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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10619 of 2024

Narendra Kumar Bothra
Versus
The Assistant Commissioner of State Tax,
Bowbazar Charge & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
... For the petitioner.

Mr. Anirban Ray
Mr. T. M. Siddiqui
Mr. T.Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu

... For the State

1. The present writ petition has been filed, inter alia, praying for leave to amend/rectify the GST returns for the period July, 2017 to March, 2018 either through Online or manual mode.

2. It is noticed that the order under Section 73 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act") had been passed on 2nd November, 2023 for the Financial Year 2017-18. The said order is an appealable order.

3. Mr. Sanyal, learned advocate representing the respondents has taken strong objection and submits that since an efficacious alternative remedy in the form of an

appeal under Section 107 of the said Act is available to the petitioner, the petitioner ought to approach the appellate authority at the first instance.

4. Mr. Choraria, learned advocate representing the petitioner submits that although, the appellate authority is competent to condone the delay and accept the appeal, unfortunately, the online portal is not permitting the petitioner to file an appeal since the statutory period of limitation has already expired. It is submitted that the online process after expiry of the period of limitation does not permit generation of Form GST APL-01.

5. The aforesaid submission is, however, disputed by Mr. Sanyal.

6. Having heard the learned advocates appearing for the respective parties and having considered the materials on record I am of the view that the petitioner at the first instance ought to approach the appellate authority since an efficacious alternative remedy in the form of an appeal under Section 107 of the said Act is available.

7. The contention of the petitioner that the appellate authority does not permit filing of an appeal beyond the prescribed period of limitation also cannot be accepted inasmuch as the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***S. K.***

Chakraborty & Sons v. Union of India reported in **2023 SCC Online Cal. 4759,** has held that the appellate authority is competent to admit an appeal by condoning the delay beyond one month from the prescribed period as provided for under Section 107(4) of the said Act.

8. Having regard to the aforesaid, I am of the view that no relief can be afforded to the petitioner in the present writ petition.

9. The aforesaid order shall, however, not stand in the way of the petitioner to file an appeal before the appellate authority. If the petitioner files an appeal within a period of two weeks from date along with an application for condonation of delay, appropriately explaining the delay, the appellate authority shall having due regard to the judgment delivered in the case of ***S. K. Chakraborty & Sons*** (supra) consider the said application and upon condoning the delay shall hear out the appeal on merits.

10. It is made clear that if online process does not permit admission of appeal beyond the statutory period of limitation, the petitioner shall be at liberty to file such appeal manually.

11. With the above observations and directions, the appeal stands disposed of.

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

(Raja Basu Chowdhury, J.)