

04.08.2025
Item No.
A 39
Saswata

WPA 4996 of 2025

**Ashok Kumar Jaiswal
Versus
The State of West Bengal & Ors.**

Mr. Abhik Chitta Kundu
Mr. S. Dutta

...For the petitioner

Mr. Amitabrata Roy, Ld. GP
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

...For the State

1. Affidavit of service filed in Court today is retained with the record.
2. Challenging the order dated 24th December, 2024 rejecting the appeal filed under Section 107 of WBGST/CGST Act, 2017 (hereinafter referred to as the “said Act”), the instant writ petition has been filed.
3. Mr. Kundu, learned advocate appearing for the petitioner submits that the petitioner had missed the opportunity to respond to the show cause notice and consequentially, an ex parte order was passed. According to the petitioner since the petitioner’s accountant who had been looking after the matter having left the petitioner’s concern, the petitioner could not appropriately defend the proceedings, nor was he aware of the order. In addition thereto, it is also submitted that the

order impugned was uploaded on the “*Additional notices and orders*” tab instead of “*Notices and orders*” which also created serious confusion.

4. Having heard the learned advocates appearing for the respective parties, I notice that the petitioner had already deposited Rs. 34,792/- towards pre deposit as is required for maintaining an appeal. The appeal was, however, dismissed on the ground of delay as the appeal was filed beyond the time prescribed. The explanation provided by the petitioner was not even considered by the appellate authority. I, however, find that having regard to the judgment delivered by the Hon’ble Division Bench of this Court in the case of ***S.K.Chakraborty & Sons vs. Union of India & Ors.*** reported in **2023 SCC Online Cal 4759 : (2024) 123 GSTR 229**, the appellate authority is bound to decide the matter whether in the facts delay was condonable. The same has not been done. Be that as it may, considering the fact that there has been no adjudication on contest at any stage and the appellate tribunal is yet to be constituted, I am of the view that in the peculiar facts noted above, the petitioner has a right to have the matter adjudicated on merits. Ordinarily, the records are available on the portal which is accessible by the appellate authority.

5. Having regard thereto, I am of the view that in the fitness of things, it would be prudent to remand the matter back to the appellate authority by setting aside the order dated 24th December, 2024. Accordingly, the appellate authority is directed to hear out the appeal on merits as expeditiously as possible preferably within 16 weeks from the date of communication of this order in accordance with law, upon giving an opportunity of hearing to the petitioner.
6. With the above direction and observation, the writ petition is disposed of.
7. All parties shall act on the basis of server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)