**24.07.2024**
Sl. No. 06
**g.b.**
**Court No.05**

**WPA 13519 of 2024**

***Rayan Consultants***
***-Vs-***
***The State of W. B. & Ors.***

***Mr. Tarun Chatterjee***
***Mr. Pratip Mukherjee***
***Mr. Soumya Sankar Chini***
***Mr. Raju Mondal***
***…..For the Petitioner***
***Mr. U. S. Bhattacharyya***
***Ms. Ekta Sinha***
***…..For C.G.S.T. Authorities***
***Mr. Anirban Ray***
***Mr. T. M. Siddique***
***Mr. Tanoy Chakraborty***
***Mr. Saptak Sanyal***
***……For the State***

1. The present writ petition has been filed, inter alia, challenging the order dated 30th January, 2024 passed under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act'). The petitioner contends that although the petitioner had filed an appeal along with the pre-deposit as is required for maintaining the appeal in terms of paragraph 3 of the notification no.53 of 2023 being a sum equal to 12.5 per cent of the amount of tax in dispute, the appellate authority has, inter alia, rejected the said appeal on the ground of failure on the part of the petitioner to comply with the terms of the notification no.53 of 2023 as regards the pre-deposit.
2. Mr. Mukherjee, learned advocate representing the petitioner by drawing attention to this court to page 129 of the writ petition submits that notwithstanding the petitioner complying with the terms of the notification and making payment of the part of the pre-deposit through its electronic cash ledger, the

appellate authority had erroneously rejected the said appeal. He submits that the appellate authority had also refused to condone the delay in filing the appeal by citing violation of provision of Sections 107 (1) and 107 (4) of the said Act and having recorded that the appeal does not fit the criteria of paragraph 1 and 3 of the above notification no.53 of 2023 dated 2nd November, 2023 had purported to dismiss the said appeal. He submits that this court may be pleased to set aside the order impugned and remand back the appeal for hearing on merits.

3. Mr. Chakraborty, learned advocate representing the respondents submits that if the petitioner has made payment, the petitioner should be given credit therefor. He submits that this may be a case of oversight by the appellate authority.
4. Having heard the learned advocates for the respective parties and having considered the materials on record, I am of the view that the order passed by the appellate authority does not take note of the payment made by the petitioner through its electronic cash ledger (annexure at page 129 of the writ petition). It may be that by reason of oversight the appellate authority had proceeded to reject the said appeal on the ground that the petitioner had not complied with the terms of pre-deposit.
5. It would appear from the order impugned that the appellate authority by citing violation of provisions of Sections 107 (1) and 107 (4) of the said Act had purportedly rejected the said appeal.
6. Although, the appeal was filed belatedly and the order under Section 73 of the said Act having been passed after 31st march, 2023, and the petitioner may not have come within the condition provided in the notification no. 53 dated 2nd November, 2023,

however, the same could not have warranted dismissal of the appeal, without deciding on the aspect of condonation of delay.

7. Having taken note of the facts of the case, I am of the view that in the instant case the petitioner should have been afforded an opportunity to explain the delay in filing the appeal having regard to the judgement delivered by the Hon'ble Division Bench of this Court in the case of ***S. K. Chakraborty & Sons v. Union of India & Ors.***, reported in **(2024) 123 GSTR 229 : 2023 SCC OnLine Cal 4759.** To that extent the order impugned appears to be mechanical.
8. Accordingly, the order impugned is set aside and the appeal is remanded back to the Appellate Authority. Needless to note that the appellate authority shall give an opportunity to the petitioner to explain the delay in preferring the appeal and after condoning the delay shall decide the appeal on merits as expeditiously as possible within a period of eight weeks from the date of communication of this order.
9. I must note that the appellate authority shall also ascertain whether the petitioner had made payment of the entirety of the pre-deposit and if any deficit is found to, direct the petitioner to make the payment of deficit sum as may be found due within a period of two weeks from the date of communication and thereafter, dispose of the said appeal.
10. With the above observations and directions, the appeal is disposed of.
11. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties after completion of all necessary formalities.

***(Raja Basu Chowdhury, J.)***