ML -65
04.09.2024
b.r./D. Hira
Ct No. 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17863 of 2024

Sunil Mondal
Vs.
The State of West Bengal & Ors.

Mr. Bhaskar Sengupta.
... for the petitioner

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. Challenging an order dated 22nd February, 2024 passed by the appellate authority under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act), the instant writ petition has been filed.

3. The petitioner submits that challenging an adjudication order passed under Section 73 of the said Act dated 3rd July, 2023 for the tax period from April 2019-March 2020, the aforesaid appeal had been filed along with pre-deposit of Rs.84,758/-.

4. Since the petitioner was ill, by reasons of his medical condition, there had been a delay of

thirty-one days in preferring the appeal.

5. Since the appeal was belatedly filed, the appeal was accompanied by an application for condonation of delay. The relevant medical documents have been enclosed to support the petitioner's contention. Unfortunately, the appellate authority by a cryptic order had rejected the appeal on the ground of delay.

6. Mr. Sengupta, learned advocate appearing for the petitioner, submits that the petitioner has been rendered remediless since, the appellate tribunal under the said Act is yet to be constituted and as such has applied before this Hon'ble Court by invoking its extraordinary writ jurisdiction. He submits that this Hon'ble Court may take up the matter on merits and pending hearing of this petition, the demand raised by the respondents in Form GST DRC – 07 dated 3rd July, 2023 be stayed.

7. Mr. Siddique, learned Additional Government Pleader appearing on behalf of the State respondents submits that admittedly the appeal was filed belatedly and having regard thereto the same has been dismissed. He however, could not elaborate whether the application for condonation of delay had been

considered.

8. Heard the learned advocates appearing for the respective parties and taken note of the fact that the petitioner questions an adjudication order, and to consider the merits thereof, detailed scrutiny of the records and factual issues would be necessary.

9. Having regard to the aforesaid and the fact that the appellate authority under Section 107 of the said Act did not adjudicate the matter on merits and there was only a marginal delay in filing the appeal and for the first time before this Court the order passed by the adjudicating authority shall be tested by reasons of the appellate tribunal not been constituted, it would be prudent to remand the matter back to the appellate authority for adjudication on merits.

10. As a sequel thereto, the order passed by the appellate authority dated 2nd February, 2024 being a non-speaking order, forming the subject matter of challenge in the writ petition is set aside.

11. The appellate authority shall hear out and dispose of the appeal on merits as

expeditiously as possible, preferably within a period of twelve weeks from the date of communication of this order.

12. With the above observations and directions, this writ petition stands disposed of. There shall be no order as to costs.

13. 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.)