

04.12.2024

WPA 28195 of 2024

**Anand Kumar Hirawat
Vs.**

**The Senior Joint Commissioner of Commercial Taxes
& WBGST, Burrabazar Circle & Ors.**

Ms. Sutapa Roychowdhury
Mr. Abhijat Das
Ms. Aratrika Roy

... ... for the petitioner

Mr. Anirban Roy
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal

... ... for the State

1. The petitioner operates a sole proprietorship business under the name *M/s Anand Impez*, situated at 21, 3rd Floor, Synagogue Street, Burrabazar, Kolkata-700001. The petitioner is a Registered Taxable Person (RTP) under the Central Goods and Service Tax Act, 2017, and the West Bengal Goods and Service Tax Act, 2017, holding GSTIN 19AAQPH8629C12E.

2. On August 24, 2023, Respondent No. 1 initiated proceedings under Section 73 of the said Act for the period from April 2018 to March 2019. The petitioner was served with an intimation in Form GST DRC-01A, alleging short payment of tax on outward supplies and excess availing of Input Tax Credit (ITC). A demand for ₹11,61,287 was raised, comprising IGST of ₹11,47,107, CGST of ₹7,090, and SGST of ₹7,090. Additionally, interest of ₹10,04,262 was levied, and the petitioner was

instructed to pay the amount by September 4, 2023, failing which a notice under Section 73(1) would follow.

3. Subsequently, on September 21, 2023, Respondent No. 1 issued a Show Cause Notice (SCN) in Form GST DRC-01, reiterating the earlier allegations and unlawfully enhancing the interest amount to ₹10,20,870. The petitioner was directed to appear before the Respondent on September 27, 2023, or file a response in Form GST DRC-06 by October 17, 2023. However, due to challenges posed by COVID-19 and the negligence of the petitioner's tax consultant, who had access to the GST portal, the petitioner could not respond to the SCN.

4. On November 23, 2023, Respondent No. 1 passed an adjudication order under Section 73, raising a total demand of ₹23,51,801. This included tax of ₹11,61,287, interest of ₹10,55,803, and a penalty of ₹1,34,711. The adjudication was based on the alleged short payment of tax and excess ITC availed. However, no specific details or evidence of discrepancies were provided to the petitioner, violating the principles of natural justice.

5. Being aggrieved by the adjudication order, the petitioner, on June 10, 2024, filed an appeal under Section 107 of the GST Act in Form GST APL-01, along with the statutory pre-deposit of ₹1,16,129. The petitioner also explained the delay in filing the appeal,

attributing it to the negligence of the former tax consultant and the lack of prior knowledge about the adjudication proceedings.

6. Despite these submissions, on July 9, 2024, Respondent No. 2 rejected the appeal through Form GST APL-02, citing the delay in submission as the sole ground for dismissal, leaving the petitioner aggrieved by the arbitrary and summary dismissal of the appeal.

7. 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.

8. 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 entirety 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”.

9. 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 order dated July 9, 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.

10. All pending applications are accordingly disposed of.

11. There shall be no order as to costs.

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

(Rajarshi Bharadwaj, J.)