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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14551 of 2024

Sanjay Nania
Versus
Deputy Commissioner of State Tax,
Asansol Charge & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
… For the petitioner.

Mr. A. Ray, Ld. GP,
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
… For the State.

1. The present writ petition has been filed, inter alia, challenging the order dated 6th April, 2024, passed by the appellate authority under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act").

2. It is the petitioner's case that being aggrieved with the order passed under Section 73 of the said Act dated 11th October, 2023, for the tax period July, 2017 to March, 2018, the petitioner had preferred an appeal. Since the appeal was filed beyond the period of limitation the same was accompanied by an application for condonation of delay.

3. Mr. Choraria, learned advocate appearing on behalf of the petitioner submits that although, the

petitioner had appropriately explained the delay, the appellate authority had mechanically rejected the appeal as being barred by limitation without taking note of the application for condonation of delay.

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

5. Heard the learned advocates appearing for the respective parties and considered the materials on record. It appears that the petitioner had filed an appeal challenging the order dated 11th October, 2023, passed under Section 73 of the said Act. From the records of the proceeding it would transpire that simultaneously with the filing of the appeal the petitioner had duly deposited the amount of pre-deposit of Rs.98368/- as is required for maintaining the appeal under Section 107(6) of the said Act. Admittedly, there was delay in preferring the appeal. As such, the petitioner had filed an application for condonation of delay. In the application for condonation of delay the petitioner has claimed that the petitioner is not tech savvy person as such was not aware of the proceeding. The petitioner could only able to ascertain that an order had been passed when recovery proceeding was initiated and

the factum thereof was communicated to the petitioner via email. However, upon ascertaining that an adjudication order had already been passed, steps had been taken for preferring the appeal by making a pre-deposit. I do not find any lack of *bone fide* on the part of the petitioner in preferring the appeal. Admittedly, the person does not stand gain by filing a belated appeal. The appeal had been dismissed on the ground that the same has been filed beyond the prescribed period.

6. Having regard to the judgment delivered by this Court in the case of ***Mukul Islam v. The Assistant Commissioner of Revenue, State Tax, Cooch Behar Range & Ors.***, in WPA 917 of 2024, delivered on 1st May, 2024 and considering the application for condonation of delay, since the appeal has been rejected only on the ground that the same was not filed within the prescribed period of three months and without considering the application for condonation of dealy, I am of the view that the order dated 6th April, 2024 cannot be sustained.

7. Having considered the explanation given by the petitioner in the application for condonation of delay, I am of the view that the petitioner has been

able to sufficiently explain the delay.

8. In view thereof, upon condoning the delay, I direct the appellate authority to hear out and dispose of the appeal on merits as expeditiously as possible, preferably, within a period of eight weeks from date.

9. With the above directions and observations, the writ petition stands disposed of.

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.)