M/L 08.08.2024
74. Court No.5
(Tanmoy)

WPA 15650 of 2024

Griham Food And Hotel Private Limited
-Versus-
The Assistant Commissioner of Revenue, State Tax & Ors.

Mr. Sandip Choraria, Adv.(VC),
Mr. Rishav Manna, Adv.
...for the petitioner.

Mr. Anirban Ray, Ld. GP,
Mr. Md. T.M. Siddiqui, Ld. AGP,
Mr. Tanoy Chakraborty, Adv.,
Mr. Saptak Sanyal, Adv.,
Mr. Debraj Sahu, Adv.
...for the State respondents.

1. Affidavit of service filed in Court be taken on record.
2. Challenging, *inter alia*, an order dated 29th May, 2024, passed by the Appellate Authority under the CGST/ WBGST Act, 2017 (hereinafter referred to as the 'said Act'), rejecting the petitioner's appeal on the ground of limitation, the present writ petition has been filed.
3. Mr. Choraria, learned Advocate appearing on behalf of the petitioner, contends that without giving an opportunity of hearing to the petitioner the proper Officer was, *inter alia*, pleased to dispose of the show-cause notice issued in FORM GST DRC 01 dated 16th June, 2023, in respect of financial year 2017-18 by passing an order dated 8th November, 2023 under Section 73(9) of the said Act. Although the petitioner had preferred an appeal from the said order and had duly made payment of pre-deposit as is required for maintaining the said appeal, the Appellate Authority,

without considering the petitioner's application for condonation of delay, was, *inter alia*, pleased to reject the said appeal by its order dated 29th May, 2024.

4. Mr. Siddiqui, learned Additional Government Pleader, appearing on behalf of the State, submits that the petitioner was duly offered opportunity to show-cause prior to passing the adjudication order under Section 73(9) of the said Act. Despite the fact that the adjudication order was passed and uploaded on the portal, the petitioner chose not to prefer an appeal within the time specified. Admittedly, the appeal was barred by limitation. As such no interference is called for.

5. Heard learned Advocates appearing for the respective parties and considered the materials on record.

6. It is submitted that there is no irregularity on the part of the Appellate Authority in dismissing the appeal on the ground of limitation. Admittedly, the appeal was barred by limitation. The petitioner, however, appears to have filed an application for condonation of delay. Simultaneously, with the filing of the appeal the petitioner had also deposited the pre-deposit as is required for maintaining the said appeal. As such, it cannot be said that there was any lack of *bona fide* on the part of the petitioner in maintaining the appeal.

7. Since, the appeal was filed belatedly, the petitioner had filed an application providing explanation for the delay

in filing the appeal. The Appellate Authority, however, without appropriately considering such explanation, had proceeded to dismiss the said appeal, by holding in effect, the provisions of Section 5 of the Limitation Act do not apply to the proceedings under Section 107 of the said Act. In this context, it will be relevant to note that a Division Bench of this Hon'ble Court in the judgment delivered in the case of ***S.K. Chakraborty & Sons v. Union of India & Ors.***, reported at **2023 SCC OnLine Cal 4759** (MAT 81 of 2022) was, *inter alia*, pleased to hold that the appellate authority is competent to admit an appeal by condoning the delay beyond one month from the prescribed period as provided for under Section 107(4) of the said Act.

8. Having regard to the aforesaid, I am of the view, the order dated 29th May, 2024, passed by the Appellate Authority, cannot be sustained. The same is accordingly, set aside.

9. After considering the explanation given by the petitioner in the application for condonation of delay, I am of the view petitioner has been able to sufficiently explain the delay in filing the appeal. In view thereof, while condoning the delay, this Court directs the Appellate Authority to hear out and dispose of the appeal on merits preferably within a period of eight weeks from the date of communication of this order, in accordance with law.

10. With these observations, this writ petition stands disposed of.

11. There shall be no order as to costs.

12. All parties to act on the basis of the server copy of this order duly downloaded from this Hon'ble Court's official website.

(Raja Basu Chowdhury, J.)