06.03.2024
SL.07, Ct.3
R.Bhar

**In the High Court at Calcutta**
**Circuit Bench at Jalpaiguri**
**Appellate Side**

**W.P.A. 346 of 2024**

**M/s. Jalpaiguri Central Engineers Cooperative Society Limited**
**-Vs.-**
**Union of India And Ors.**

Mr. Prosenjit Das
Mr. Abhilash Mittal
……for the petitioner

Mr. Sudipto Kumar Mazumdar
Mr. Saptak Sarkar
……for Union of India

Mr. Ratan Banik
Mr. Saptarshi Banik
……for respondents

The petitioner in the present writ petition is challenging the show cause notice dated 27.04.2021, order in original dated 12.04.2022 passed by respondent no.3 and the appeal order dated 02.11.2023 passed by the respondent no.2.

Brief facts leading to the present writ petition is as follows :-

The present dispute pertains to the financial year 2015-16 and 2016-17. During the said period, the petitioner was providing works contract service to the government department and government undertakings. Additional/Joint Commissioner of CGST and Central Tax, Siliguri Commissionerate issued a show cause notice dated 27.04.2021 alleging that the petitioner has willfully suppressed the taxable value during the financial year 2015-16 and 2016-17 by not obtaining service tax registration and by not declaring the actual taxable value in the statutory ST-3 returns. After affording an opportunity of hearing, the adjudicating authority passed the order in original dated 11.04.2022 by confirming the demand of service tax to the tune of Rs.24,07,850/-. Aggrieved by the same, the petitioner preferred an appeal before the appellate authority. The appellate authority vide order dated 02.11.2023 summarily rejected the said appeal on the ground of delay.

Learned counsel for the petitioner submits that the appellate authority has wrongly dismissed the appeal on the presumption that there is no power vested with the appellate authority to condone the delay in filing the appeal beyond 90 days.

However, the Hon’ble Calcutta High Court in MAT No. 81 of 2022 titled as *S.K. Chakraborty & Sons v. Union of India & Ors* has held that the appellate authority under the GST Act has power to condone the delay.

Learned counsel for the respondent conceded to the said legal position and submits that in view of the law laid down by the Hon’ble Division Bench in *S.K. Chakraborty (Supra),* the appellate authority has the power to condone the delay beyond the statutory period.

As pointed out by the parties, the issue of whether the appellate authority has the power to condone the delay beyond the statutory period is no more *res integra* in view of the law laid down by the Hon'ble Division Bench in *S.K. Chakraborty (Supra)*.

Hence, in view of the aforesaid legal position, this Court deems it appropriate to set aside the impugned order dated 02.11.2023 and remand the matter back to the appellate authority for fresh consideration on merit.

With the aforesaid directions, the present writ petition is disposed of.

Affidavit of service is taken on record.

**(Gaurang Kanth, J.)**