Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 10849 of 2024

Surya Prakash Mahato
Versus
Deputy Commissioner of State Tax,
Bally & salkia Charge & Ors.

For the petitioner	:	Mr. Akash Agarwal
For the State	:	Mr. Md. T.M.Siddiqui Mr. Tanoy Chakraborty Mr. Saptak Sanyal
Heard on	:	9th May, 2024.
Judgment on	:	**9th May, 2024.**

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia*, challenging dismissal of the appeal preferred under Section 107 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act") by an order dated 28th February, 2024.

2. It is the petitioner's case that being aggrieved with the determination under Section 73(9) of the said Act dated 3rd July, 2023, the petitioner had filed an appeal under Section 107 of the said Act. Since, the said appeal which was otherwise barred by limitation not being accompanied by an application under

Section 5 of the Limitation Act, 1963, the Appellate Authority, by its order dated 28th February, 2024, was, *inter alia*, pleased to dismiss the said appeal.

3. The petitioner is, however, aggrieved by the findings arrived at by the Appellate Authority that it can only condone the delay provided the same is filed within one month from the prescribed period for filing of appeal.

4. Mr. Agarwal, learned advocate appearing for the petitioner by drawing attention of this Court to the provisions of Section 107(4) of the said Act submits that the Appellate Authority is competent to entertain an appeal beyond one month of the time prescribed, provided the same is accompanied by an application under Section 5 of the Limitation Act, 1963. He submits that although a show cause notice dated 21st February, 2024 was issued calling upon the petitioner to explain the delay, however, before the petitioner could file an application under Section 5 of the Limitation Act, 1963, the Appellate Authority, by its order dated 28th February, 2024, had taken up the appeal for hearing and had dismissed the same by the impugned order by, *inter alia*, observing that the delay in preferring the appeal has not been explained and that the petitioner had acted in violation of Sections 107(1) and 107(4) of the said Act. According to him, by the aforesaid order, the Appellate Authority had made it clear that no appeal can be entertained beyond one month from the

prescribed period of limitation provided for under the said Section. He submits that there was nothing in the provisions of the said Act which bars the Appellate Authority from exercising its jurisdiction to condone the delay beyond one month from the prescribed period as provided for in the said Act.

5. According to him, the aforesaid observation made by the Appellate Authority is contrary to the statute. By placing reliance on a judgment delivered by an 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**, it is submitted that the Division Bench while interpreting the provisions of the said Act, having regard to Section 29(2) of the Limitation Act, 1963 has held that since, there is no expressed or implied exclusion of Section 5 of the Limitation Act, by virtue of Section 29(2) of the Limitation Act, Section 5 of the Limitation Act, 1963 stands attracted. Having regard to the aforesaid, he submits that this Hon'ble Court may be pleased to set aside the order passed by the Appellate Authority in refusing to condone the delay and in the facts of the case, direct the Appellate Authority to hear out the appeal by condoning the delay.

6. Mr. Siddiqui, learned advocate appearing for the State respondents, on the other hand by drawing attention of this Court to the provisions of Section 107(4) of the said Act, submits that there is no power available to the Appellate Authority to

condone the delay beyond the period of one month from the prescribed period of 90 days, provided for in preferring the appeal. According to him, the said Act is a self-contained code and excludes the applicability of the provisions Section 5 of the Limitation Act, 1963. Though, the provisions of Section 5 of the Limitation Act, 1963 may not have been expressly excluded, the same stands impliedly excluded.

7. In support of his contention, Mr. Siddiqui by placing reliance on a judgment of the Hon'ble Allahabad High Court delivered by the learned Single Judge in the case of ***M/s Yadav Steels v. Additional Commissioner & Anr.****,* reported in **Neutral Citation 2024 AHC 26169,** submits that the judgment delivered by the Division Bench of this Court in the case of ***S.K. Chakraborty & Sons*** (supra) was considered by the learned Single Judge and by distinguishing the same, had concluded that taxing statutes like GST Act embody a comprehensive framework with specific limitation provisions tailored to expedite the resolution of tax-related matters. Section 107 of the said Act operates as a complete code in itself, explicitly delineating limitation periods for filing appeals and implicitly excluding the application of general limitation provisions such as Section 5 of the Limitation Act, 1963.

8. In this case as no application under Section 5 of the Limitation Act was filed, the appeal was dismissed. In any event since, the

appeal being filed beyond one month from the prescribed period, there was no opportunity available to the Appellate Authority to entertain the appeal. There is no irregularity on the part of the Appellate Authority in dismissing the appeal.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. The legal issue that falls for consideration in the present petition is whether the Appellate Authority has the jurisdiction and competence to condone the delay beyond the prescribed period of one month provided for filing an appeal under Section 107(4) of the said Act.

10. It may be noticed that an identical issue had fell for consideration before the Hon'ble Division Bench of this Court in the case of ***S.K. Chakraborty & Sons*** (supra). The Division Bench of this Court, while considering the scope and ambit of Section 107 of the said Act and the applicability of Section 5 of the Limitation Act, 1963 on the basis of the provisions contained in Section 29(2) of the Limitation Act, and by placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper & Anr. v. Excise and Taxation Officer Sunder Nagar/Assessing Authority*** reported in **(2020) 17 SCC 692**, had concluded that in absence of non obstante clause rendering Section 29(2) of the Limitation Act, 1963, non applicable and in absence of specific exclusion of

Section 5 of the Limitation Act, 1963, it would be improper to read implied exclusion thereof. Having regard to the above, in my view the Appellate Authority is not denude of its power to condone the delay beyond one month from the prescribed period of limitation as provided for in Section 107(4) of the said Act.

11. It also appears that another Hon'ble Division Bench of this Court in the case of ***Kajal Dutta v. Assistant Commissioner of State Tax, Suri Charge and Ors***. reported in **(2023) 97 GST154 (Calcutta)** had while considering the provisions of Section 107(4) of the said Act, held that the statute does not state that beyond the prescribed period of limitation, the Appellate Authority cannot exercise jurisdiction.

12. In the light of the above, the judgment delivered by the learned Single Judge of Allahabad High Court in the case of ***M/s Yadav Steel*** (supra) does not appear to be persuasive enough.

13. Having regard to the aforesaid, I find that the observations made by the Appellate Authority that it can condone the delay, provided the same is presented within a period of one month from the prescribed period, cannot be sustained and the same is accordingly set aside.

14. At the same time it may be noticed that the petitioner did not file any application for condonation of delay before the Appellate Authority. There is also a show cause notice calling upon the petitioner to explain the delay. The petitioner, however, says that

before the application under Section 5 of the Limitation Act could be filed the appeal was dismissed on the ground of limitation without giving reasonable opportunity to the petitioner.

15. Be that as it may and without going into the controversy as to whether the petitioner had been prevented by sufficient cause from filing the appeal within the prescribed period, I am of the view that it is for the Appellate Authority to consider the same. As such, this Court cannot consider whether any sufficient cause has been made out by the petitioner for condoning the delay since no application for condonation of delay had been filed.

16. Having regard to the aforesaid, I find that no relief can be granted in favour of the petitioner at this stage. The writ petition is accordingly disposed of.

17. However, the aforesaid order shall not prevent the petitioner from applying before the Appellate Authority by filing appropriate application praying for condonation of delay. If such application is filed by the petitioner within a period of two weeks from date, appropriately explaining the delay in filing the appeal beyond the prescribed period of limitation, the Appellate Authority shall consider the same in accordance with law and in the light of the observations made hereinabove.

18. Since no affidavit-in-opposition has been called for, the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

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

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)