

M/L 113
19.08.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16363 of 2024

P.G. Exim Pvt. Ltd.

Versus

Assistant Commissioner of Revenue,
N.S. Road & MR Charge & Ors.

Mr. Souradeep Majumder

... For the petitioner.

Mr. Anirban Ray, Ld. GP

Mr. T. M. Siddiqui

Mr. Tanoy Chakraborty

Mr. Saptak Sanyal

... For the respondents.

1. Affidavit of service filed in Court today is taken on record.
2. Being aggrieved by an order dated 26th July, 2023 passed under Section 73 of the CGST/WBGST Act, 2017 (hereinafter referred to as the “said Act”), the petitioner had preferred an appeal. However, before such appeal was filed, a sum of Rs.2,37,894/- had been recovered from the petitioner. Simultaneously with the filing of the appeal in addition to the said sum of Rs.2,37,894/- the petitioner had deposited a sum of Rs.31,380/-, though Mr. Majumder, learned advocate appearing on behalf of the petitioner would submit that such sum was not payable as Rs.2,37,894/- was already recovered. He submits that the delay caused in filing the appeal was by reasons of medical condition of

the authorised representative of the petitioner who was in charge of looking after the matter. He submits that the representative of the petitioner had been suffering from cirrhosis of liver which prevented the petitioner from challenging the order passed under Section 73 of the said Act within the prescribed period of limitation. According to the petitioner, although the medical condition of the representative of the petitioner was brought to the notice of the appellate authority, however, the appellate authority had purported to reject the said appeal on the ground that there was no scope to admit the appeal beyond a month from the prescribed period. Mr. Majumder submits that the aforesaid order cannot be sustained, the same should be set aside and the matter should be remanded back to the appellate authority for adjudication on merits.

3. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the respondents.
4. Heard the learned advocates appearing for the respective parties and considered the materials on record.
5. In this case, it is noticed that after the order under Section 73 of the said Act was passed on 26th July, 2023, a sum of Rs.2,37,894/- was recovered from the petitioner. The petitioner, in addition to the said

recovery had made payment of Rs.31,380/- towards pre-deposit. The appellate authority was made aware with regard to the reasons which prevented the petitioner from preferring an appeal. Taking note of the stand taken by the petitioner it cannot be said that there was lack of *bona fide* on the part of the petitioner in preferring the appeal. It is well-established that the one does not stand to gain by filing a belated appeal especially when the respondents by then recovered a sum of Rs.2,37,894/- from the petitioner. The appellate authority, however, despite acknowledging the medical conditions of the petitioner's representative and despite ascertaining that the petitioner was otherwise prevented from filing the appeal within the time prescribed had purported to dismiss the said appeal, *inter alia*, on the ground that there was no scope for admission of the appeal filed beyond four months from the date of the order appealed against. The aforesaid stand taken by the appellate authority is not appreciated by this Court. 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 vs. Union of India** reported in **2023 SCC OnLine Cal 4759**, which, *inter alia*, provide that the provisions of Section 5 of the Limitation Act, 1963 stands attracted for condoning the delay beyond

one month from the prescribed period.

6. In view thereof, the order passed on 29th April, 2024 by the appellate authority cannot be sustained and the same is set aside.
7. Further taking note of the explanation given by the petitioner, I am of the view that the petitioner has been able to sufficiently explain the delay in preferring the appeal.
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.
10. There shall be no order as to costs.
11. 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.)