ML - 61
03.09.2025
D. Hira
Ct No. 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 5999 of 2025

Rifat Aamina
Vs.
Assistant Commissioner of Revenue, State tax, Howrah and Kadamtala Charge & Ors.

Mr. Arya Das,
Mr. Amit Kumar Shaw,
Mr. Pritom Banerjee.
... for the petitioner

Mr. Amitabrata Roy,
Mr. Nilotpal Chatterjee,
Mr. Tanoy Chakraborty,
Mr. Sapak Sanyal.
.. for the State

1. Affidavit-of-service filed in Court today is taken on record.
2. The present writ petition has been filed inter alia, challenging an order passed under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act), dated 24th January, 2025, rejecting petitioner's appeal from an order passed under Section 73 of the said Act on the ground of delay.
3. The petitioner claims that the order impugned was not served by the other modes of communication provided for communication of an order but was only uploaded on the portal and for such reason, there had been delay in filing the appeal.
4. The aforesaid contention of the petitioner was

not accepted by the appellate authority for the simple reason that the order which was impugned in the appeal was duly uploaded on the portal.

5. Learned advocate appearing for the petitioner however, by placing before this Court an affidavit affirmed by the petitioner's advocate on 12th January, 2024, would submit that by reasons of failure on the part of the petitioner's advocate who was looking after the matter, to collect all notices that the petitioner could not file the appeal in time.

6. Heard the learned advocates for the respective parties and considered the materials on record. Ordinarily, though the explanation for the delay is not entirely sufficient, however, having regard to the fact that the appellate tribunal is yet to be constituted and since, the relevant records are available on the portal, it would be far more convenient for the appellate authority to decide the appeal on merits.

7. Having regard to the aforesaid and the fact that the appellate authority under Section 107 of the said Act did not adjudicate the matter on merits though, there was only a marginal delay in filing the appeal and to avoid the

adjudication order to be tested before this Court at the first instance by reasons of the appellate tribunal not been constituted, in my view, it would be prudent to remand the matter back to the appellate authority for adjudication on merits. However, the petitioner should be put to terms.

8. Thus, in the event, the petitioner deposits 5% of the remaining amount of tax in dispute in addition to the amount already deposited, under Section 107(6) of the said Act, the appellate authority shall hear out and dispose of the appeal on merits in accordance with law.

9. With the above observations and directions, this writ petition stands disposed of.

10. There shall be no order as to costs.

11. Urgent certified copy of this order, if applied for, be made over to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)