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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

WPA 2538 of 2023

Ahindra Nath Roy
-versus-
The State of West Bengal & Ors.

Mr. Kunaljit Bhattacharjee
Mr. Tapan Bhattacharjee
Mr. Alok Sah
...For Petitioner

Mr. Subir Kumar Saha, AGP
Mr. Dilip Kumar Agarwa
...For State

Affidavit of service is taken on record.

The appeal preferred by the petitioner stood rejected by the appellate forum being the Joint Commissioner of Revenue on 8th September, 2023 on the ground of limitation as the same was delayed beyond four months.

The issue as to whether the provision of Section 5 of the Limitation Act, 1963 will be applicable in cases where the appeal under Section 107 of the WBGST Act, 2017 is filed beyond the prescribed period of four months, has been decided by the Hon'ble Division Bench of this Court on 1st December, 2023 in the matter of MAT 81/2022 with IA NO:CAN/2/2022 (*S.K. Chakraborty & Sons vs. Union of India & Ors.*).

The Hon'ble Division Bench held that in the absence of specific exclusion of Section 5 of the Act of 1963, it would be improper to read an implied exclusion thereof. The Court clearly laid down that Section 107 of

WBGST Act in its entirety has not expressly excluded Section 5 of the Limitation Act, 1963.

In view of the ratio laid down by the Hon'ble Division Bench, the impugned order passed by the appellate authority is liable to be set aside and is, accordingly, set aside.

Leave is granted to the petitioner to make a separate application seeking condonation of delay in preferring the appeal mentioning the ground for the delay.

In the event such application is filed, the appellate authority shall consider the same and if the ground for the delay appears to be sufficient, then condone the delay in preferring the appeal and decide the same on merits.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)