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2025

Ct. No.
551

Ab

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 20712 of 2025

Dhananjoy De

Vs.

**Superintendent of Central Tax Audit, Circle-VI,
Group-41, Kolkata-II, Commissionerate and others.**

Mr. Sandip Chorasias.

... for the petitioner.

**Mr. Bhaskar Prosad Banerjee,
Mr. Kaustav Kanti Maity.**

... for the CGST & CX.

Ms. Sipra Chanda.

... for the respondent no. 5.

1. Affidavit of service filed in Court today is taken on record.
2. The petitioner assails an order dated July 24, 2025 passed by the appellate authority under Section 107 of the CGST Act, 2017 whereby the petitioner's appeal against an order dated June 20, 2023 passed under Section 74 of the said Act of 2017 was dismissed on the twin grounds of delay and non-fulfillment of the statutory condition of pre-deposit.
3. The appeal was filed with a delay of 27 days i.e. 27 days beyond the period of three months prescribed for preferring an appeal under Section 107 of the said Act of 2017, but within the condonable period of one month in terms of Section 107(4) of the said Act of 2017.
4. The petitioner has taken this Court through the application for condonation of delay along with its annexure (at pages 88 to 97 of the writ petition) and has submitted that the petitioner could not file

the appeal in time inasmuch as he was debilitated due to rheumatoid arthritis.

5. It is further submitted that it will be apparent from the order impugned itself that out of the total tax demand to the tune of Rs. 26,31,154/- in the order in original, the petitioner has disputed tax only to the extent of Rs. 21,53,505/-. The petitioner submits that the balance/remaining admitted tax amount had been paid by the petitioner to the relevant GST Authorities. It is further submitted that since the disputed amount of tax was only Rs. 21,53,505/-, therefore, the petitioner was required to put in the pre-deposit only to the extent of 10 percent of the said sum of Rs. 21,53,505/- and not of Rs. 26,31,154/- as wrongly held by the appellate authority.
6. Having heard the learned Advocates appearing for the respective parties and having considered the material on record, this Court is of the view that the explanation given by the petitioner for having occasioned delay of 27 days in preferring the appeal is plausible. It does not appear that the petitioner was grossly negligent in filing the appeal or that the delay occasioned in preferring such appeal is attributable to the petitioner's laches.
7. However, insofar as the aspect of non-fulfillment of the condition of pre-deposit is concerned, although, prima facie, appears that the petitioner has made out a case of having put in the pre-deposit in terms of the statutory mandate yet, such aspect needs to be conclusively decided by the appellate authority only, at the first instance, upon taking into consideration the material placed before it. The appellate authority needs to apply its mind to the facts afresh and re-calculate the amount required to be put in as pre-deposit in accordance with law.

8. In such view of the matter, the delay of 27 days, in preferring the appeal, being marginal in nature, is condoned. The order impugned dated July 24, 2025 passed by the appellate authority is set aside and the matter is remanded to the appellate authority for a fresh decision.
9. It is clarified that the appellate authority shall have due regard to the submission of the petitioner as regards the pre-deposit and shall proceed to hear the appeal on merits only upon arriving at the satisfaction that the mandatory condition of pre-deposit has been met by the petitioner.
10. It is further clarified that this Court has not expressed any opinion on the pre-deposit aspect and the same shall be decided by the appellate authority on the basis of the material placed before it in accordance with law.
11. WPA 20712 of 2025 stands disposed of on the above terms.

(Om Narayan Rai, J.)