14.08.2024
Sl. No. 121.
M/L.
Mithun
Ct.No.5

WPA 16124 of 2024

Rajesh Agarwal
Vs.
Deputy Commissioner of Revenue, State Tax, Taltala & New Market Charge & Ors.

Mr. Piyal Gupta,
Mr. M.S. Alam
..for the petitioner.
Mr. Anirban Ray, Ld. G.P.,
Mr. T.M. Siddique,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
Mr. Debraj Sahu
…for the State.

1. The present writ petition has been filed, *inter alia*, challenging the order dated 29th February, 2024 passed by the Appellate Authority under Section 107 of the CGST/WBGST Act , 2017 (hereinafter referred to as the "said Act").

2. Records would reveal that challenging the determination made under Section 73 of the said Act by order dated 15th September, 2023 for the tax period July, 2017 to March, 2018 an appeal was filed before the Appellate Authority under Section 107 of the said Act. Simultaneously with the filing of the appeal, the petitioner had also made a pre-deposit of Rs.49,783/- as is required for maintaining the appeal. Since the appeal was filed belatedly, the petitioner had

also simultaneously with the filing of the appeal filed an application for condonation of delay under Section 5 of the Limitation Act.

2. Mr.Rajesh Agarwal, learned Advocate representing the petitioner submits that since the petitioner was unwell and under the treatment on and from 14th January, 2024 to 2nd February, 2024, appropriate steps could not be taken for filing the appeal in time. The medical records of the petitioner had also been disclosed. Notwithstanding the aforesaid, the appellate authority by ignoring the application filed under Section 5 of the Limitation Act had purportedly rejected the said appeal on the ground that the same was filed beyond one month of the prescribed period. He submits that in the facts of the case, this Court may be pleased to set aside the order passed by the Appellate Authority and remand it back for adjudication on merits.

3. Mr. Chakraborty, learned advocate enters appearance on behalf of the respondents.

4. Heard the learned Advocates appearing on behalf of the respective parties and considering the materials on record, I find that in this case, being aggrieved by the order passed under Section 73 of the said Act dated 15th September, 2023, the petitioner

had filed an appeal. Simultaneously with the filing of the appeal, the petitioner had deposited the pre-deposit as is required for maintaining the appeal and, as such, the bona fide of the petitioner cannot be doubted. Since there was some delay in filing the appeal, the petitioner had filed an application for condonation of delay. The appellate authority, however, by glossing over the same had rejected the said appeal. Taking note of the averments made in the application for condonation of delay, I am of the view that the appellate authority ought to have appropriately considered the application for condonation of delay. The Appellate Authority by proceeding to dismiss the appeal by treating the same barred by limitation as having been filed beyond one month after the prescribed period had in fact, acted contrary to the law laid down by the Division Bench of this Court in the case of ***S.K.Chakraborty & Sons v. Union of India & Ors.*** reported in ***2024(123) GST 229*** as also the judgment delivered in the case of ***Mukul Islam v. The Assistant Commissioner of Revenue, State Tax, Cooch Behar Range & Ors.,*** reported in **[2024] 162 taxmann.com 552 (Calcutta).**

5. Having regard to the above, I am of the view that the order passed by the Appellate Authority on

29th February, 2024 cannot be sustained and the same is accordingly set aside. Since the petitioner has been able to sufficiently explain the delay, while condoning the delay, I remand the appeal back to the Appellate Authority. The Appellate Authority shall hear out the appeal on merits in accordance with law and dispose of the same within a period of 8 weeks from the date of communication of this order.

6. With the above observations, the application stands disposed of.

7. There shall be no order as to costs.

(Raja Basu Chowdhury, J.)