18-10-2024
Item No.7 VB
SG/**Subrata Bhattacharyya AR(C)**

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

WPA No.23902 of 2024
Frontline (NCR) Business Solutions Private Limited & Anr
-vs-
State of West Bengal & Ors.

Mr. Vikas Baisya
Mr. Tathagat
Mr. Dyutimoy Pal
Mr. Aman Agarwal
Ms. Ranjana Seal
Mr. Sourasish Das …for the petitioners

Ms. Sabnam De Bardhan
Mr. Manas Kumar Sadhu
Mr. Hare Krishna Halder …for the State

Affidavit of service filed in court be taken on record.

This writ petition has been filed challenging an order of the appellate authority namely, Joint Commissioner of Revenue, State Tax/GST, Behala Circle, rejecting the appeal filed by the petitioners on the grounds of it being barred by limitation in contravention to the provisions of sub-sections (1) and (4) of section 107 of the WBGST Act, 2017.

Mr Baisya, learned counsel appearing for the petitioners, referring to a judgement in the case of ***S.K. Chakraborty & Sons versus Union of India & Ors.*** reported in ***2023 SCC OnLine Cal 4759*** submits that though as per provisions of Section 107 of WBGST Act, 2017, there is delay yet such delay may be condoned applying Section 5 of the Limitation Act. The delay is of nominal 30 days in filing the appeal which has occasioned due to sudden demise of the professional consultant who was previously looking after the case and after his demise, the petitioners were not aware of the status of the case. He seeks for condonation of delay and sending the matter before the appellate authority to hear out the appeal and dispose of the same on merit within a stipulated time.

On the other hand, learned counsel for the State-respondents, submits that as per the statutory requirement, the appeal should have been preferred within a period of three months with an extended period of thirty days on sufficient ground been shown. However, the appeal has been filed beyond the period as stipulated under the provisions of WBGST Act. Therefore, the order passed by the appellate authority does not call for any interference. She submits for dismissal of the writ petition.

It is found from the Annexure to Form GST APL-01 (at page 32 of the writ petition) that the delay was on the grounds of sudden demise of the professional consultant who previously looked after the case. The appeal was preferred against the order dated December 28, 2023 passed by the Deputy Commissioner of State

Tax, Behala Charge under section 74 of the WBGST Act, 2017. The appeal has been rejected by the appellate authority on being barred by limitation in contravention of the provisions of section 107(1) and 107(4) of the WBGST Act, 2017. Now the question which is to be examined is whether the appellate authority was right in rejecting the appeal on the ground of delay.

At this stage, it would be profitable to reproduce the observation of Hon'ble Division Bench of this court in *S.K. Chakraborty & Sons (supra)* at paragraph 20 as follows:–

> *"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 filing the appeal can be extended by the appellate authority."*

Bearing in mind the aforesaid decision of the Hon'ble Division Bench, there cannot be any doubt as regards the power of the appellate authority under section 107 of the WBGST Act, 2017 Act to condone the delay beyond the time prescribed. The explanation made by the petitioners is acceptable.

In the light of the above discussions, the appeal is restored to its original file and number by condoning the delay.

The appellate authority is directed to hear out and dispose of the appeal on merits within a period of four weeks from the date of communication of this order, upon giving an opportunity of hearing to the petitioners.

With the above observations and directions the writ petition stands disposed of.

There shall be no order as to costs.

Learned advocate for the petitioners is directed to communicate this order to the appellate authority.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

[Bivas Pattanayak, J]