IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 21713 of 2024

Reserved on : 11.11.2024
Pronounced on: 14.11.2024

Dola Bharati

...Petitioner

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Himangshu Kumar Ray
Mr. Arup Dasgupta
Mr. B. Sengupta
Mr. S. Podder
Ms. S. Shaw
Mr. P. Chowdhury

... ... for the petitioner

Mr. A. Ray
Mr. Md. T.M. Siddiqui
Mr. Nilotpal Chatterjee
Mr. T. Chakraborty
Mr. D. Sahu

... ... for the State

Rajarshi Bharadwaj, J:

1. The present writ petition has been filed in relation to the order passed by the Appellate Authority herein respondent no.3 wherein the petitioner challenges the impugned order passed by the Appellate Authority under

WBGST Act, 2017 confirming the order of the Adjudicating Authority imposing penalty for availing excess Input Tax credit.

2. The facts of the case in a nutshell are that the petitioner, Smt. Dola Bharati, is the sole proprietor of M/s Divine, a business entity with its registered office at 816, South Panchpota, Sabujsangha Auto Station, Panchpota, Garia, under the jurisdiction of Sonarpur Police Station in South 24 Parganas, 700152. The petitioner is engaged in the wholesale and retail trade of various types of paper and paperboard labels, duly registered under relevant legal provisions and holding a GST registration (GSTIN: 19AKPPB5630A1ZH). In the regular course of her business, the petitioner procured goods from suppliers across India and subsequently sold these goods to her clients in accordance with purchase orders, discharging all related tax liabilities accordingly.

3. An intimation dated May 15, 2023 was issued to the petitioner by the Assistant Commissioner of State Tax, Baruipur Charge herein respondent no. 3, under Form GST DRC-01A, alleging discrepancies in returns filed under GSTR-1, GSTR-3B, GSTR-9 and GSTR-9C for the tax periods of 2017-2018. The petitioner was alleged to have availed excess Input Tax Credit (hereinafter referred to as 'ITC') amounting to ₹5,65,883.26 (CGST of ₹30,541.63 and SGST of ₹5,35,341.63) and a reversal liability of ₹9,889.09 was also cited. Payment of the amounts indicated was required by May 22, 2023 to avoid further action.

4. A Show Cause Notice dated May 28, 2023 was subsequently issued under Section 73(1) of the West Bengal Goods and Services Tax (hereinafter referred to as 'WBGST') Act, 2017, reiterating the allegations, with no personal hearing opportunity provided to the petitioner. Subsequently, on July 27, 2023, the Assistant Commissioner herein the respondent no.3 issued an order confirming a total demand of ₹5,75,772.35, with additional penalties and interest, directing payment by October 25, 2023 under the threat of recovery action.

5. Dissatisfied with the order, the petitioner filed an appeal under Section 107 of the WBGST Act, 2017 including an application for delay condonation due to unavoidable personal circumstances. A Show Cause Notice dated May 07, 2023 was subsequently issued to the petitioner, questioning the timeliness of the appeal. The petitioner responded, explaining the delay due to her husband's critical illness, which necessitated extensive medical treatment, thus impeding her ability to keep a track of GST compliance. The appeal was subsequently rejected on grounds of limitation, leading the petitioner to assert that the order dated May 24, 2023 is legally unsustainable. Owing to the unfavourable order passed by the Appellate Authority the present petition has been preferred.

6. The Learned Counsel appearing on behalf of the petitioner submits that the order dated July 27, 2023, passed by the adjudicating authority, was issued without adhering to principles of natural justice, as no personal hearing was provided, that violated of Section 75(4) of the Central Goods and Services Tax (hereinafter referred to as 'CGST') Act, 2017/WBGST Act, 2017.

7. The petitioner contends that the GST authority acted in a biased and arbitrary manner, ignoring procedural mandates and statutory obligations. It has been submitted that the authority failed to verify the petitioner's returns properly before passing the order, reflecting a pre-determined and closed-minded adjudication.

8. The petitioner further submits that despite reversing the erroneously availed ITC, the adjudicating authority overlooked this and proceeded to issue an order that lacked proper jurisdiction and exceeded the statutory time limit prescribed by Section 73(10) of the CGST Act, 2017.

9. It is submitted that the delay in filing the appeal was due to extenuating personal circumstances, including her husband's illness, for which supporting medical documentation was provided. However, the Appellate Authority refused to consider the circumstances and summarily dismissed the appeal as time-barred.

10. The petitioner maintains that her 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 orders dated July 27, 2023 and July 24, 2023 be quashed and set aside, restoring the petitioner's rights under law.

11. Submissions of the Learned Counsel appearing for the respondent no.3 is that based on the GSTIN portal, an appeal was filed under ARN - AD1903240053189 dated March 06, 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 March 06, 2024 against an order dated July 27, 2023, exceeding the maximum allowable period of four months.

12. The respondent authorities acknowledge that a brief condonation request was included with the appeal, but submit that a show-cause notice was issued on May 08,2024, directing the appellant herein the petitioner to respond by May 14, 2024 as to why the appeal should not be dismissed for non-compliance with the time limitations prescribed under Sections 107(1) and 107(4) of the WBGST Act, 2017.

13. Upon a thorough examination of the documents presented to 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 an unavoidable personal circumstances, including the critical illness of her husband, which required extensive medical attention. The petitioner provided supporting medical documentation, but the Appellate Authority refused to condone the delay. 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 unduly harsh and legally unsound. Moreover, the petitioner's right to further appeal has been obstructed by the non-formation of the GST Appellate Tribunal, effectively denying her a statutory right to a higher appeal.

14. 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.

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".

15. 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 May 24, 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 Appellate Authority may condone the delay in preferring the appeal, hear and dispose the appeal on merit.

16. All pending applications are accordingly disposed of.

17. There shall be no order as to costs.

18. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata
14.11.2024
PA (BS)