11.03.2024
SL.07, Ct.3
R.Bhar

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

W.P.A. 767 of 2022

Prem Chand
-Vs.-
Assistant Commissioner of CGST And Central Excise, Cooch Behar Division

Mr. Sandip Choraria
Mr. Rajeev Parik
……for the petitioner

Mr. Ratan Banik
Mr. Bishwa Raj Agarwal
……for the respondents

The petitioner has filed the present writ petition assailing the order dated 17.09.2019 passed by respondent no.2 vide which the petitioner's application for refund claim has been rejected, an order dated 24.09.2021 vide which the appeal filed by the petitioner was dismissed on the ground of delay.

It is the case of the petitioner that he filed a refund application dated 15.07.2019 seeking refund of Rs. 1,52,055/- towards input tax credit on export of goods and services for the period from April 2018 to March 2019. It is the case of the petitioner that he submitted this application with the CGST authority but was not intimated of the outcome of the present application. Later, on 12.08.2020, the petitioner came to know that the respondent had rejected the petitioner's application on 17.09.2019 on the ground of non-submission of documents. Learned counsel for the petitioner further submits that the petitioner never received any show cause notice and hence the said order was passed without complying with the principles of natural justice. The petitioner filed an appeal before the appellate authority and the same was rejected by order dated 24.09.2021 on the ground of delay. Learned counsel for the petitioner further relies on the judgment of this Court in Writ Petition No. 766 of 2022 titled as *Rakesh Manda v. Assistant Commissioner of CGST & Central Excise, Cooch Behar Division & Ors.*

Per contra, learned counsel for the respondent submits that the petitioner filed the application for refund without any supporting documents. The same was rejected vide order dated 17.09.2019. Learned counsel further submits that as per Section 169 of the CGST Act, making an order available by uploading it on GST common portal is a valid mode of communication. The petitioner filed an appeal after a delay of 7 months. As per Section 107 of the CGST ACT, the appeal is to be preferred within a period of three months. The delay can further be condoned for a period of one month. However, there is no provision for condoning the delay for a period of seven months. It is further contended by the respondent that the petitioner has not explained the delay in filing the appeal. Affidavit-in-opposition has been filed by the respondent.

This Court has heard the rival contentions of the parties and has examined the documents on record. The issue regarding condonation of delay in filing the appeal before the appellate authority is no more res integra in view of the latest judgment of the Hon'ble Calcutta High Court in MAT 81/2022 titled as *S.K. Chakraborty & Sons v. Union of India & Ors* and Writ Petition No. 2904 of 2023 titled as *Arvind Gupta v. Assistant Commissioner of Revenue, State Taxes, Cooch Behar Charge & Ors.* It has been categorically held that the appellate authority under the GST Act has power under law to condone the delay beyond 120 days.

Hence, in view of the settled position of law, the appellate authority ought to have condoned the delay in the statutory period while considering the petitioner's appeal. Further, as held by this Court in *Rakesh Manda (Supra)*, the appellate authority has the power under Rule 107 of the CGST Act to accept additional documents under certain circumstances.

The petitioner received the order dated 17.09.2019 only on 12.08.2020. It is the claim of the petitioner that he filed the appeal within the statutory period from the date of knowledge. Hence, this Court is of the considered opinion that the appellate authority should have condoned the delay in filing the appeal.

In view of the same, this Court condones the delay in filing the appeal and set aside the order dated 24.09.2021 passed by the appellate authority. The matter is remanded back to the appellate authority for fresh consideration. The appellate authority is further directed to permit the petitioner to place on records additional documents and in case he files fresh documents, the same is to be examined in view of Rule 107 of the CGST Act.

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

(Gaurang Kanth, J.)