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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11515 of 2024

M/s. Deb EI Shipping Agency Private Limited

The State of West Bengal & Ors.

Mr. Aditya Dutta
Mr. Akash Dutta
... For the petitioner

Mr. A. Ray
Mr. T. M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
... For the State.

1. The present writ petition has been filed, *inter alia,* challenging the order dated 11th March, 2024 passed by the appellate authority under the provisions of West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act").

2. It is the petitioner's case that pursuant to a show cause notice, issued under Section 74 of the said Act on 8th September, 2023, in respect of the tax period April, 2018 to March, 2021, an order under Section 74(9) of the said Act dated 13th October, 2023 was passed.

3. Being aggrieved, the petitioner had preferred an appeal in terms of Section 107 of the said Act. Consequent there upon Form GSTAPL-01 was

issued. Simultaneously, with the filing of the aforesaid appeal, the petitioner had made a pre-deposit as required under Section 107(6) of the said Act. In the said appeal petition, the petitioner had also prayed for condonation of delay of 10 days in preferring the said appeal. Independent of the aforesaid, an application in the form of a letter dated 15th February, 2024 was also filed explaining the delay in filing the appeal. The appellate authority, however, by its order dated 11th March, 2024, despite acknowledging the factum of the petitioner praying for condonation of delay, refused to accept the same, inasmuch as, the petitioner despite being called upon to appear on 11th March, 2024, had failed to appear on the said date.

4. Mr. Dutta, learned advocate representing the petitioner by placing before this Court the explanation given by the petitioner for the delay in preferring the appeal, which also forms part of the appeal, submits that the appellate authority did not consider the grounds on which the petitioner had sought for condonation of the delay. There is no reflection in the order that the appellate authority had considered the explanation given by the petitioner. It is submitted that the petitioner had been able to sufficiently explain the delay,

notwithstanding the aforesaid, the appeal had been rejected on the ground of delay. In the facts, it is submitted that this Hon'ble Court may be pleased to set aside the order dated 11th March, 2024 and by condoning the delay regularize the appeal and direct the appellate authority to hear out and dispose of the same on merits.

5. Mr. Sanyal, learned advocate representing the respondents on the other hand submits that although, the petitioner was called upon to appear before the authorities on 11th March, 2024 at 11.30 a.m., none appeared on behalf of the petitioner. Since the petitioner chose not to present itself before the appellate authority and/or explain the delay in preferring the appeal, the order passed by the appellate authority dated 11th March, 2024 rejecting the appeal cannot be said to be irregular. No interference is called for.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. From the annexures to Form GSTAPL-01 filed by the petitioner, it would appear that the petitioner had categorically stated in paragraph 17 thereof, not only the period of delay but the reasons for delay. From the above, it would appear that there is delay of 10 days in preferring the appeal.

The petitioner had also explained the delay. Independent of the above, a further letter was also filed with the Assistant Commissioner of State Tax explaining the delay. The aforesaid explanation given by the petitioner has not been considered by the appellate authority. The appellate authority in the order impugned despite recording that the petitioner's advocate appeared before him and had a prayer for condonation of delay on 7th March, 2024, however, since none appeared on 11th March, 2024, such prayer for condonation of delay was not accepted. In my view, the appellate authority ought to have, in the given facts taken note of the explanation given by the petitioner praying for condonation of delay. The appellate authority having not considered the same and having mechanically rejected the said prayer, the aforesaid order dated 11th March, 2024 in my view cannot be sustained and the same is accordingly set aside.

7. Having regard to the judgment delivered by the 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** : **(2024) 123 GSTR 229** there cannot be any doubt as regards the power of the Appellate Authority under Section 107 of the said Act to condone the delay beyond one month of

the time prescribed. I find that the delay is only 10 days beyond one month from the time prescribed. Admittedly, the petitioner had made pre-deposit as required for maintaining the appeal under Section 107 of the said Act. Taking into consideration the aforesaid and the explanation given by the petitioner, I find that the petitioner has been able to sufficiently explain the delay in filing the above appeal.

8. In view thereof, the appeal is restored to its original file by condoning the delay.

9. The appellate authority is directed to hear out and dispose of the same on merit, preferably within a period of eight weeks from the date of communication of this order upon giving an opportunity of hearing to the petitioner.

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

11. There shall be no order as to costs.

12. 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.)