M/L 158
17.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19053 of 2024

Global Dried Flowers
versus
Union of India & Ors.

Ms. Sweta Mukherjee
Ms. Tanima Nandy
For the petitioner.

Ms. Manasi Mukherjee
Mr. Bijitesh Mukherjee
... For the respondents.

1. Challenging the order dated 26th March, 2024, passed under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act"), the instant writ petition has been filed.

2. Ms. Mukherjee, learned advocate appearing in support of the writ petition would submit that the petitioner being aggrieved by the refund rejection order passed by the proper officer on 6th February, 2023, in respect of the tax period January, 2022 to February, 2022, had filed an appeal on 27th March, 2023 within the time limit prescribed.

3. By drawing attention of this Court to the order impugned, she would submit that the original appeal was filed on 27th March, 2023, against the refund rejection order dated 6th February, 2023 before the Park Street Division, Kolkata South

Commissionerate. Subsequently, the petitioner was called upon to submit a physical copy of the appeal, which the petitioner did before the Additional Commissioner (Appeal) CGST & CX on 5th October, 2023. She submits that notwithstanding issuance of provisional acknowledgement in terms of Rule 108(3) of the Central Goods and Services Rules 2017 (hereinafter referred to as the "said Rules") which is required to be considered as date of filing of the appeal, however, the appellate authority by treating the date of submission of the physical copy of the appeal on 5th October, 2023 as the date of filing of the appeal, had treated the same as time barred. Such finding arrived at by the appellate authority is perverse to say the least. She would submit that the appellate authority by relying on the un-amended provisions of Rule 108(3) of the said Rules had taken such decision. Such decision cannot be sustained. She further submits that since the Appellate Tribunal has not been constituted, the present writ petition has been filed. Having regard to the facts as noted above, she submits that this Court may be pleased to remand the matter back to the appellate authority or in the alternative, hear out the writ petition on merits.

4. Ms. Mukherjee, learned advocate appearing on

behalf of the respondents acknowledges the fact that in this case on filing of the appeal a provisional acknowledgement was issued. From the records it would transpire such provisional acknowledgement was issued within the time prescribed for filing of the appeal.

5. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I find that in terms of the Rule 108(3) of the said Rules that date of issuance of provisional acknowledgement is to be considered as the date of filing of the appeal. Admittedly, in this case, from the provisional acknowledgement issued by the respondents it would transpire that the appeal had been filed on 27th March, 2023. The order impugned before the appellate authority is dated 6th February, 2023. From the aforesaid, it is apparent and clear that there is no delay in filing of the appeal especially, having regard to the provisions contained in Rule 108(3) of the said Rules.

6. In view thereof, while setting aside the order dated 26th March, 2024, I remand the matter back to the appellate authority for reconsideration of the appeal on merits.

7. The appellate authority having regard to the fact

that the appeal had been filed on 27th March, 2023 shall dispose of the appeal on merits as expeditiously as possible, preferably within a period of six weeks from the date of communication of this order.

8. With the above observations and directions, the writ petition is disposed of.

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.)