5th September, 2024
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W.P.A 18080 of 2024

Probir Kumar Saha
Vs.
Assistant Commissioner of Revenue, State Tax, Behala Charge and others

Mr. Akshat Agarwal
...for the petitioner.

Mr. Anirban Ray
Md. T.M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu
...for the State.

1. Challenging, inter alia, an order passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act') dated 6th October, 2023 for the tax period July 2017 to March 2018, an appeal was filed before the Appellate Authority under Section 107 of the said Act. The Appellate Authority, however, had rejected the said appeal by an order dated 10th June, 2024 on the ground of delay in filing the same. Being aggrieved, the instant writ petition has been filed.

2. Mr. Agarwal, learned Advocate appearing in support of the aforesaid petition would submit that although the petitioner has a case on merits and despite the petitioner depositing the pre-deposit as is required for maintaining the appeal and also having afforded appropriate explanation for the

delay, the Appellate Authority without entering into the merits had rejected the appeal by the order dated 10th June, 2024. He submits that the petitioner ordinarily could have challenged the aforesaid order before the appellate tribunal, however, since, the tribunal is yet to be constituted the petitioner has been prevented from challenging the adjudication order as also the appellate order on merits. In the circumstances as aforesaid, the present writ petition has been filed.

3. He submits that this Ho'ble court may be pleased to take up the matter for consideration and decide the same on merits and pending hearing of this application the demand raised by the respondents in Form GST DRC-07 dated 6th October, 2023 should be stayed.

4. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the respondents. He submits that admittedly the appeal was filed beyond the period of limitation as such the order passed by the Appellate Authority cannot be said to the irregular.

5. Heard learned Advocates appearing on behalf of the respective parties and considered the materials on record.

6. It appears that the adjudication has been made under Section 73 of the said Act. The said Act also

at the same time provides successive appeals for testing out an order passed by the adjudicating authority. In this case the appeal was filed belatedly beyond the prescribed period. Although an application for condonation was filed the Appellate Authority has concluded that there is no sufficient cause which prevented the petitioner from filing the appeal within the time stipulated. As such there has been no determination on merit.

7. Since the petitioner has been prevented from preferring the subsequent appeal before the appellate tribunal by reasons of the appellate tribunal not being constituted, and considering the peculiar facts of the case and the determination made by the proper officer, I am of the view that the petitioner has a right to have the adjudication order tested out on merits. However, in order to test out the said order on merits not only scrutiny of the records but determination of factual issues would be necessary.

8. Having regard thereto, it would be prudent at this stage to remit the matter back to the Appellate Authority for reconsideration on merits.

9. The Appellate Authority is, thus, directed to hear out the appeal on merits as expeditiously as possible preferably within a period of twelve weeks from the date of communication of this order.

10. As a sequel thereto the order passed by the Appellate Authority dated 10th June, 2024 stands set aside.
11. With the above observations, writ petition stands disposed of.
12. There shall be no order as to costs.
13. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.

(Raja Basu Chowdhury, J.)