07-08-2023
Court No.2
Sh/103.

In The High Court At Calcutta
Jalpaiguri Circuit Bench

W.P.A. 575 of 2023

M/s. G.L. Kundu & Sons Steel Pvt. Ltd.
-Vs-
Dy. Commissioner of W.B.State Tax & Ors.

Mr. Boudhayan Bhattacharyya,
Mr. Stuti Bansal,
Ms. Bodhistya Ghosh.
..For the Petitioner.
Mr. Ratan Banik,
Mr. Bishwaraj Agarwal.
.. For the Respondent no. 4
Mr. Bikramaditya Ghosh,
Ms. Bedashruti Bose.
.. For the State.

Heard learned counsels for the parties.

The order passed by the appellate authority on 15th February, 2023 dismissing the appeal preferred by the petitioner, on the ground of limitation, is assailed in the writ petition.

A consignment belonging to the petitioner was intercepted and detained on July 10, 2019 by the revenue in Siliguri town and upon necessary enquiry made by the authority, the petitioner was directed to appear before the appropriate authority and produce books of accounts for the period 2018-2019 and 2019-2020 on July 25, 2019, by a notice issued by the authority on July 16, 2019.

Upon hearing the petitioner and considering the relevant material placed before the authority, the concerned authority, by an order passed on 13-12-2019 levied penalty upon the petitioner to the tune of

Rs.9,72,225/-, payable within 31-01-2020. The said order was carried in appeal by the petitioner along with an application for condonation of delay of about 50 days. The petitioner was served with the show-cause notice on 2nd February, 2023 directing him to explain the said delay. The petitioner sent a reply to the notice on 8th February, 2023. By the order impugned dated 15th February, 2023, the appeal preferred by the petitioner was dismissed solely on the ground of limitation. Merits of the petitioner's case were not considered by the authority.

The show-cause notice dated 2nd February, 2023 indicates that since the maximum time limit allowed within which an appeal has to be filed is four months and the application has been submitted after lapse of the maximum time permitted by the statute, the same cannot be considered.

This issue has been dealt with by an Hon'ble Division Bench of this Court presided over by the Hon'ble the Chief Justice in MAT 1924 of 2022 and by an order passed on 20th January, 2023, the Hon'ble Division Bench held as hereunder:

" *It is true that in terms of Section 107(1) read with Section 107(4) of the GST Act, the time limit for preferring the appeal beyond the period of three months is 30 days, which is a grace period. However, the statute does not state that beyond the said date, the appellate authority cannot exercise jurisdiction. It is not a case that deliberately the appellant had presented the appeal beyond the condonable period. Therefore, while exercising jurisdiction under Article*

226 of the Constitution this Court can examine the factual circumstances and grant appropriate relief as the appellate remedy is a very valuable remedy since the appellate authority can re-appreciate the factual position. Thus, for such reason, we are inclined to exercise discretion"

In the present case, it prima facie appears that the appeal was preferred after a delay of about 50 days.

In view of the observation made by the Hon'ble Division Bench as referred to earlier, this Court is inclined to hold that the appellate authority be directed to reconsider the appeal on merits upon condoning the delay in preferring the same and upon affording reasonable opportunity of hearing to the petitioner.

Accordingly, the order passed by the appellate authority being the Joint Commissioner of Revenue, Raiganj Circle, Raiganj on 15th February, 2023 is set aside.

The writ petition is disposed of directing the 2nd respondent herein to reconsider the appeal preferred by the petitioner on merits upon affording reasonable opportunity of hearing to all the interested persons including the petitioner and pass a reasoned order within one month from the date of communication of this order, in accordance with law.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

With the above observation and direction the writ petition being WPA 575 of 2023 is disposed of.

There shall be no order as to costs.

Since no affidavit has been called for, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties expeditiously on compliance of all requisite formalities.

(Suvra Ghosh, J.)