D/L - 8
25/03/2025
Court. No. 5
S.Kundu

WPA 4518 of 2025

Debabrata Das
Vs.
Union of India & Ors.

Mrs. Sabnam Basu,
...for the petitioner.

Mrs. Manasi Mukherjee,
Mr. Bijitesh Mukherjee
...for the respondent no. 2 to 5.

Mr. Tilak Mitra,
Ms. S. Roy
...for the Union of India.

1. The instant writ petition has been filed challenging the order dated 12th February, 2025 passed by the respondent no. 3 whereby the petitioner's appeal under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the said Act) challenging the order of cancellation of registration has been rejected on the ground of delay.
2. Records would reveal that a show-cause notice was served on the petitioner on 14th January, 2023 proposing cancellation of registration on the ground of non-furnishing of return under Section 39 of the said Act. From a perusal of the show-cause notice, it would transpire that the principal ground for proposing cancellation was for failure to furnish returns for a continuous period of six months. Following the aforesaid show-cause notice an order of cancellation of

registration was passed on 24th February, 2023. Challenging the said order an appeal was filed before the Appellate Authority under Section 107 of the said Act. It appears that there was a delay of 578 days in preferring the appeal.

3. Ms. Basu, learned advocate appearing in support of the writ petition by drawing attention of this Court to the application for condonation of delay appended to the said appeal would submit that the petitioner had appropriately explained the delay in filing the appeal and that there was sufficient cause for condonation of delay. Unfortunately, the Appellate Authority by proceeding on the premise that the appeal was time barred as having been filed beyond the prescribed period of three months from the date of communication of the order impugned had rejected the appeal. She would submit that the appellate authority did not even consider the explanation provided by the petitioner. Assailing the above order, the present writ petition has been filed. Independent of the above, she would submit that the petitioner is interested to carry on business by complying with the provisions of the Act

4. Ms. Mukherjee, learned advocate appearing on behalf of the respondents would submit that the petitioner had failed to file returns and it is for the aforesaid reason by following the statutory provision the petitioner's registration under the said Act had been cancelled.

There is no irregularity in cancelling the petitioner's registration.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case, I may note that the appellate authority without even considering the petitioner's application for condonation of delay has purported to reject the same. In this context, it would be relevant to place on record that the Division Bench of this Court in the case of ***S.K. Chakraborty and other*** reported in **2023 SCC OnLine Cal 4759** has taken a view as regards the scope and powers of an appellate authority to condone the delay in preferring an appeal.

6. Having regard thereto, I am of the view that the appellate authority was obliged to consider the petitioner's application for condonation of delay which had not been done. In any event, there is another aspect of the matter which requires consideration. Admittedly, I find that the registration of the petitioner had been cancelled on the ground of non-filing of returns. It is not the case of the respondents that the petitioner had evaded tax and or had been engaging in dubious process to evade tax. Taking note of the fact that suspension/revocation of registration would be counter productive and works against the interest of the revenue since, the petitioner in such case would not be able to carry on his business in a sense that no invoice

can be raised by the petitioner and the same would ultimately impact recovery of revenue, I am of the view that the respondents should take a pragmatic view of the matter and permit the petitioner to carry on his business.

7. Having regard to the aforesaid and taking note of the direction issued by the Division Bench of this Court in the case of ***Subhankar Golder versus Assistant Commissioner of State Tax, Serampore Charge and others (MAT 639 of 2024) on 9th April, 2024***, I propose to set aside the order dated 24th February, 2023 cancelling the petitioner's registration subject to the condition that the petitioner files his returns for the entire period of default and pays requisite amount of tax, interest, fine and penalty.

8. It is made clear that if the petitioner complies with the directions/conditions noted above, within four weeks from date of receipt of server copy of this order, the petitioner's registration under the said act shall be restored by the jurisdictional Officer. However, if the petitioner fails to comply the directions as aforesaid, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed.

9. For the purpose of compliance of the above directions, the respondents are directed to activate the portal within one week from date so that the petitioner can file

his returns pay requisite amount of tax, interest, fine and penalty.

10. As a sequel to the above, the order dated 12th February, 2025 passed by the appellate authority is also set aside.
11. With the above directions and observations, the writ petition being WPA 4518 of 2025 stands disposed of.
12. There shall be no order as to costs.
13. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J.)