17.11.2023
Item No.13
gd/ssd

MAT/1766/2023
IA NO: CAN/1/2023, CAN/2/2023
POONAM SARKAR
VS
ASST COMMISSIONER, STATE
TAX, BALLYGUNGE CHARGE AND ORS.

Mr. Debasish Ghosh,
Mr. Partha Sen
..for the Appellant.

Md. T.M. Siddiqui
..for the State.

Re: CAN 2 of 2023

1. CAN 2 of 2023 has been filed by the appellant seeking condonation of delay of 53 days in filing this appeal.

2. Learned counsel for the appellant has referred to the explanation which has been furnished in the application and also has made submission in respect of the explanation for the delay.

3. We find that the delay in filing this appeal has been sufficiently explained and the appellant was prevented from filing the appeal within time on account of bona fide reason.

4. Hence, CAN 2 of 2023 is, accordingly, allowed. The delay in filing the appeal is condoned.

Re: MAT 1766 of 2023

5. This intra court appeal is directed by the writ petitioner against the order passed by the learned Single Bench dated 17th July, 2023 in WPA 15661 of 2023.

6. In the said writ petition the appellant had challenged the order passed by the appellate authority dismissing the appeal filed by them against the order dated 22.07.2021 passed by the Assistant Commissioner of Sales Tax, Ballygunge Charge on several grounds including on the ground of violation of principles of natural justice and that the order was beyond the allegation in the show cause notice dated 31.03.2021.

7. The learned writ court had dismissed the writ petition on the ground that the appeal was filed belatedly and the delay being inordinate the court cannot interfere in the matter.

8. Aggrieved by such order, the present appeal has been filed.

9. We have elaborately heard the learned advocates for either of the parties.

10. It may be true that the appeal filed before the 1st Appellate Authority was hopelessly barred by time.

11. However, when we examine the order which was impugned in the said appeal dated

22.07.2021 passed by the Assistant Commissioner of Sales Tax, Ballygunge Charge, we find that the basis on which the order was passed is outside the scope of the show cause notice dated 31.03.2021. In the order dated 22.07.2021 it has been stated that the appellant has opted to pay under composition levy and the same is improper. However, there was no such allegation in the show cause notice dated 31.03.2021. Therefore, we are of the view that the assessee can be afforded one more opportunity.

12. Considering the fact that the assessee was not very vigilant in the matter, we are not inclined to quash the order dated 22.07.2021 passed by the Assistant Commissioner of Sales Tax, Ballygunge Charge but would direct the appellant-assessee to treat the said order dated 22.07.2021 as a show cause notice and submit his reply within 15 days from the date of receipt of the server copy of this order.

13. On receipt of the reply, the authority shall afford an opportunity of personal hearing to the authorised representative of the assessee and pass a speaking order on merits and in accordance with law.

14. The learned advocate appearing for the respondent State submitted that a notification has been issued by the Government of India dated 2nd November, 2023 to the effect that even if an appeal has been

dismissed, the assessee is entitled to avail the benefit of the settlement scheme.

15. However, in the facts and circumstances of the case, we found that the basis on which the order was passed was beyond the allegation made in the show cause notice.

16. Therefore, we deem it appropriate to give one more opportunity to the appellant in terms of the above direction.

17. Accordingly, the appeal stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)