11th September, 2024
(AK)
143

W.P.A 18799 of 2024

Surekha Shah
Vs.
Deputy Commissioner of Revenue, State Tax, College Street and Sealdah Charge and others

Mr. Sandip Choraria
Mr. Rishav Manna
...for the petitioner.

Md. T.M. Siddiqui
Mr. Tanoy Chakraborty
Mr. D. Sahu
...for the State.

1. Challenging, *inter alia*, an order dated 30th November, 2023 passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act'), for the tax period July 2017 to March 2018 an appeal was filed before the Appellate Authority under Section 107 of the said Act and the same was accompanied with the pre-deposit as is required for maintaining the appeal.

2. Mr. Choraria, learned Advocate appearing on behalf of the petitioner, would submit that since, the appeal was belatedly filed, appropriate explanation was provided for condonation of delay. According to him, there was only a delay of sixteen days in filing the appeal. The Appellate Authority, however, by ignoring the explanation by its order dated 9th May, 2024 had rejected the said appeal. He submits that

in the facts noted hereinabove, since the appellate tribunal is not available, this Hon'ble Court may be pleased to hear out the writ petition on merits, or in the alternative remand the matter back to the Appellate Authority for a decision on merits.

3. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the State-respondents. He submits that admittedly, the appeal was filed beyond the prescribed period. As such according to him there is no irregularity in the order passed by the appellate authority. He, however, does not dispute the fact that there was a marginal delay in filing the appeal.

4. Having heard the learned Advocates appearing on behalf of the respective parties and taking note of the fact that the appellate tribunal is yet to be constituted, I am of the view, in order to adjudicate the writ petition on merits, the same would require not only scrutiny of records but decision on factual issues.

5. Having regard thereto, it would be prudent at this stage to remand the matter back to the Appellate Authority for a decision on merits especially considering the fact that there was a marginal delay in filing the appeal.

6. Accordingly, the order passed by the Appellate Authority on 9th May, 2024 is set aside. The matter

is remanded back to the Appellate Authority with a direction to 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 the order.

7. With the aforesaid directions and observations, writ petition stands disposed of.

8. There shall be no order as to costs.

9. 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.)