M/L 86
**16.05.2024**
sb
Ct 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

**WPA 11649 of 2024**

Sushil Kumar Hazra
Versus
The State of West Bengal & Ors.

Mr. Atanu Basu
Mr. Indranuj Dutta
... For the petitioner.

Mr. Anirban Ray
Mr. T. M. Siddiqui
Mr. Debraj Sahu
... For the State

1. Affidavit of service filed in Court today is taken on record.

2. Challenging the adjudication order dated 5th September, 2023, passed under Section 73 of the Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), issued in Form DRC-07, an appeal was filed before the Appellate Authority on 6th February, 2024. Admittedly, the said appeal was barred by limitation.

3. Pursuant to a show cause dated 16th February, 2024, the petitioner had not only submitted a response explaining the delay in filing the appeal but also appeared before the Appellate Authority and had made submission

explaining the delay.

4. Records reveal that the Appellate Authority under Section 107 of the said Act, by the order impugned was, inter alia, pleased to reject the said appeal on the grounds that there is no provision under Section 107 of the said Act to accept the appeal after one month of prescribed period of limitation as provided under Section 107(4) of the said Act.

5. Mr. Basu, learned advocate representing the petitioner by placing before this Court the judgment delivered by the Division Bench of this Hon'ble Court in the case of ***S. K. Chakraborty & Sons v. Union of India*** reported in **2023 SCC Online Cal. 4759,** submits that the Appellate Authority had failed to exercise jurisdiction in refusing to condone the delay despite taking note of the explanation given by the petitioner that he was otherwise prevented by sufficient cause from filing the appeal within the time prescribed.

6. Mr. Siddiqui, learned advocate enters appearance on behalf of the respondents. He submits that the Appellate Authority had taken into consideration the explanation give by the petitioner, however, the same was disbelieved by the Appellate Authority.

7. Heard the learned advocates appearing for the

respective parties and considered the materials on record. Admittedly, in this case the appeal preferred by the petitioner before the Appellate Authority was barred by limitation since, the same was filed beyond the time prescribed. The petitioner had, however, in response to the show cause notice had explained the delay in filing the appeal. It appears that condonation of delay was sought for on medical reasons. Although, the appellate authority did not disbelieve the medical certificate, however, had arrived at a conclusion since the petitioner could carry on business, there was no reason for the petitioner not to file the appeal within the prescribed period. Despite observing as such, the Appellate Authority, however, proceeded to dismiss the appeal by holding that there is no provision laid down under Section 107 of the said Act to accept an appeal after one month from the prescribed period of limitation. In this context I may note that the issue whether an appeal can be entertained beyond one month from the prescribed period of limitation has already been decided by the Hon'ble Division Bench of this Court in the case of ***S. K. Chakraborty & Sons*** (supra).

8. Having regard to the aforesaid, I am of the view that the Appellate Authority had failed to exercise the jurisdiction vested in it in refusing to consider the application for condonation of delay on the ground that the same was filed beyond one month from the prescribed

period of limitation.

9. On the aspect of disbelieving the petitioner I find that the Appellate Authority had chosen not to question the medical certificate produced by the petitioner. Once, the Appellate Authority had accepted the medical certificate, there was nothing on record for the Appellate Authority to conclude since the petitioner could carry on business despite illness by submission of GSTR-1 and GSTR-3B in due time, the illness could not be a reason for the petitioner not to file the appeal in time. In my view the petitioner cannot be penalized for complying with the statutory obligations. Since, on the disclosure made by the petitioner it is apparent that the petitioner was prevented by medical reasons from filing the aforesaid appeal in time, in my view, the Appellate Authority ought to have, by taking the same into consideration condoned the delay. The discretion exercised by the Appellate Authority in refusing to accept the explanation does not appear to be justifiable, rather arbitrary. Having regard to the same, I am of the view that the delay in preferring the appeal should be and is accordingly condoned.

10. In view thereof, the order passed in Form GSTAPL-02 dated 6th March, 2024 is set aside. The appeal is restored to its original file and number.

11. The Appellate Authority shall hear out and dispose

of the appeal on merit after giving an opportunity of hearing to the petitioner as expeditiously as possible, preferably within a period of six weeks from the date of communication of this order.

12. Since, it is submitted by the learned advocate representing the petitioner that a sum of Rs.5,16,348/- has already been debited from the petitioners electronic cash/ credit ledger consequent upon dismissal of the aforesaid appeal, the said issue is kept open for the same to be duly taken care of by the Appellate Authority while disposing of the aforesaid appeal.

13. With the above observations and directions, the writ petition is disposed of.

14. There shall be no order as to costs.

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.)**