ML -62
04.09.2024
b.r./D. Hira
Ct No. 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17824 of 2024

Silverline Gifts & Anr.
Vs.
Deputy Commissioner, State Tax, Colootola & Ezra Street Charge & Ors.

Mr. Souradeep Majumdar.
... for the petitioners

Mr. Anirban Ray, ld. G.P.,
Mr. T.M. Siddique,
Mr. T. Chakraborty,
Mr. S. Sanyal.
... for the State

1. Affidavit-of-service filed in Court today is taken on record.

2. Leave is granted to correct the writ petition number as appearing on the affidavit-of-service, in course of the day.

3. Challenging an order dated 1st April, 2024 passed by the appellate authority under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act), the present writ petition has been filed.

4. The petitioners by placing the Form GST APL – 02 would submit that the appeal had been

rejected on the ground of delay notwithstanding there was only a marginal delay in filing the appeal.

5. It is submitted that appropriate explanation had also been provided praying for condonation of the delay. Such explanation had also not been considered. The petitioners say that they have a legal right to file a statutory appeal before the appellate tribunal which has been denied since, the tribunal is yet to be constituted. As such the present writ petition has been filed. In view thereof, this Court may be pleased to hear out the matter on merits.

6. Mr. Siddique, learned Additional Government Pleader appearing for the respondents submits that admittedly in this case the appeal was filed beyond the prescribed period and as such the order of rejection passed by the appellate authority cannot be said to be irregular.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record, I find that the petitioners challenging the adjudication order passed under Section 73 of the said Act for the tax period from July 1, 2017 to March 31, 2018

had filed an appeal along with the pre-deposit as was required for maintaining the appeal. Since the appeal was filed beyond the prescribed period the petitioners had filed an application praying for condonation of delay. The appellate authority, however, by a cryptic order had rejected the appeal on the ground of delay. I find that though the petitioners have a statutory remedy in the form of an appeal before the appellate tribunal, the tribunal is yet to be constituted.

8. Having regard thereto, I am of the view that it would be prudent at this stage to remand the matter back to the appellate authority for adjudication on merits.

9. As a sequal thereto, the order dated 1st April, 2024 passed by the appellate authority issued in Form GST APL – 02 arising out of the challenge to the order dated 6th April, 2023 passed under Section 73 of the said Act, in respect of the tax period from July 1, 2017 to March 31, 2018 stands set aside.

10. With the above observations and directions, the writ petition stands disposed of.

11. Urgent certified copy of this order, if applied

for, be made over to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)