12th August, 2024
(AK)
95

W.P.A 16017 of 2024

Jagmohan Saraogi
Vs.
The Union of India and others

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Ms. Shiwani Shaw
Mr. Piyas Chowdhury
...for the petitioner.

Mr. Shib Shankar Banerjee
Ms. Aishwarya Rajyashree
...for the CGST Authority.

Mr. A. Ray
Md. T.M. Siddiqui
Mr. T. Chakraborty
Mr. S. Shaw
Mr. S. Sanyal
...for the State.

1. Affidavit-of-service filed in court today be kept on record.

2. Challenging, *inter alia*, an order passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act") dated 14th March, 2023 for the tax period 2017-18, an appeal was filed before the Appellate Authority under Section 107 of the said Act.

3. Simultaneously with the filing of the appeal, the petitioner had also made payment of the pre-deposit as is required for maintaining the said appeal.

4. Admittedly such appeal was filed beyond the period of limitation. As such the same was accompanied by an application for condonation of delay in filing the appeal.

5. The Appellate Authority, however, appears to have rejected the said appeal on the ground that the same is barred by limitation.

6. Mr. Ray, learned Advocate appearing for the petitioner, however, submits that the Appellate Authority was duty bound to consider the application for condonation of delay, especially taking into consideration the fact that the petitioner, who is a senior citizen, at the relevant point of time was suffering from age related ailments which preventing the petitioner from filing the appeal within the time prescribed.

7. It is submitted that by non-consideration of petitioner's application for condonation of delay, the petitioner's valuable right has been taken away and the petitioner has been denied the opportunity of challenging the order passed under Section 73 of the said Act on merits.

8. In the facts as noted here, this Hon'ble Court may set aside the order impugned and remand back the appeal to the Appellate Authority for a decision on merits.

9. Mr. Banerjee, learned Advocate appearing for the respondents, on the other hand, would submit that the initial order passed under Section 73 of the said Act cannot be faulted. There has been due determination on merits.

10. Although, the petitioner was entitled to file the appeal in terms of the notification dated 2nd November, 2023 by paying an amount of twelve and half per cent of tax in dispute, the same had not been done.

11. It is still further submitted that the medical prescription relied on behalf of the petitioner do not make out a case for condonation of delay. Admittedly the prescription which is dated 13th July, 2023 only requires the petitioner to take some rest. The ailments noted could not have prevented the petitioner from filing an appeal within the time prescribed.

12. Heard learned Advocates appearing for the respective parties and consider the materials on record.

13. Admittedly in this case, it may be noted that the determination has been made under Section 73 of the said Act.

14. Such appeal had been filed beyond the time prescribed though there appears to be some explanation for the delay in filing the appeal.

15. The Appellate Authority, however, without considering such explanation had decided to dismiss the said appeal, *inter alia*, on the ground that the appeal is barred by limitation and the petitioner having not made the deposit of twelve and half per cent in terms of the notification dated 2^{nd} November, 2023 is not entitled to the benefit of such notification.

16. I, however, find that an application for condoning the delay had been filed by the petitioner. Once, an application praying for condonation of delay had been filed, I am of the view, it was the obligation of the Appellate Authority to take into consideration the same.

17. It is noticed that the petitioner is a senior citizen and the petitioner claims to have been suffering with certain age related disease.

18. It appears that the petitioner has already made a pre-deposit of ten per cent of the amount of the tax in dispute. As such, it cannot be said that there was any lack of *bona fide* on the part of the petitioner in preferring the appeal. The petitioner

certainly does not stand to gain by filing a belated appeal.

19. Having regard to the aforesaid and taking note of the judgment delivered in the case of ***S.K. Chakraborty & Sons. v. Union of India and others*** reported in **(2024) 123 GSTR 229** and judgment delivered by this court in ***Mukul Islam v. Assistant Commissioner of Revenue, State Tax*** reported in **[2024] 162 taxmann.com 552 (Calcutta)**, I am of the view that the Appellate Authority ought to have, in the given facts, considered the application for condonation of delay.

20. In view thereof, the order passed by the Appellate Authority on 18th March, 2024 cannot be sustained. The same is accordingly set aside.

21. Taking note of the materials on record, although the explanation given by the petitioner, does not appear to be proper, however, for ends of justice, subject to a payment of cost of Rs.3,000/- to be paid by the petitioner to the State Legal Services Authority, West Bengal, the appeal filed by the petitioner shall be taken up for consideration by the Appellate Authority and shall be heard and disposed of within a period of eight weeks, on the petitioner filing the receipts for the aforesaid deposit with the Appellate Authority.

22. With the aforesaid directions, the writ petition stands disposed of.

23. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)