Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 8072 of 2022

Hari Om Arora
Versus
Union of India & Ors.

For the petitioner	:	Mr. Debdutta Raha Mr. Abhishek Bhandari
For the State	:	Md. T. M. Siddiqui Mr. Tanoy Chakraborty Mr. Saptak Sanyal
For the respondent-CGST	:	Mr. Vipul Kundalia Ms. Sangita Das Mr. Anindya Kanon
Heard on	:	11th July, 2024
Judgment on	:	**11th July, 2024**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter allia, praying for a direction upon the respondents to allow the petitioner to upload the input tax credit certificate in the web portal of the respondent authorities by condoning the delays in the petitioner's attempt to upload such certificate.

2. The petitioner carries on business under the name and style of M/s Mobile Care and is registered under the provisions of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act").

3. It is the petitioner's case, that on 11th November, 2021, the petitioner had prayed for transfer of his GST file from the 'composition scheme' to the normal scheme by filing an online application.

4. It is also the petitioner's case that the respondents had duly sanctioned the same. Accordingly, the petitioner was required to file and upload input tax credit certificate within 30 days from 11th November, 2021.

5. It is contended that by reasons of pandemic as also on the medical ground of the chartered accountant of the petitioner, the petitioner was otherwise prevented from uploading the said certificate within the time specified. However, immediately after his recovery when the chartered accountant attempted to upload the input tax credit certificate the same was not permitted and the following message displayed on the portal :-

> **"***Due date of filing claim of input tax credit through From GST ITC -01 under clauses (c)of sub-section (1) of Section 18 is over. The claim cannot be filed now.***"**

6. The petitioner submits that the chartered accountant had attempted to uploaded the said certificate on the portal on 12^{th} December, 2021 i.e. on the 32^{nd} day from the date of approval of the petitioner's application for withdrawal from composite scheme. Although, the petitioner had approached the respondent authorities praying for condonation of delay, the authorities did not condoned the delay, on the contrary, by a communication dated 21^{st} February, 2022 had held out that the petitioner's claim cannot be entertained.

7. Challenging the aforesaid communication/rejection of the petitioner's application for condonation of delay, the petitioner had filed a writ petition before this Court which was registered as WPA 3479 of 2022.

8. By an order dated 9^{th} March, 2022 a coordinate Bench of this Court, taking into consideration the grievance of the petitioner, was, inter alia, pleased to set aside the order of rejection, with a further direction upon the Joint Commissioner Commercial Tax/the respondent no.6, to pass a fresh order on the aforesaid application of the petitioner for condonation of delay, dated 17^{th} December, 2021.

9. It is in pursuance to the aforesaid, that the Joint Commissioner of Commercial Tax has been pleased to dispose of the petitioner's application for condonation of delay by an order

dated 1st April, 2022, thereby observing that having not come across any provision in the said Act or Rules which permitted him to condone the delay and he being a creature of the statute, and despite taking a lenient view was unable to condone the delay. On such ground, the petitioner's application was rejected.

10. Mr. Raha, learned advocate representing the petitioner submits that under peculiar circumstances as noted above, the application for condonation of delay dated 17th December, 2021 was made. From the tenor of the order dated 1st April, 2022, it would transpire that the explanation of the petitioner was found to be satisfactory, however, since, according to the Joint Commissioner, there was no sanction of law which permitted condonation of delay, the delay had not been condoned.

11. By placing before this Court a judgment delivered by the Hon'ble High Court of Judicature at Allahabad in the case of ***M/s Anupam Electricals And Electronics v. State of U.P. and Another***, reported in **2023:AHC:175105-DB**., it is submitted that in somewhat similar facts, the Division Bench of the Allahabad High Court was pleased to condone the delay in filing Form GST ITC 01.

12. Having regard to the aforesaid, he submits that the petitioner is a small businessman and unless, the aforesaid benefit of

input tax credit is given to the petitioner, the petitioner will suffer irreparable loss and injury.

13. Mr. Siddiqui, learned advocate enters appearance on behalf of the State GST and submits that the petitioner's case was duly considered by the authorities. The petitioner is required to file his return by making a declaration electronically on the common portal in Form GSTITC-01 as regards his eligibility to avail the input tax credit within the time specified in Rule 40(1)(b) of the West Bengal Goods and Services Tax Rules, 2017 (hereinafter referred to as the "said Rules"). Since, the petitioner did not apply within the time specified, there is no scope to condone the delay. In support of his contention, Mr. Siddiqui has placed reliance on the judgment delivered by the Hon'ble Privy Council in the case of ***Maqbul Ahmad & Ors. v. Onkar Pratap Narain Singh & Ors.***, reported in **AIR 1935 PC 85.**

14. Mr. Kundolia, learned advocate enters appearance on behalf of the CGST authority and adopts the submissions made by Mr. Siddiqui. He submits that in the instant case there is no scope to condone the delay.

15. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, it appears that the petitioner who is small businessman was dependent on his chartered accountant for filing his

return. It was the Covid-19 period. The petitioner had duly made an application for withdrawal from composition scheme. Such application of the petitioner was submitted on 12th November, 2021 and the same was approved by the authorities. Although, the petitioner was required to make a declaration electronically on the common portal in Form GSTITC-01 within 30 days from the date of approval, it appears that there was a delay of 2 days. The fact that the petitioner was prevented from submitting his return within the time specified is not called in question by the authorities/ by the Joint Commissioner. In fact, the Joint Commissioner has accepted the explanation given by the petitioner. The Joint Commissioner has, however, by his order dated 1st April, 2022 held that he did not come across any provision in the Act or Rules which permitted condonation of delay. In this context, it may be noted that a coordinate Bench of this Court by taking note of the case made out by the petitioner had by its order dated 9th March, 2022 directed the respondents to consider the petitioner's application for condonation of delay. In my view, once, such order was passed, it was the bounden duty of the respondents to proceed within the four corners of the direction issued by the coordinate Bench of this Court. The order passed by the Coordinate Bench was not challenged by the respondents by filing an appeal from the said order. Although, a defence is being sought to be set up by the respondents that there is no provision for condonation of delay, I am of the view, that the respondents cannot be permitted to raise such defence having not challenged the order dated 9th March, 2022. In any event, the aforesaid defence set up by the respondents is misconceived as would appear from Rule 40(1)(b) of the said Rules. To morefully appreciate the aforesaid provision, the same is extracted hereinbelow:-

> *"(b)The registered person shall within a period of 30 days from the date of becoming eligible to avail an input tax credit under sub-section (1) of Section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf shall make a declaration, electronically, on the common portal in Form GSTITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid.*
>
> *Provided that any extension of the time limit notified by the Commissioner of State Tax or the Commissioner of Union Territory, the tax shall be deemed to be notified by the Commissioner."*

16. The aforesaid provision specifically authorizes the Commissioner to extend the time. It is for such reasons that the coordinate Bench of this Court had specifically directed the Joint Commissioner to consider the aforesaid issue. The Commissioner, in my view, had not appropriately considered the same and had overlooked the aforesaid provision.

17. Although, Mr. Siddiqui, learned advocate by placing reliance of the judgment delivered by the Hon'ble Privy Council in the case of ***Maqbul Ahmad*** (supra) tried to submit that the discretion by the Court can be exercised provided the same is permissible within the four corners of the statute and not otherwise. I find, in the instant case, the statute itself recognizes the power to extend the time. Having regard thereto, I do not find that the aforesaid judgment delivered by the Hon'ble Privy Council in the case of ***Maqbul Ahmad*** (supra) to be applicable in the facts of this case. Since the statute itself recognizes the power to condone the delay, I am of the view that the Joint Commissioner ought to have appropriately considered the same, having regard to the direction issued by the coordinate Bench of this Court on 9th March, 2022.

18. Since, from the order dated 1st April, 2022 it would be apparent that the Joint Commissioner State Tax had accepted the explanation given by the petitioner and had found that the delay was condonable in the fact of the case, however, having not identified any provision in the Act or Rules, he did not allow the application, I am of the view, that in the peculiar circumstances, this is a fit case for directing to the respondent authorities to condone delay and permit the petitioner to file Form GSTITC01. For the said purpose, the respondents are

directed to issue appropriate order/direction so that the return can be filed by the petitioner.

19. With the above observations and directions the writ petition stands disposed of.

20. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

sb