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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19509 of 2024

Big Bull Trader Pvt. Ltd.
Versus
The Assistant Commissioner of State Tax,
Howrah & Kadamtala Charge & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
… For the petitioner.

Mr. Anirban Ray, Ld. GP
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
… For the State.

1. Challenging the appellate order dated 27th February, 2024, passed by the appellate authority under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act") for the tax period July, 2017 to March, 2018, the instant writ petition has been filed.

2. Mr. Choraria, learned advocate appearing in support of the writ petition would submit that being aggrieved by an order dated 3rd May, 2023 passed under Section 73 of the said Act, an appeal was filed before the appellate authority. According to him, there had been a delay of 53 days in preferring the appeal. Having regard to the same, an application for condonation of delay was also filed. The appellate authority, however, dismissed the

appeal on the ground of delay in filing the appeal. He further submits that the appellate authority without considering the application for condonation of delay had mechanically rejected the same. It is submitted that since the Appellate Tribunal is yet to be constituted, this Hon'ble Court may be pleased to take up the hearing of the writ petition and decide the same on merits, especially having regard to the fact that even prior to filing of the appeal on 3rd August, 2023, the entire tax component had been recovered from the petitioner.

3. Mr. Chakraborty, learned advocate enters appearance on behalf of the State respondents. On instruction, he acknowledges the fact that the entire tax component has been recovered and the same is required to be reconciled.

4. Having regard to the above and taking note of the fact that there is no adjudication on merits by the appellate authority and by reasons of the Appellate Tribunal not being available it would be necessary for this Court to scrutinize the records and determine the factual issues in order to test out the order passed by the proper officer on merits.

5. Having regard thereto and considering the fact that the entire amount of tax has already been recovered it would be prudent, at this stage, to remand the matter

back to the appellate authority.

6. The appellate authority having due regard to the direction passed herein shall hear out and dispose of the appeal on merit as expeditiously as possible, preferably within a period of six weeks from the date of communication of this order.

7. Needless to mention that since the entire tax component has already been recovered, the petitioner shall not be required to put in any further pre-deposit.

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.)