

05.09.2024
Item No.
ML 67
Saswata

W.P.A. 17873 of 2024
Udayan Ghosh
versus
The State of West Bengal & Ors.

Mr. Bhaskar Sengupta

...For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, AGP
Mr. Tanoy Chakraborty
Mr. S. Sanyal

...For the State

1. Affidavit of service filed in Court today is retained with the record.
2. Challenging an order dated 12th September 2023 passed under Section 73 of the WBGST /CGST Act, 2017 (hereinafter referred to as the “said Act”) in respect of the tax period from 2020-2021, an appeal was filed before the appellate authority under Section 107 of the said Act.
3. Mr. Sengupta, learned advocate appearing for the petitioner would submit that at the time of filing of the appeal the petitioner had made a pre deposit of Rs. 2,24,646/ as is required for maintaining an appeal. According to him since the petitioner was suffering from serious chest infection, he could not take adequate steps to prefer the appeal within the time prescribed, which resulted in a delay of 50 days. The aforesaid fact was duly brought to the notice of the appellate authority through an application for condonation of delay under Section 5 of the Limitation Act, 1963. Notwithstanding the above, the appellate authority had rejected the appeal by an order dated 29th February 2024 on the ground of delay disregarding the explanation given by the petitioner.

4. It is submitted that though the petitioner has a statutory remedy before the appellate tribunal, the appellate tribunal having not been constituted, the instant writ petition has been filed. In such circumstances, the petitioner prays for determination of the issues involved, on merit, since the matter has not been decided by the appellate authority on merit.

5. Mr. Siddiqui, learned Additional Government Pleader submits that admittedly the appeal was filed beyond the time prescribed. Having regard thereto, the order passed by the appellate authority cannot be said to be irregular. He, however, does not dispute the fact that the petitioner was otherwise prevented by sufficient cause from preferring the appeal within the time prescribed.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record.

7. I find that the petitioner challenges an adjudication order passed under Section 73 of the said Act. Though, there are successive appellate forums, admittedly in the instant case the order passed by the proper officer could not be tested on merit, since, the appellate tribunal is also not available. Having regard to the case made out by the petitioner, although it is necessary to adjudicate the matter on merit, a decision on merit would require not only scrutiny of the record but an adjudication of factual issues.

8. In my view, it shall not be prudent to decide all such questions especially when an appellate body, which has access to the records can conveniently decide the same on merits. Having regard to the above, the order dated 29th February 2024 is set aside and the appellate authority is

directed to hear out the appeal as expeditiously as possible, preferably within a period of 12 weeks from the date of communication of this order.

9. With the above observations and directions, the instant writ petition being WPA 17873 of 2024 is accordingly ***disposed of***.

10. All parties are to act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)