

06.08.2024
Sl. No. M/L.50
g.b.
Court No.05

WPA 15228 of 2024

M/S. Mondal Supplier, a partnership firm & Ors.
-Vs-
Deputy Commissioner of State Tax, Diamond Harbour Charge & Ors.

Mr. Rituraj Chakraborty
.....*For the Petitioners*
Mr. Anirban Ray
Md. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. S. Sanyal
Mr. N. Chatterjee
.....*For the State*

1. Aggrieved by an order passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act') dated 19th September, 2023 for the tax period from July 2017 to March, 2018, the petitioner had preferred an appeal under Section 107 of the said Act. Such appeal was filed on 8th April, 2024 along with pre-deposit of Rs.7,82,968/-. The appellate authority, however, by its order dated 24th May, 2024 rejected the said appeal, inter alia, on the ground that the said appeal was barred by limitation.
2. Mr. Chakraborty, learned advocate for the petitioners by drawing attention of this court to the show cause notice dated 7th May, 2024 would submit that pursuant to the show cause issued by the appellate authority, the petitioners had duly appeared and had submitted appropriate explanation including relevant documents in connection with illness of the petitioner no.1's partner. According to the petitioners, the petitioner no.1 had been prevented from filing the appeal within the time specified by reasons of illness of the petitioner no.1's partner. Notwithstanding the aforesaid, the appellate authority had purportedly

dismissed the said appeal on the ground of limitation without considering the petitioners' explanation.

3. Mr. Siddiqui, learned Additional Government Pleader would submit that admittedly, the appeal is filed beyond the time prescribed. As such there is no irregularity on the part of the appellate authority in rejecting the appeal as the same is barred by limitation.
4. Heard the learned advocates for the respective parties and considered the materials on record. In this case it would appear, although the appeal was filed beyond the time prescribed, however, explanation had been afforded by the petitioners. The appellate authority appears to have ignored such explanation and proceeded to reject the appeal on the ground of limitation.
5. I am of the view that the appellate authority ought to have in the given facts taken note of the explanation given by the petitioners, especially in view of 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**.
6. Having considered the explanation given by the petitioners, I find that the petitioners have been able to sufficiently explain the delay in filing the appeal. In view thereof, while condoning the delay for filing the appeal beyond the time prescribed, 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 the date of communication of this order.
7. As a sequel thereto, the order passed by the appellate authority dated 24th May, 2024 is set aside.

8. With the above observations and directions, the writ petition is disposed of.
9. 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.)