M/L 138
**20.08.2024**
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

**WPA 16703 of 2024**

Raj Kumar Senapati
Versus
The Senior Joint Commissioner of Revenue & Ors.

Mr. Avra Mazumder
Ms. Alisha Das
Mr. Samrat Das
Ms. Elina Dey
... For the petitioner.

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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 on behalf of the petitioner is taken on record.

2. Challenging, inter alia, the order dated 27th May, 2024 passed by the appellate authority under Section 107 of the CGST/WBGST Act, 2017(hereinafter referred to as the "said Act"), the present writ petition has been filed.

3. Being aggrieved and dissatisfied with the order passed under Section 73 of the said Act dated 22nd November, 2023 for the tax period July, 2017 to March, 2018 an appeal was filed before the appellate authority. Simultaneously with the filing of the appeal the petitioner has made a pre-deposit of Rs.176204/-as is required for maintaining the appeal. Since the

appeal was filed belatedly, the petitioner had also filed a comprehensive application under Section 5 of the Limitation Act, 1963, inter alia, praying for condonation of delay in filing the appeal. The appellate authority, however, by ignoring the application for condonation of delay had proceeded to reject the appeal by holding that there is no provision under Section 107 of the said Act to accept an appeal which is filed beyond one month from the prescribed period provided for filing an appeal.

4. Mr. Mazumder, learned advocate appearing on behalf of the petitioner by drawing attention of this Court on the judgment delivered 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** would submit that the provision of Section 5 of the Limitation Act 1963, is squarely applicable in the facts of this case. The appellate authority, however, passed the order impugned ignoring the said judgment.

5. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the State respondents.

6. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I am of the view that the appellate authority was obliged to consider the application filed under

Section 5 of the Limitation Act, 1963 for reasons noted below. I find that the petitioner had filed an appeal challenging the order passed under Section 73 of the said Act. Simultaneously with the filing of the appeal the petitioner had also made a pre-deposit of Rs. Rs.176204/- as is required for maintaining the appeal. As such, the *bona fide* of the petitioner in filing the appeal cannot be doubted. Since, the appeal was belatedly filed, the petitioner also filed an application under Section 5 of the Limitation Act, 1963, *inter alia*, praying for condonation of delay. The appellate authority, however, had proceeded to reject the said appeal on the ground that there is no provision to accept the appeal filed beyond one month from the prescribed period. The aforesaid order passed by the appellate authority on 27th May, 2024 is 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**, whereby the Hon'ble Division Bench had categorically provided that the provisions of Section 5 of the Limitation Act, 1963 are applicable to appeals filed beyond one month from the prescribed period. The approach of the appellate authority is not appreciated by this Court. Independent of the above although, the above order passed by the appellate authority is appealable before the Appellate Tribunal since, the Tribunal has not been constituted and in a matter relating to fiscal statute, in absence of a decision on merits, factual issues would be required to be looked into by this Court.

7. Having regard thereto, I am of the view that in the fitness of things the matter should be remanded back to the appellate authority.

8. Accordingly, taking note of the explanation given by the petitioner that the petitioner had been prevented from preferring an appeal within the prescribed period, 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. The order passed by the appellate authority on 27$^{th}$ May, 2024 is accordingly set aside.

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.)**