14.05.2024
Item No.
ML-82
Court No.5
Saswata

W.P.A. 11586 of 2024

Jharna Das
Versus
The Joint Commissioner of State Tax, Bureau of Investigation (South Bengal), Durgapur Zone & Ors.

Mr. Avra Mozumder
Mr. Suman Bhowmik
Ms. Alisha Das
Ms. Elina Dey
...For the petitioner
Mr. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. Debraj Sahu
Mr. Nilotpal Chatterjee
...For the State

1. The present writ petition has been filed, inter alia, questioning the purported rejection of the appeal filed under Section 107 of the GST Act, 2017 (hereinafter referred to as the "said Act") vide form GST APL-02.
2. Mr. Mozumder, learned advocate appearing for the petitioner submits that being aggrieved by the order dated 6th September 2023 passed under Section 74(9) of the said Act, the petitioner had filed an appeal on 29th February 2024, as would appear from form GST APL-01.
3. By drawing attention of this Court to page 41 of the writ petition, it is submitted that when the aforesaid appeal was filed along with 10 per cent pre-deposit of the disputed amount of tax, a system generated provisional acknowledgement form as proof of submission of the appeal was issued. Subsequently, when the acknowledgement for submission of appeal was issued in form GST APL – 02, the petitioner

came to learn that the appeal, itself, has been rejected on the ground of delay. It is submitted that before the petitioner could file an application under Section 5 of the Limitation Act, 1963 praying for condonation of delay in filing the appeal, the form GST APL-02 has been uploaded with the remark *"Reason for rejection – Delay in submission of Appeal"*.

4. According to the petitioner, the petitioner has not only a statutory right to prefer an appeal but also has a right to seek condonation of delay in preferring the appeal. No reasons apart from the reason noted above had been assigned by the appellate authority while rejecting the aforesaid appeal. The aforesaid order is bad in law, cannot be sustained and should be set aside.

5. Mr. Siddiqui, learned advocate enters appearance on behalf of the State and opposes the petition.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record.

7. Records reveal that being aggrieved by the order dated 6th September 2023 passed under Section 74(9) of the said Act, the appeal under Section 107 of the said Act was filed. In terms of rule 108 of the CGST Rules, 2017 the date of filing of the appeal relates back to the date of issuance of acknowledgement form GST APL-01, provided the certified copy of the decision or order appealed against is submitted within seven days of filing the

appeal, and in other cases the date of filing shall be from the date when the final acknowledgment of filing of the appeal in form GST APL – 02 is issued.

8. Admittedly, in this case when the final acknowledgment in form GST APL – 02 was issued, the same was issued with the order of rejection of the appeal on the ground of delay. In my view, the appeal was obviously barred by time. However, the same could not have prevented the petitioner from filing an application under Section 5 of the Limitation Act, 1963. In the facts as noted hereinabove, I am of the view that the appellate authority ought to have afforded the petitioner an opportunity to file an application under Section 5 of the Limitation Act, 1963 for the purpose of seeking condonation of delay in filing the appeal.

9. Be that as it may, since the petitioner has a statutory right and has already made the pre deposit as required under Section 107(6) of the said Act and the appeal has been rejected on the sole ground of delay, I am of the view that an opportunity should be afforded to the petitioner to explain the delay, especially when the delay in filing the appeal is only marginal.

10. Having regard to the aforesaid, while setting aside the order of rejection of the appeal dated 29th February 2024 as appearing in form GST APL- 02, I grant liberty to the petitioner to file an application under Section 5 of the Limitation Act, 1963. If such application praying for condonation of delay is filed

within a period of two weeks from date, the appellate authority shall hear out and dispose of the said application in accordance with law and in light of the judgment delivered 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**. In the event, the petitioner is able to satisfactorily explain the delay, the appellate authority, upon recording such satisfaction, shall proceed to hear out and dispose of the appeal on merit within a period of two months from the date of disposal of the application under Section 5 of the Limitation Act, 1963.

11. With the above directions and observations, the writ petition being WPA 11586 of 2024 is accordingly disposed of.

12. Since, I have not called for any affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

13. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)