

17.05.2024
Item No.
ML-102
Court No.5
Saswata

W.P.A. 12611 of 2024

Gour Mohan Bera

-vs-

The State of West Bengal & Ors.

Mr. Siddhartha P. Datta

...For the petitioner

Mr. Md. T.M.Siddiqui

Mr. Tanoy Chakraborty

Mr. Saptak Sanyal

...For the State

1. Affidavit of service filed in Court today is retained with the record.
2. Challenging the order dated 8th June 2023 passed under Section WBGST/CGST Act 2017 (hereinafter referred to as the “said Act”), the petitioner had filed an appeal on 9th December 2023.
3. Admittedly, the appeal was barred by time as the same was filed beyond the prescribed period of limitation. The petitioner, however, along with the aforesaid appeal had filed an application for condonation of delay. The appellate authority by an order dated 20th December 2023 has proceeded to dismiss the said appeal. Although it has been recorded that the delay is more than 6 months from the date of communication of the order, yet the reasons for rejection of the appeal as follows:-

“Appellant has violated the provision of section 107(1) of the WBGST/CGST ACT,

2017. The time limit specified for acceptance of appeal petition u/s 107(4) of the WBGST/CGST Act, 2017 has been crossed.

Hence, the appeal petition vide no. AD 191223006093J; Dated 09.12.2023 is rejected.”

4. The petitioner says that the appellate authority ought to have properly considered the application for condonation of delay as there is no bar for considering the application under Section 5 of the Limitation Act. In the backdrop as aforesaid he prays that upon consideration of the explanation, the delay may be condoned and the appeal be heard out on merits as the petitioner has a strong case on merits.
5. Mr. Siddiqui, learned advocate enters appearance for the State.
6. Heard the learned advocates appearing for the respective parties and considered the materials on record.
7. The issue whether the appellate authority can accept an appeal beyond the time prescribed under Section 107(4) of the said Act has already been decided by the Hon’ble Division Bench of this Court in the case of **S.K.Chakraborty & Sons versus Union of India & Ors.** reported in **2023 SCC online Cal 4759.**

8. Having regard to the aforesaid it is apparent and clear that the appellate authority has failed to exercise jurisdiction vested in it. I also find that the appellate authority ought to have appropriately considered the explanation given by the petitioner.
9. I have considered both the written and oral explanation given by the petitioner for condoning the delay in filing the appeal under Section 107 of the said Act. Although, the explanation does not appear to be entirely satisfactory, however, for the ends of justice I am of the view that the delay in filing the appeal under Section 107 of the said Act should be and is accordingly condoned and the order dated 20th December 2023 issued in Form GST APL-02 stands set aside. The appeal is accordingly restored to its original file and number.
10. The appellate authority shall hear out and dispose of the said appeal preferably within a period of 6 weeks from the date of communication of this order upon giving an opportunity of hearing to the petitioner.
11. With the above observations and directions, the writ petition being WPA 12611 of 2024 is disposed of without any order as to costs.
12. Since, I have not called for any affidavits the allegations made in the instant writ petition are

deemed not to have been admitted by the respondents.

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

(Raja Basu Chowdhury, J.)