Form No. J.(2)
Item No.7

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 24.09.2024

DELIVERED ON: 24.09.2024

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK

F.M.A. 1169 of 2024
With
IA No. CAN 1 of 2024

Delta Goods Private Limited & Anr.
Vs.
The Union of India & Ors.

Appearance:-
Mr. Himangshu Kumar Ray
Mr. Piyas Chowdhury
Mr. Subhasis Podder
Ms. Shiwani Shaw
Mr. Amit Saha

..... For the Appellants

Mr. T. M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal

.....For the State

<u>JUDGMENT</u>

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the unsuccessful writ petitioners is directed against the order dated 21st August, 2024 in W.P.A. No.15504 of 2024. The appellants had filed the writ petition challenging the order passed by the appellate authority dated 13th March, 2024 dismissing the appeal filed by the appellants as it was time-barred.

2. The appellants cannot fault the appellate authority's order since the appeal was filed much beyond the condonable period. Therefore, the appellate authority was right in rejecting the appeal on the ground of it being barred by

limitation as he had no power to condone the delay beyond the period of four months (3+1). Thus, the learned Single Bench was justified in not entertaining the writ petition.

3. However, after elaborately hearing the learned advocates for the parties and perusing the facts of the case, it is seen that the appellants did not respond to the show-cause notice issued by the adjudicating authority viz. the Joint Commissioner of Revenue, 24 Parganas Circle as could be seen from the order passed under Section 73 of the W.B.G.S.T. Act (for brevity, "the Act") dated 17th April, 2023.

4. The appellants' contention is that no tax is payable since the appellants had imported goods from Nepal and the requisite customs duty has been paid and the appellants are in possession of all documents. Thus, right through the entire proceedings, the appellants' case was never adjudicated and the appellants are to be blamed for such a situation as they did not respond to the show-cause notice by submitting reply, nor produced any documents before the adjudicating authority and were not diligent in filing the appeal within the statutory period of limitation. However, taking note of the fact that the appellants are in possession of certain customs documents and that their contention is that no tax is payable since it was an import transaction on which customs duty has been remitted and also taking into consideration that the appellants have pre-deposited a sum of Rs.1,48,895/- at the time of preferring the appeal, being 10% of the disputed tax and also taking note of the fact that the tax period is from July 1, 2017 to March 31, 2018 i.e. when the GST regime was introduced, this Court is of the view that one more opportunity can be granted to the appellants.

5. It is made clear that this order has been passed without going into the merits of the matter and taking into consideration the peculiar facts and circumstances of the case and also the relevant tax period.
6. For the above reasons, the appeal is allowed. The order passed in the writ petition is set aside and the writ petition is allowed and the order passed by the appellate authority and adjudication order passed under Section 73 of the Act dated 17th April, 2023 are set aside and the matter is remanded back to the adjudicating authority for fresh consideration.
7. The appellants are directed to submit their reply to the show-cause notice enclosing all documents in their possession within a period of six weeks from the date of receipt of server copy of this judgment and order after which the adjudicating authority shall afford an opportunity of personal hearing to the authorized representative of the appellants and pass fresh orders on merits and in accordance with law.
8. It is reiterated that this Court has not gone into the merits of the matter and all grounds available to the appellants can be canvassed before the adjudicating authority, which shall take decision on merits.
9. No costs.
10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(BIVAS PATTANAYAK, J.)

Pallab/Krishnendu AR(Ct.)