Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 13300 of 2024

Farinni Leather Private Limited
Versus
The Joint Commissioner of State Tax,
Park Street Charge, Directorate of Commercial Taxes & Ors.

For the petitioner	:	Mr. Rajarshi Chatterjee
For the State	:	Mr. Anirban Ray Mr. T. M. Siddiqui Mr. Tanoy Chakraborty
Heard on	:	9th July, 2024
Judgment on	:	**9th July, 2024**

Raja Basu Chowdhury, J:

1. Challenging the order of rejection of an appeal, by an order dated 28th March, 2024 by the appellate authority under Section 107 of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), the present writ petition has been filed.

2. Mr. Chatterjee, learned advocate representing the petitioner by drawing attention of this Court to order passed by the appellate authority submits that the appellate authority had mechanically

rejected the said appeal by, inter alia, observing that the appellate authority is only competent to condone the delay provided the same is filed within the period of one month beyond the time prescribed for maintaining the appeal under Section 107 of the said Act.

3. It is submitted that being aggrieved by an order dated 16th October, 2023, passed under Section 73(9) of the said Act, for the tax period July, 2017 to March, 2018, the aforesaid appeal had been filed. That there are good grounds for maintaining the appeal.

4. Simultaneously, with the filing of the appeal, the petitioner had also made pre-deposit as is required for maintaining the appeal under the provisions of the said Act. Unfortunately, the appellate authority by overlooking judgment delivered by the Hon'ble Division Bench of this Court in the case of ***S. K. Chakaraborty & Sons v. Union of India & Ors***, reported in **2023 SCC Online Cal 4759** had purported to reject the appeal, although, the petitioner in its application for condonation of delay had sufficiently explained the delay in preferring the appeal.

5. Mr. Siddiqui, learned advocate enters appearance on behalf of the State-respondents.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case, it would

transpire that being aggrieved by the order dated 16th October, 2023 passed under Section 73(9) of the said Act for the tax period July, 2017 to March, 2018, the petitioner had preferred an appeal. While preferring the appeal, the petitioner had also made a pre-deposit of Rs.1,81,640/-as is required for maintaining the appeal under the provisions of the said Act.

7. Having regard to the aforesaid, it cannot be said that there was or is lack of *bona fide* on the part of the petitioner in preferring the appeal.

8. From the application for condonation of delay filed by petitioner before the appellate authority, it would transpire that there was a delay of 17 days in filing the said appeal and the same was due to the medical reasons. From the documents disclosed by the petitioner it appears that the petitioner's advocate, by reasons of his father's illness, could not prepare the appeal in time. It is submitted that the petitioner's advocate's father ultimately, succumbed to the illness and expired on 17th February, 2024. The aforesaid had occasioned the delay in preferring the appeal.

9. Although, the petitioner had taken all steps to have the appeal filed within the time prescribed, unfortunately, by reasons of the circumstances which are beyond the control of the petitioner, the delay had occasioned. The appellate authority had glossed over the aforesaid explanation given by the petitioner and had

purported to reject the appeal, inter alia, on the ground that the appellate authority is only competent to condone the delay provided the same is filed within the period of one month beyond the time prescribed.

10. I find that the aforesaid observations made by the appellate authority are inconsistent with the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***S. K. Chakraborty & Sons*** (supra), which recognises the right to condone the delay in filing the appeal in appropriate cases.

11. Having regard to the observations made in the said judgment and taking note of the explanation given by the petitioner, I am of the view, that the petitioner, having sufficiently explained the delay, the appellate authority ought to have appropriately considered the same. There appears to be a jurisdictional error on the part of the appellate authority in failing to consider the petitioner's application for condonation of delay.

12. In view thereof, the order dated 28th March, 2024, passed by the appellate authority, refusing to condone the delay in filing the appeal under Section 107 of the said Act, is set aside and by condoning the delay the appeal is restored to its original file, with a further direction on the appellate authority to hear out and dispose of the appeal on merits upon affording an opportunity of hearing to the petitioner.

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

14. There shall be no order as to costs.

15. 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.)

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