12-10-2023
Court No.3
Sh/7.

In The High Court At Calcutta
Jalpaiguri Circuit Bench

W.P.A. 2453 of 2023

Khagarbari Builders & Anr.
-Vs-
Dy. Commissioner of Revenue, Coochbehar & Ors.

Mr. Anil Kumar Dugar,
Mr. Rajib Mukherjee,
Mr. Debajit Kundu.
For the petitioners.
Mr. Subir Kumar Saha,
Mr. Hirak Barman.
For the State.

Affidavit of service filed by the petitioner is taken on record.

In this writ petition the petitioners have challenged the impugned order dated September 4, 2023 passed by the appellate authority under West Bengal Goods Service Tax Act, 2017 (in short WBGST Act) thereby the appellate authority rejected the appeal only on the ground that the appeal was filed beyond the period of limitation as prescribed under Section 107 of WBGST Act. There was 30 days delay in filing the appeal on the ground that the accountant-cum-tax counsel of the petitioners was seriously ill. Learned counsel also submitted medical documents before the appellate authority and also annexed with this writ petition.

It is submitted by the learned counsel appearing on behalf of the petitioners that the delay was due to illness of the accountant-cum-tax counsel, which is not the latches or negligence on the part of the petitioners and same is beyond the control of the petitioners that could have allowed by the appellate authority but rejected the same. He also referred several judgments and orders passed by the co-ordinate Benches of this court in WPA 1504 of 2023 (Jayshree Bhardwah Vs. Dy Commissioner of Revenue WB State Tax & Ors), WPA 1372 of 2023 (Sadhan Mandal @ Mondal Vs. Jt. Commissioner of Revenue Appellate Authority GST Jalpaiguri Circle & Ors), ad in WPA 18515 of 2023 (Ajay Kumar Singh Vs. ASstt. Commissioner of State Tax. Howrah & Kadamtala & Ors.) to support his contention that Hon'ble High Court has condoned the delay and remanded back the matter to the appellate authority to hear the main matter after giving an opportunity of hearing to all the parties on merit.

Upon perusal of all the aforesaid orders passed by the High Court, it appears that Hon'ble High Court has condoned the delay of the writ petitioners, here also cause shown by the petitioner are sufficient, satisfactory and bonafide.

In such a situation, the writ petition is considered and allowed and the delay of 30 days is hereby condoned.

The impugned order dated September 4, 2023 appellate authority under West Bengal Goods Service Tax Act, 2017 is hereby set aside with a further direction to the appellate authority to take the appeal and decide the same on merit as expeditiously as possible, preferably within three months from the date of communication of this order.

It is made clear that this Court has not gone into the merits of the case. The appellate authority is free to decide the matter independently in accordance with law without being influenced by the observation made in this order.

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

Accordingly, WPA 2453 of 2023 is disposed of with the aforesaid observations and direction.

There will be no order as to costs.

Urgent Photostat certified copy of this order, if applied for be supplied to the learned advocates for the parties subject to compliance of all requisite formalities.

(**Ajay Kumar Gupta, J.)**