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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 12250 of 2024

Acme Paints and Resin Private Limited
Versus
The Deputy Commissioner of Revenue,
State Tax & Ors.

Mr. Debanuj Basu Thakur
... For the petitioner.

Mr. Anirban Ray, Ld GP,
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Debraj Sahu
... For the respondents.

1. The present writ petition has been filed, inter alia, challenging the order dated 15th March, 2024, passed by the appellate authority under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the “said Act”)
2. It is the petitioner’s case that being aggrieved by the order dated 14th August, 2023, passed under Section 73(9) of the said Act, the petitioner had filed an appeal before the appellate authority. Simultaneously, with the filing of the appeal, the petitioner had also made pre-deposit of Rs.1,76,141/-in terms of provisions of Section 107(6) of the said Act, as is required for maintaining the appeal. The said appeal was, however, filed

beyond the time prescribed for filing of an appeal as provided for under Section 107(4) of the said Act. It appears that the petitioner could not appropriately explain the delay in filing the appeal. It is on such ground, the appeal had been rejected.

3. Mr. Basu Thakur, learned advocate representing the petitioner submits that the petitioner had been prevented from preferring the appeal within the time prescribed. It is contended that the petitioner's accountant who deals with all tax matters had overlooked the aforesaid order on the portal. It is submitted that the petitioner has good grounds for preferring the appeal and has a fair chance of success. The aforesaid appeal should not be rejected on technical grounds.
4. Mr. Siddiqui, learned advocate representing the respondents submits that the appeal was filed belatedly. There is no proper explanation for condonation of delay. In the facts as noted hereinabove, there is no irregularity on the part of the appellate authority in rejecting the appeal on the ground of limitation.
5. Heard the learned advocates appearing for the respective parties and considered the materials on record. It appears that being aggrieved by the order

dated 14th August, 2023, passed under Section 73(9) of the said Act an appeal had been filed. Simultaneously, with the filing of the appeal, the petitioner had also made a pre-deposit of Rs.1,76,141/-. As such, from the above, it cannot be said that there is any lack of *bona fide* on the part of the petitioner. The petitioner claims that by reasons of oversight on the part of its accountant, the appeal could not be filed on time. The aforesaid explanation though, does not appear to be adequate, however, for the end of justice and taking into consideration of the fact that the petitioner may have merits in the appeal and the petitioner having deposited the pre-deposit amount, I propose to and do hereby set aside the order dated 15th March, 2024, subject to the petitioner's making payment of cost of Rs.25,000/- with the concerned GST authorities.

6. If the petitioner makes the aforesaid payment within a period of two weeks from date and files an application praying for condonation of delay, before the appellate authority disclosing the receipt of payment costs, the appellate authority shall condone the delay and hear out the appeal on merits upon giving an opportunity of hearing to the petitioner. It is made clear that the aforesaid direction is

peremptory.

7. In the event, the petitioner fails to comply with the direction indicated hereinabove, the petitioner shall not be entitled to the benefit of this order and the writ petition shall stand automatically dismissed without any further reference to the petitioner.
8. With the above observations and directions, the writ petition is disposed of.
9. There shall be no order as to costs.
10. 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.)