11.03.2024
SL.24, Ct.3
SB

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

W.P.A. 1266 of 2023

M/s. Millenium Cement Company Private Limited
-Vs.-
Superintendent, Central Goods And Services Tax And Central Excise, Rajgant Range, Jalpaiguri Division And Ors.

Mr. Boudhayan Bhattacharyya
Ms. Stuti Bansal
……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 (i) the notice of demand dated 21.04.2023 and (ii) appellate order dated 22.03.2023 vide which the appeal filed by the petitioner was dismissed on the ground of delay.

It is the case of the petitioner that he has preferred statement in GST TRAN-1 within the stipulated time and had availed the benefit of carrying forward the input tax credit claim, i.e, unutilized Cenvat Credit. However, the Respondent No. 1 issued show cause notice dated 06.04.2020 u/s 73(1) of the Act alleging short payment of tax. After considering the submission of the Petitioner, the adjudicating authority passed the Order in original dated 08.02.2022. It is the case of the Petitioner that without notice of demand in GST DRC 07, no appeal can be filed in online form. Hence after much follow up, he got the said notice in demand on 21.04.2023. Since the time for filing the Appeal was expiring, in the meanwhile, the Petitioner preferred the Appeal before the Appellate Authority manually on 30.06.2022. The Appellant made the pre-deposit on 21.07.2022. However, the Appellate authority, while quoting Section 107 of the Act, refused to condone the delay in filing the Appeal and hence dismissed the same on the ground of delay. Appellate authority noted that there was a delay of 152 days in filing the Appeal.

Per contra, learned counsel for the respondent submits that the petitioner filed an appeal after a delay of 152 days. 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 152 days. It is further contended by the respondent that the petitioner has not explained the delay in filing the appeal.

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.

In the present case, it is noted that the order in original was dated 08.02.2022 and the Appeal was filed on 21.07.2022. Hence after the deducting the statutory period of 90 days in filing the Appeal, there was a delay of 53 days. Hence the finding of the Appellate Authority to the extent that there was a delay of 152 days in filing the Appeal was erroneous.

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.

In view of the same, this Court condones the delay in filing the appeal and set aside the order dated 22.03.2023 passed by the appellate authority. The matter is remanded back to the appellate authority for fresh consideration.

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

(Gaurang Kanth, J.)