27.09.2024
Court No.2
Sl. No.6
KB

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

W.P.A 2050 of 2024

Kartikeya Commodeal Private Limited
-versus
The State of West Bengal & Ors.

Dr. Navin Barik,
Ms. Esha Acharya.
...For the Petitioner.

Mr. Subir Kumar Saha, Ld.AGP,
Ms. Rima Sarkar.
...For the State.

Affidavit-of-service filed in Court today is taken on record.

The petitioner intends to prefer an appeal before the appellate forum but is delayed in doing so. Prayer has been made to condone the delay and permit him to file the appeal before the appellate forum.

The petitioner relies upon an order dated 11th September, 2024 passed by a coordinate Bench of this Court in ***W.P.A. 18799 of 2024*** (***Surekha Shah Vs. Deputy Commissioner of Revenue, State Tax, College Street and Sealdah Charge and Others***) and the judgment dated ***1st December, 2023*** passed by the Hon'ble Division Bench in ***MAT 81 of 2022*** with ***IA No. CAN 2 of 2022*** with ***MAT 82 of 2022*** with ***CAN IA No.***

CAN 2 of 2022 (***S. K. Chakraborty & Sons Vs. Union of India & Ors.***).

Learned advocate representing the respondents submits that the order passed by the Hon'ble Division Bench in the matter of S. K. Chakraborty & Sons (supra) has been stayed by the Hon'ble Supreme Court.

According to Section 107(1) of the WBGST Act, 2017, any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

According to Section 107(4) of the Act the Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

The Hon'ble Division Bench in S. K. Chakraborty & Sons (supra) considered the above issue and held that the provision of Section 5 of the Limitation Act, 1963 has not been expressly or impliedly excluded by Section 107 of the Act of 2017 and by virtue of Section 29(2) of the Limitation Act, Section 5 of the Limitation Act stands attracted.

The Court clearly held that the prescribed period under the Act of 2017 is not final and in given facts and circumstances of a case, the period for filing the appeal can be extended by the appellate authority.

The Court passed order requesting the appellate authority to consider and decide the application for condonation of delay filed by the appellant on merits.

The effect of the order of stay passed by a superior forum has been laid down in ***Pijush Kanti Chowdhury vs State*** reported in ***2007 3 CHN 178*** wherein the Court held that unless a decision is set aside it remains as a binding precedent although it may not be binding on the parties to the proceeding where the superior Court passed interim order of stay. Stay order in a case pending before the appellate Court does not amount to any declaration of law. It is only binding on the parties to the said proceeding.

As long as the order of the Hon'ble Division Bench of this Court is not set aside by the superior forum, the order passed by the Division Bench does not get wiped away and the appellate authority would be bound to act in accordance with the same.

Accordingly, the order of stay passed by the Hon'ble Supreme Court will not stand in the way of the appellate authority to decide the matter on merits.

In the event the petitioner approaches the appellate authority within three days from date, the said authority shall consider the application filed by the petitioner for condoning the delay on merits.

If the appellate authority is of the opinion that the delay may be condoned, then necessary order may be passed by the said authority and the appeal be heard and disposed of on merits.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance of usual legal formalities.

(Amrita Sinha, J.)