit of more than Rs.7,00,000/- while filing the statutory appeal. Thus, considering the peculiar facts and circumstances of the case, we are of the view that the Appellate Authority shall dispose of the appeal on merits rather rejecting the appeal on the ground of limitation.

5. For the above reasons, the writ petition as well

as this appeal and the connected application are all **allowed** and the order passed by the Appellate Authority dated 31.08.2022 is set aside and the appeal stands restored to the file of the Appellate Authority, who shall decide the appeal on merits and in accordance with law after affording an opportunity of personal hearing to the appellant or through his authorized representative. This direction shall be complied with within a period of three months from the date of receipt of the server copy of this order.

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)