

Form No.J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 917 of 2024

Mukul Islam
Versus
The Assistant Commissioner of Revenue,
State Tax Cooch Behar Range & Ors.

For the petitioner : Mr. Sandip Choraria
Mr. Rajeev Parik

For the State : Mr. Subir Kumar Saha
Ms. Rima Sarkar

Heard on : 1st May, 2024.

Judgment on : **1st May, 2024.**

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia*, challenging the refusal on the part of the appellate authority to condone the delay in maintaining the appeal under Section 107 of the West Bengal Goods and Services Tax Act, 2017¹ by its order dated 27th March, 2024.
2. It is the petitioner's case that being aggrieved with the determination under Section 73 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 27th March, 2024 and had consequentially disposed of the appeal.

3. Challenging the aforesaid rejection of the application for condonation of delay the present writ petition has been filed.
4. Mr. Choraria, 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 appeal had been filed beyond the maximum period of four months from the date of communication of the order 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

¹ Hereinafter referred to as the “said Act”

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 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. Ms. Sarkar, 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 her, 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 Act 1963 may not have been expressly excluded, the same stands impliedly excluded.

7. In support of her contention, Ms. Sarkar 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. She 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 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 writ petition 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 the maximum period of four months from the date of communication

² 2023 SCC Online 4759

³ Neutral Citation – 2024-AHC 26169

of the order. 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 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

⁴ (2020) 17 SCC 692

⁵ (2023) 97 GST (Calcutta)

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 consider the application for condonation of delay in its proper perspective, since the same was filed beyond the prescribed period of four months from the date of communication of the order appealed against.
13. Having regard to the aforesaid, the order dated 27th March, 2024 passed by the Appellate Authority in rejecting the appeal on the ground of delay 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. In view 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 two month from date, without granting unnecessary adjournments to either of the parties.

16. With the above direction and observations, the writ petition being WPA 917 of 2024 is disposed of without any order as to costs.

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.)