

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

**W.P.A 11438 of 2024
Subhabrata Mukherjee
Versus
Senior Joint Commissioner of Revenue
State Tax, Asansol Circle & Ors.**

For the petitioner	:	Mr. Sandip Choraria Mr. Rishav Manna
For the State	:	Mr. Anirban Ray, Mr. Md. T. M. Siddiqui Mr. Tanoy Chakraborty Mr. Saptak Sanyal Mr. Debraj Sahu
Heard on	:	27 th June, 2024
Judgment on	:	27th June, 2024

Raja Basu Chowdhury, J:

1. Supplementary affidavit filed in Court today on behalf of the petitioner is taken on record.
2. The present writ petition has been filed, inter alia, challenging the order dated 27th February, 2024, whereby the appeal filed by the petitioner under Section 107 of the West Bengal/Central Goods

and Services Tax Act, 2017 (hereinafter referred to as the said Act) had been rejected.

3. The petitioner claims to be the sole proprietor of M/s. Snehangi Traders, which is duly registered under the provisions of the said Act.
4. The petitioner contends that the petitioner has been regularly complying with the provisions of the said Act. Incidentally, on or about 8th June, 2023, the petitioner was served with a show cause notice under Section 73 of the said Act alleging short-payment/non-payment of tax for tax period July, 2017 to March, 2018. The same culminated in the order dated 12th July, 2023 passed under Section 73(9) of the said Act. The petitioner, however, claims to be unaware with regard to the aforesaid till such time the notice for recovery of tax under Section 79 of the said Act was served on the petitioner's e- mail on 29th October, 2023.
5. Being aggrieved, the petitioner had preferred an appeal before the appellate authority under Section 107 of the said Act and had also made payment of the pre-deposit as required under Section 107(6) of the said Act. The said appeal was accompanied by a detailed application explaining the delay in filing the same.
6. According to the petitioner, there was a delay of 73 days, excluding the prescribed period and a month thereafter for filing the appeal. The delay, according to the petitioner had occasioned

by reasons of the petitioner not having knowledge with regard to the factum of issuance of the show-cause notice and with regard to the lack of knowledge as regards the factum of passing of the order under Section 73(9) of the said Act, until service of email on 29th October, 2023.

7. Mr. Choraria, learned advocate representing the petitioner by drawing attention of this Court to the statements made in the application for condonation of delay, inter alia, including those made in the supplementary affidavit, submits that not only the show cause notice but the final order passed under Section 73(9) of the said Act was not available for viewing on the “view notices” tab but was only available on “additional view notices” section. The petitioner, being unaware with regard to the same, could not take appropriate steps in the matter. It is still further submitted that the petitioner was also unwell during the relevant period and in support thereof, a medical certificate issued by a qualified doctor had been disclosed.
8. By placing reliance on a judgment delivered by the Hon’ble High Court of Delhi at New Delhi, in the case of **Anhad Impex Through its Partner & Anr. v. Assistant Commissioner Ward 16 Zone 2 Delhi & Ors.** (W.P.(C) 2356/2024 & CM. APPL. 9755-56/2024) on 16th February, 2024, it is submitted that in a similar case where the impugned order was only available for viewing on “additional view notices” tab instead of “view notices” tab, the

Hon'ble Delhi High Court was pleased to set aside the same and remand the matter back to the authorities on the ground that the registered tax payer had been prevented from responding to the show-cause notice, by reasons of lack of knowledge, which constitute violation of principles of natural justice.

9. By placing reliance on the impugned order it is submitted that on one hand the petitioner had been prevented from responding to the show-cause notice and on the other the appellate authority by ignoring the case made out by the petitioner had purported to reject the said appeal by concluding there is no reasonable cause for the petitioner to file the appeal beyond one month of the time prescribed for preferring an appeal.
10. In the facts as noted hereinabove, the impugned order including the order passed under Section 73(9) of the said Act, cannot be sustained and the same should be set aside and an opportunity should be afforded to the petitioner to respond to the said show cause.
11. Mr. Sanyal, learned advocate representing the respondents on the other hand submits that the respondents have no control as to where the show cause notice and the order shall be uploaded on the portal. The aforesaid show-cause notice and the order are uploaded by GSTIN Network. The petitioner has not made the GSTIN Network a party. As such, without seeking a response from

GSTIN network, no order should be passed in the present petition.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case, a show cause notice under Section 73 of the said Act, dated 8th June, 2023 had been issued. The petitioner contends that the petitioner did not get opportunity to respond to the same since, the same was not available for viewing on the “view notices” tab. In absence of any response being filed by the petitioner, the adjudication order under Section 73(9) of the said Act was passed by the proper officer. Incidentally, such order was also not available in the “view notices” section of the portal and the same was available on the “view additional notices” tab of the portal. The petitioner claims that it had acquired knowledge with regard to the factum of passing of the aforesaid order only when the e-mail communication dated 29th October, 2023, in connection with a notice for recovery of tax issued under Section 79 of the said Act was served. I find that it is also a matter of record that the petitioner preferred an appeal and had also made pre-deposit as required under Section 107(6) of the said Act. A detailed explanation as to why the appeal had been filed out of time had been provided. The aforesaid aspect, unfortunately, had not been appropriately considered by the appellate authority who had proceeded to mechanically observe, inasmuch as, the petitioner

had filed the appeal after a gap of six months and twelve days, there was no reasonable cause for the delay. Although Mr. Choraria, learned advocate representing the petitioner by placing reliance on the judgment in the case of **Anhad Impex Through its Partner & Anr.** (supra), tried to impress upon this Court that the initial determination made by the proper officer under Section 73(9) of the said Act, cannot be sustained by reasons of failure of principle of natural justice, I am of the view that it is a little late in the day for the petitioner to challenge the same before this Hon'ble Court in exercise of its extraordinary writ jurisdiction after having filed an appeal under Section 107 of the said Act. I, however, notice that the appellate authority had mechanically rejected the petitioner's application for condonation of delay as well as the appeal. The fact that the petitioner was prevented from filing the appeal within the time prescribed had not been considered. Lack of knowledge, as regards passing of the aforesaid order, had not been considered by the appellate authority. The order impugned thus, appears to be perverse.

13. It may be relevant to note that it has already been held by the Hon'ble Division Bench of this Court in the case of **S. K. Chakraborty & Sons v. Union of India & Ors.**, reported in **2023 SCC OnLine Cal 4759** that the appellate authority is competent to hear an appeal by condoning the delay beyond one month from the prescribed period as provided in Section 107(4) of

the said Act. Having regard to the aforesaid, I am of the view that the order dated 27th February, 2024, passed by the appellate authority, cannot be sustained and the same is accordingly set aside.

14. Having considered the explanation offered by the petitioner, I am of the view that no useful purpose will be served by remanding the matter to the appellate authority to reconsider the application for condonation of delay. Since, the explanation provided by the petitioner appears to be sufficient, by condoning the delay, I direct the appellate authority to hear out and dispose of the appeal on merit after giving the petitioner an opportunity of hearing, preferably within a period of eight weeks from the date of communication of this order.
15. With the above observations and directions, the writ petition is disposed of.
16. Since no affidavit-in-opposition has been called for, the allegation made in the writ petition are deemed not to have been admitted by the respondents.
17. 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.)