M/L 107
19.08.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16281 of 2024

Pramod Kumar Baranwal
Versus
Assistant Commissioner of Revenue,
Asansol Charge & Ors.

Mr. Souradeep Majumder
… For the petitioner.

Mr. Anirban Ray, Ld. GP
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. N. Chatterjee
… For the respondents.

1. Affidavit of service filed in Court today on behalf of the petitioner is taken on record.

2. On the basis of an audit proceeding initiated by the respondents, an order was passed under Section 65 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") for the period from 1st July, 2017 to 31st March, 2018. In furtherance to the same, a summary of the order cum demand in Form GST DRC -07 dated 24th August, 2023 was also uploaded in the common portal.

3. Being aggrieved, the petitioner had filed an appeal before the appellate authority along with the pre-deposit of Rs.46860/- as is required for maintaining the appeal. Since the appeal was belatedly filed, the

petitioner claims to have provided certain explanations for the delay.

4. Mr. Siddiqui Learned Additional Pleader enters appearance on behalf of the respondents.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record. It appears from the records that the appeal was delayed by 44 days. The appellate authority by its order dated 24th January, 2024 without going into the explanation provided by the petitioner and taking note of the fact that the appeal had been filed after 137 days from the order of adjudication and since according to the appellate authority there was no scope to admit the appeal filed beyond a month from the prescribed period of limitation, the appeal had been dismissed. From the tenor of the order passed by the appellate authority it is very clear that the appellate authority without even considering the explanation provided by the petitioner as regards condonation of delay had purported to dismiss the appeal. The aforesaid order appears to be contrary to the directive issued by the Hon'ble Division Bench of this Court in the case of ***S. K. Chakraborty & Sons v. Union of India*** reported in **2023 SCC OnLine Cal 4759**, which, *inter alia*, provides that the provisions of Section 5 of the Limitation Act, 1963

stands attracted for condoning the delay beyond one month from the prescribed period. It is rather unfortunate to say the least that despite repeated orders passed by this Court, the appellate authority choose to overlook the same. This Court does not appreciate the same.

6. Having regard to the above and since the appellate authority had failed to exercise the jurisdiction vested in it, in considering the explanation given by the petitioner, I am of the view that the order passed by the appellate authority on 24th January, 2024 cannot be sustained and the same is accordingly set aside.

7. Further taking note of the explanation given by the petitioner that the petitioner had been prevented from preferring an appeal by reasons of the demise of his wife and the treatment of his daughter, I am of the view that the petitioner has been able to sufficiently explain the delay in preferring the appeal belatedly.

8. In view thereof while condoning the delay in preferring the appeal, 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.

9. With the above observations and directions, the writ

petition is 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.)