11
BS 04.12.2024

WPA 27177 of 2024

Snehasish Paul
Vs.
Assistant Commissioner of State Tax, Balurghat Charge & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
… … for the petitioner
Mr. A Ray.
Mr. T.M.Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
… …for the respondents

1. The Petitioners in the present writ petition have approached this Hon'ble Court under Article 226 of the Constitution of India, 1950, seeking the quashing and setting aside of the order passed under Section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") and the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as "WBGST Act") for the financial year 2021–2022. The impugned order was passed by the Learned Assistant Commissioner, State Tax Officer, Dakshin Dinajpur, being Respondent No. 1 herein.

2. The Impugned Order, dated September 15, 2023, with Reference No. ZD1909230253748, was uploaded in the "Additional Notice and Orders" section of the GST portal, demanding a payment of ₹35,85,346.04 as interest and penalties. This order followed a Show Cause Notice dated November 21, 2022, alleging a shortfall in tax payment amounting to ₹62,75,587.88 for the financial year 2021-2022.

3. The Show Cause Notice was issued without providing an opportunity for a personal hearing, as required under Section 75(4) of the GST Act, 2017. The notice was uploaded in the "Additional Notice and Orders" tab of the GST portal, which went unnoticed due to the Petitioners' reliance on their accountant and their lack of technical expertise. The Petitioner claims that this procedural lapse violated the principles of natural justice.

4. The Petitioners had already made a partial tax payment of ₹28,26,860/- on November 30, 2022, via Form DRC-03 (ARN No. AD1911220132010). However, the Respondents proceeded with the adjudication and imposed additional liabilities without considering this payment or granting the Petitioners an opportunity for a personal hearing.

5. The Petitioners submitted medical records indicating that they were suffering from severe anemia and spinal complications during the relevant period, which required blood transfusions and extended treatment. These health issues, along with the departure of their accountant, hindered their ability to respond to the notices within the prescribed timeline.

6. The Petitioners, dissatisfied with the Impugned Order, filed an appeal under Section 107 of the GST Act, 2017, on March 27, 2024, in Form GST APL-01, along with a petition for condonation of delay. The appeal was delayed by 72 days due to the aforementioned circumstances. Despite presenting supporting documentary evidence, the appellate authority rejected the appeal on September 30, 2024, solely on the grounds of limitation.

7. The Petitioners submits that Section 107 of the GST Act, 2017, does not explicitly exclude the applicability of the Limitation Act, 1963, and that the delay in filing the appeal should have been condoned under Section 5 and Section 29(2) of the Limitation Act. Therefore, the Petitioners pray for the quashing of the Impugned Order dated September 15, 2023 and the appellate order dated September 30, 2024. They seek appropriate relief from this Hon'ble Court to rectify the procedural irregularities and ensure compliance with the principles of natural justice.

8. 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 as statutory provisions on limitation should be interpreted liberally in cases where genuine hardships are demonstrated, particularly in light of judicial precedents supporting such relief.

9. In **S. K. Chakraborty & Sons Vs. Union of India** reported in ***[2024] 159 taxman.com 259 (Calcutta)***, the Hon'ble Division Bench comprising Justice

Debangsu Basak and Justice 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".

10. In light of the procedural irregularities and the arbitrary nature of the actions, this court finds the petitioner's case to be meritorious. Accordingly, the writ petition is allowed and the appellate orders dated September 30, 2024 is quashed. The Appellate 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.

11. All pending applications are accordingly disposed of.

12. There shall be no order as to costs.

13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)