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jks **13.11.2024**

WPA 18704 of 2024

Pramod Kumar Jaiswal
Vs.
State of West Bengal & Ors.

Mr. Anil Kumar Dugar
Mr. Rajarshi Chatterjee
Mr. Somnath Balial
Mr. Govind Jethalia
Mrs. Suman Sahani
… … for the petitioner

Mr. A. Ram
Mr. Md. T.M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
Mr. S. Shaw
… …for the State

1. The present writ petition has been filed in relation to the order passed by the Appellate Authority herein respondent no.2 wherein the petitioner challenges the impugned order passed by the Appellate Authority under the West Bengal Goods and Services Tax (hereinafter referred to as 'WBGST') Act, 2017 for not condoning the delay for filing an appeal under the said Act.

2. The facts of the case in a nutshell are that the petitioner, Mr. Pramod Kumar Jaiswal, is the sole proprietor of A K Enterprise, a business entity with its registered office at 7/9, Liluah, Seth Parsuram Bazaz Road, Howrah- 711204, and is duly registered under relevant legal provisions, holding a GST registration (GSTIN: 19AINPJ5740PIZH).

3. A Show Cause Notice dated February 13, 2023 was issued under Section 73(9) of the WBGST Act, 2017.

Subsequently, on May 18, 2023, the Deputy Commissioner herein the respondent no.3 issued an order under Section 73(9) of the WBGST Act, 2017, confirming a total demand of ₹11,29,406.00, with additional penalties and interest, directing payment by August 16, 2023 under threat of recovery action.

4. Dissatisfied with the order, the petitioner approached one Mr. B.N. Saraf, Learned Advocate (hereinafter referred to as the 'said advocate'), in August 2023 to file an appeal against the order of the Adjudicating Authority. The petitioner was assured that the appeal would be filed within a week, but the said advocate failed to do the same. Thereafter, multiple attempts were made to connect with the said advocate in the following months, but in December 2023, the petitioner was compelled to entrust the brief to Mr. Somnath Balial, Learned Advocate in the present case. The appeal dated February 27, 2024 was subsequently rejected on grounds of limitation. Owing to the unfavorable order passed by the respondent no.2, the present petition has been preferred.

5. The Learned Counsel appearing on behalf of the petitioner submits that the order dated February 27, 2024, passed by the Adjudicating Authority, was issued without adhering to the principles of natural justice, as no personal hearing was provided in violation of Section 75(4) of the Central Goods and Services Tax (hereinafter referred to as 'CGST') Act, 2017/WBGST Act, 2017. Moreover, the petitioner contends that the GST authority acted in a biased and arbitrary manner, ignoring procedural mandates and statutory obligations.

6. It is submitted that the delay in filing the appeal was due to circumstances beyond the petitioner's control. However, the appellate authority refused to consider the circumstances and summarily dismissed the appeal as time-barred.

7. The petitioner maintains that his statutory right to appeal before the Appellate Tribunal has been effectively obstructed due to the tribunal's non-formation, thus infringing upon her constitutional rights under Articles 14, 19(1)(g), 21, and 300A of the Indian Constitution. In light of these submissions, the petitioner submits that the impugned order dated February 27, 2024 be quashed and set aside, restoring the petitioner's rights under law.

8. Submissions of the Learned Counsel appearing for the respondent no.2 is that based on the GSTIN portal, an appeal was filed under ARN - AD190523016691F dated January 12, 2024. Under Section 107(1) of the WBGST Act, 2017, an appeal must be filed within three months from the date of the order. However, Section 107(4) permits an extension of up to one additional month in cases of compelling circumstances. Here, the appeal was filed on January 12, 2024 against an order dated May 18, 2023, exceeding the maximum allowable period of four months.

9. It has been further submitted that the respondent authority does not have any discretionary authority under the Statute to accept an appeal submitted past the specified deadline. Substantiating their submissions with the judgment of the Hon'ble High Court of Patna in the case of **Ram Krishna Mission Ashrama v. State of Bihar** reported in (2024) 101 GST 501, where it was held that:

> "It is trite law that when there is specific period for delay condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Constitution".

10. The Hon'ble Kerala High Court in of **M/s. Penuel Nexus Pvt. Ltd. v. The Additional Commissioner, Headquarters (Appeal) Ernakulam & State Tax Officer, Taxpayer Services Circle, Cochin, State GST Department** reported in WP(C) No. 15574 of 2023, held that:

> "The Central Goods and Services Tax Act is a special statute and a self-contained code by itself. Section 107 has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite that the Limitation Act will apply only if it is extended to the special statute. It is also

> rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted".

11. Thus, the respondent no.2 submits that the petitioner herein has not provided a reasonable explanation for remaining inactive for an extended period after the issuance and communication of the contested order. Furthermore, the Statute imposes a strict time limit for filing an appeal.

12. Upon a thorough examination of the documents presented before the Court and taking into account the arguments put forth by the parties, this Court allows the writ petition on the grounds that the delay in filing the appeal by the petitioner was due to circumstances beyond the control of the petitioner. This rigid approach fails to account for genuine extenuating circumstances, reflecting a lack of judicial empathy and an unreasonable interpretation of statutory time limits. Given the petitioner's situation, this decision by the Appellate Authority to dismiss the appeal based solely on timing considerations was legally unsound. Moreover, the petitioner's right to further appeal has been obstructed by the non-formation of the GST Appellate Tribunal, effectively denying him a statutory right to a higher appeal.

13. In **S.K. Chakraborty & Sons Vs. Union of India** reported in **[2024] 159 taxman.com 259 (Calcutta)**, the

Hon'ble division bench of Justice Debangsu Basak and Md. Shabbar Rashidi held that: -

> *"19. Section 107 of the Act of 2017 does not exclude the applicability of the Act of 1963 expressly. It does not exclude the applicability of the Act of 1963 impliedly also if one has to consider the provisions of Section 108 of the Act 2017 which provides for a power of revision to the designated authority, against an order of adjudication. In case of revision a far more enlarged period of time for the Revisional Authority to intervene has been prescribed. Two periods of limitations have been prescribed for two different authorities namely, the Appellate Authority and the Revisional Authority in respect of the same order of adjudication. Any interference with the order of adjudication either by the Appellate Authority or by the Revisional Authority would have an effect on the defaulter/notice. Section 107 does not have a non-obstante clause rendering Section 29(2) of the Act of 1963 non-applicable. In absence of specific exclusion of the Section 5 of the Act 1963 it would be improper to read an implied exclusion thereof. Moreover, Section 107 it its entirely has not expressly stated that, Section 5 of the Act of 1963 stands excluded.*
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> *20. Therefore, in our view, since provisions of Section 5 of the Act of 1963 have not been expressly*

> *or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29(2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filling the appeal can be extended by the Appellate Authority".*

14. In light of the procedural irregularities, the arbitrary nature of the actions, and the statutory misapplication, this court finds the petitioner's case to be meritorious. Accordingly, the writ petition is allowed, and the impugned orders dated February 27, 2024 is quashed. The petitioner's rights under the WBGST Act, 2017, are restored, with all benefits that accompany this decision, without any adverse consequences arising from the annulled orders. The Appellant Authority is requested to consider and decide the application for condonation of delay filled by the petitioner on merits. If, the explanations advance for condonation of delay are accepted to be sufficient, the Appellant Authority may condone the delay in preferring the appeal, hear and dispose the appeal on merit.

15. All pending applications are accordingly disposed of.

16. There shall be no order as to costs.

17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)