

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 30.01.2024

DELIVERED ON: 30.01.2024

CORAM:

**THE HON'BLE Mr. CHIEF JUSTICE T.S. SIVAGNANAM
AND**

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. 965 of 2023

With

I.A. No. CAN 1 of 2023

With

I.A. No. CAN 2 of 2023

**V.K. Gupta @ Vijay Kumar Gupta, Proprietor of
M/s. Northern India Trading Company
Vs.**

**The Assistant Commissioner, State Tax,
Manohar Katra Charge & Ors.**

Appearance:-

Mr. Aniket Mitra

.....for the appellant

Mr. Anirban Ray, Ld. GP

Mr. T.M. Siddique

Mr. S. Sanyal

.....for the respondents

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re: I.A. No. CAN 1 of 2023

1. We have heard Mr. Mitra, learned advocate appearing for the appellant and Mr. T.M. Siddique, learned Government counsel appearing for the respondents.

2. There is delay of 41 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation.
3. I.A. No. CAN 1 of 2023 is allowed and the delay in filing the appeal is condoned.

In Re: M.A.T. 965 of 2023

4. This intra-Court appeal by the writ petitioner is directed against the order dated 30th January, 2023 by which the writ petition in W.P.A. 974 of 2023 was dismissed.
5. In the said writ petition, the appellant had challenged the order passed by the appellate authority, who rejected the appeal petition filed by the appellant on the ground of delay.
6. We note from the facts placed before this Court that the appellant is more than 75 years of age and said to be suffering from various ailments. Thus, considering the peculiar facts and circumstances of the case, we are of the view that the appeal can be decided on merits instead of rejecting the same on a technical ground of limitation.
7. For the above reasons, the appeal and the connected application (I.A. No. CAN 2 of 2023) are allowed and the order passed by the learned Single Bench is set aside and the order passed by the appellate authority dated 2nd November, 2022 is set aside and the appeal is restored to the file of the appellate authority, to be decided on merits and in accordance with law after affording an opportunity of personal hearing to the appellant.

8. This order shall not be treated as a precedent, since it has been passed considering the peculiar facts and circumstances of the case.
9. No costs.
10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(SUPRATIM BHATTACHARYA, J.)

Pallab/KS AR(Ct.)