Item no. 20
24.04.2024
Saswata

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

WPA 884 of 2024

Sujit Das
versus
The Senior Joint Commissioner of Revenue, State Tax, Jalpaiguri Circle & Ors.

Mr. Sandip Goraria
...For the petitioner

Mr. Pretom Das
Mr. Dilip Kumar Agarwal
...For the State

1. The instant writ application has been filed, *inter alia*, challenging the refusal on the part of the appellate authority in refusing to condone the delay in maintaining the appeal under Section 107 of the WBGST Act, 2017[1] by its order dated 19th January 2024.
2. It is the petitioner's case that being aggrieved with the determination under Section 74 of the said Act dated 26th June, 2023, the petitioner had filed an appeal under Section 107 of the said Act. Since, the appeal was filed beyond the period of limitation the same was accompanied by an application under Section 5 of the Limitation Act, 1963. The appellate authority, however, appears to have rejected the said application for condoning the delay by its order dated 19th January 2024 and had consequentially disposed of the appeal.
3. Challenging the aforesaid rejection of the application for condonation of delay the present writ application has been filed.

[1] Hereinafter referred to as the "said Act"

4. Mr. Goraria, learned advocate appearing for the petitioner by drawing attention of this Court to the provisions of Section 107(4) of the said Act submits that since the appellate authority was competent to entertain the appeal beyond one month of the time prescribed, the petitioner had filed an application for condonation of delay on the ground stated therein. He submits that the appellate authority had, however, by overlooking the fact that the petitioner had made out sufficient grounds for condonation of delay by, inter alia, observing that there is no scope under the provisions of the said Act for condoning the delay beyond 4 months, had rejected the said application for condonation of delay and consequentially disposed of the appeal. According to him, the aforesaid constitutes failure on the part of the appellate authority to exercise jurisdiction so vested in it. There is nothing in the provisions of the said Act, which even impliedly bars the appellate authority from exercising its jurisdiction, to condone the delay beyond one month of the prescribed period as provided for in the said Act.
5. By placing reliance on a judgment delivered by a Hon'ble Division Bench of this Court in the case of ***S.K. Chakraborty & Sons v. Union of India***[2] (2024) 123 GSTR 229 it is submitted that the Division Bench while interpreting the provisions of the said Act having regard to Section 29(2) of the Limitation Act, 1963 has held that since, there is no expressed or implied exclusion of Section 5 of the Limitation Act, by virtue of Section 29(2) of the

[2] 2023 SCC Online 4759

Limitation Act, Section 5 of the Limitation Act 1963 stands attracted. Having regard to the aforesaid he submits that this Hon'ble Court may be pleased to set aside the order passed by the appellate authority in refusing to condone the delay and in the facts of the case, direct the appellate authority to hear out the appeal by condoning the delay.

6. Mr. Agarwal, learned advocate appearing for the State respondents, on the other hand by drawing attention of this Court to the provisions of Section 107(4) of the said Act submits that there is no power available to the appellate authority to condone the delay beyond the period of one month from the prescribed period of 90 days, provided for in preferring the appeal. According to him, the said Act is a self-contained code and excludes the applicability of the provisions Section 5 of the Limitation Act 1963. Though, the provisions of Section 5 of the Limitation Act1963 may not have been expressly excluded, the same stands impliedly excluded.

7. In support of his contention, Mr. Agarwal has placed reliance on a judgment of the Hon'ble Allahabad High Court delivered by the Learned Single Judge in the case of ***M/s Yadav Steels versus Additional Commissioner & Anr.***[3]. He submits that the judgment delivered by the Division Bench of this Court in the case of ***S.K. Chakraborty & Sons (supra)*** was considered by the Learned Single Judge and by distinguishing the same, had concluded that taxing statutes like GST Act embody

[3] Neutral Citation – 2024-AHC 26169

a comprehensive framework with specific limitation provisions tailored to expedite the resolution of tax-related matters. Section 107 of the said Act operates as a complete code in itself, explicitly delineating limitation periods for filing appeals and implicitly excluding the application of general limitation provisions such as Section 5 of the Limitation Act 1963.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record.

9. The legal issue that falls for consideration in the present application is whether the appellate authority had failed to exercise jurisdiction in rejecting the application for condonation of delay, *inter alia*, on the ground that the same was filed beyond one month from the prescribed period of limitation, as provided in Section 107(4) of the said Act. It may be noticed that an identical issue had fell for consideration before the Hon'ble Division Bench of this Court in the case of ***S.K. Chakraborty & Sons (supra)***. The Division Bench of this Court, while considering the scope and ambit of Section 107 of the said Act and the applicability of Section 5 of the Limitation Act 1963 on the basis of the provisions contained in Section 29(2) of the Limitation Act 1963 and by placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case ***Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and another versus Excise and Taxation Officer Sunder Nagar/Assessing Authority***[4], had concluded that in

[4] (2020) 17 SCC 692

absence of non obstante clause rendering Section 29 (2) of the Limitation Act 1963, non applicable and in absence of specific exclusion of Section 5 of the Limitation Act, 1963, it would be improper to read implied exclusion thereof. Having regard to the above, in my view the appellate authority is not denude of its power to condone the delay beyond one month from the prescribed period of limitation as provided for in Section 107 (4) of the said Act.

10. It also appears that another Hon'ble Division Bench of this Court in the case of ***Kajal Dutta versus Assistant Commissioner of State Tax, Suri Charge and Ors.***[5] had, while considering the provisions of Section 107 (4) of the said Act, held that the statute does not state that beyond the prescribed period of limitation, the appellate authority cannot exercise jurisdiction.

11. In the light of the above, the judgment delivered by the Learned single Judge of Allahabad High Court in the case of ***M/s Yadav Steels (supra)*** does not appear to be persuasive enough.

12. In view thereof, I find that the appellate authority had failed to exercise jurisdiction in refusing to entertain the application under Section 5 of the Limitation Act, since the same was filed beyond one month, beyond the prescribed period of Limitation as provided for in Section 107(4) of the said Act.

13. Having regard to the aforesaid, the order dated 19th January 2024 passed by the appellate authority in

[5] (2023) 97 GST (Calcutta)

refusing to condone the delay under Section 107 of the said Act is set aside.

14. Since, no useful purpose will be served to remand the matter as regards consideration of the application under Section 5 of the Limitation Act, 1963 to the appellate authority, I am of the view that such issue needs to be considered by this Court. Having considered the application for condonation of delay, I find that the explanation provided by the petitioner in the application under Section 5 of the Limitation act is satisfactory and delay has been sufficiently explained. Having regard thereof the delay in preferring the appeal under Section 107 of the said Act is condoned and appeal be restored to its original file and number.

15. The appellate authority is directed to hear out and dispose of the appeal on merits preferably within a period of one month from date without granting unnecessary adjournments to either of the parties.

16. With the above direction and observations, the writ application being WPA 884 of 2024 is disposed of without any order as to costs.

17. All parties to act on the basis of the server copy of this order duly downloaded from this Hon'ble Court's official website.

(Raja Basu Chowdhury, J.)