

M/L 112
10.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18430 of 2024

Sarika Todi
Versus
The Assistant Commissioner of State Tax,
Raja Katra Charge & Ors.

Mr. Anil Kumar Dugar
Mr. Rajarshi Chatterjee
Mr. Somnath Balial
Ms. Suman Sahani

... For the petitioner.

Mr. Anriban Ray, Ld. GP,
Mr. T. M. Siddiqui
Mr. Tanoy Charkaborty
Mr. D. Sahu

... For the respondents.

1. The present writ petition has been filed, inter alia, challenging the order passed by the appellate authority dated 1st April, 2024, by which the petitioner's appeal under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") has been dismissed.
2. Mr. Dugar, learned advocate appearing on behalf of the petitioner would submit that there was a marginal delay in filing the appeal notwithstanding the above and despite the petitioner having a strong case on merits the appellate authority had dismissed the appeal. It is also submitted that since the appellate tribunal has not been constituted, the petitioner has been compelled to approach this

Court, especially having regard to the fact that the petitioner has not been able to test out the order passed by the proper officer on merits.

3. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the respondents.
4. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I am of the view that the petitioner should be permitted to test out the order passed by the proper officer on merits having regard to the marginal delay in filing the appeal.
5. Having regard to the above and taking note of the fact that the appellate tribunal is yet to be constituted, I am of the view that the matter requires to be remanded back to the appellate authority subject to payment of cost of Rs.5000/- to be paid by the petitioner with the respondents within a period of two weeks from date.
6. If such cost is paid within a period of two weeks from date, the appellate authority having regard to the observations made herein and upon ascertaining that the cost has been paid, shall hear out and dispose of the appeal on merits.

7. As a sequel thereto, the order passed by the appellate authority on 1st April, 2024, as appearing at page 40 of the writ petition stands set aside.
8. With the above observations and directions, the writ petition is disposed of.
9. 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.)