Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 12141 of 2024
Saha Construction
Versus
The State Tax Officer, Serampore Charge & Ors.

For the petitioner	:	Mr. Sandip Choraria Mr. Rajiv Pareek Mr. Rishav Manna
For the State	:	Mr. Anirban Ray, Ld. GP Mr. T.M.Siddiqui Mr. Tanoy Chakraborty Mr. Saptak Sanyal
Heard on	:	4th July, 2024
Judgment on	**:**	**4th July, 2024**.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order dated 28th March 2024 passed by the appellate authority under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act").

2. It is the petitioner's case that challenging the order dated 9th October 2023 passed under Section 73(9) of the said Act, an appeal had been filed before the appellate authority on 22nd February 2024

along with the pre-deposit as is required for maintaining the appeal. Simultaneously, the petitioner had also filed a separate application for condonation of delay explaining in detail, the grounds on which the petitioner had sought for condonation of delay. It appears that a delay of 13 days had occurred due to medical reasons.

3. At the time of hearing of the aforesaid appeal the petitioner had placed relevant documents to substantiate its claim of illness. Records reveal that the appellate authority despite acknowledging the medical treatment documents submitted by the petitioner, had rejected the said appeal since the same was delayed by more than 4 months from the date of the order against which the appeal was filed.

4. Mr. Choraria, learned advocate appearing for the petitioner submits that the aforesaid order has been passed based on complete non application of mind. The petitioner had appropriately explained the delay in filing the appeal. Unfortunately, by glossing over the reasons for delay and the medical documents, the appellate authority had rejected the appeal.

5. Mr. Ray, learned Government Pleader enters appearance on behalf of the State respondents.

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

7. In this case it is noticed that despite there being an application for condonation of delay, the appellate authority by glossing over the

same had purported to reject the appeal on the ground that the appeal was delayed by more than 4 months. From the order impugned it would appear that the appellate authority despite acknowledging the fact that the main reason for delay in filing the appeal was due to medical treatment and by placing reliance on the provisions of Section 107(4) of the said Act, by observing the petitioner having filed the appeal beyond the time prescribed, had dismissed the same. The aforesaid order not only appears to be mechanical but contrary to the repetitive directives issued by this Court in the case of ***Mukul Islam v. The Assistant Commissioner of Revenue, State Tax Cooch Behar range & Ors. (WPA 917 of 2024)*** as also by the Hon'ble Division Bench of this Court in the case of ***S.K.Chakraborty & Sons versus Union of India***[1].

8. It is elementary that when an application for condonation of delay is filed, the appellate authority is obliged to consider the same. Unfortunately, in this case the appellate authority, despite acknowledging the fact that the reason for delay was the medical treatment of the petitioner and by holding that the appeal had been filed beyond the time prescribed as provided for in Section 107(4) of the said Act, had been pleased to reject the same. In my view, the aforesaid order is perverse to say the least and based on complete non application of mind. The same is accordingly set aside. I find that the petitioner has been able to sufficiently explain the delay in filing the appeal.

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[1] (2024) 123 GSTR 229

9. Having regard to the aforesaid and by condoning the delay in preferring the appeal, I direct the appellate authority to hear out and dispose of the appeal on merits upon giving opportunity of hearing to the petitioner, within a period of 8 weeks from the date of communication of this order.

10. With the above directions and observations, the writ petition being WPA 12141 of 2024 is 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 of necessary formalities.

(Raja Basu Chowdhury, J.)

Saswata (AR)