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14.02.2025

WPA 21521 of 2024

Green Filed Agrotech
Vs.

The State of West Bengal & Ors.

Mr. Shiv Shankar Sharma
… … for the petitioner

Mr. Anirban Ray
Md. T.M. Siddiqui
Mr. T. Chakraborty
Mr. Saptak Sanyal
Mr. D. Sahu
… … for the State

Affidavit of service filed in Court today is taken on record.

The present writ petition has been filed, inter alia, questioning the purported rejection of the appeal under Section 107 of the West Bengal Goods and Service Tax Act, 2017 (hereinafter referred to as the said Act) vide form GST-APL 02 dated 26th June, 2024.

Mr. Sharma, learned advocate representing the petitioner submits that being aggrieved by the order dated 5th December, 2023 passed under Section 73(9) of the said Act, the petitioner had filed an appeal on 15th May, 2024 as would appear from Form GST APL 01.

By drawing attention of this Court to page 6 of the writ petition it is submitted that the aforesaid appeal was filed along with 10% pre deposit of the disputed amount of tax. A system generated provisional acknowledgement form as proof of submission of appeal was also issued. Since, the said appeal was filed beyond the time prescribed the same was accompanied by an application for condonation of delay. According to the petitioner, there was a delay of 42 days in filing the appeal.

Subsequently, on 15th May, 2024 the petitioner had received a notice as to why the appeal should not be rejected due to the delay as the same was filed beyond one month of the prescribed period as provided for under Section 107(1) read with Section 107(4) of the said Act.

Mr. Sharma by drawing attention of this Court to the order impugned submits that the Appellate Authority by ignoring the explanation given by the petitioner and by placing reliance on the proviso to sub-section (4) of Section 107 of the said Act had returned a clear finding that there is no power vested with the Appellate Authority to allow the appeal beyond one month after the time prescribed for filing the appeal. According to the petitioner, the petitioner has not only a statutory right to prefer an appeal but also has a right to seek condonation of delay in preferring an appeal. It would be apparent and clear from the above order that the Appellate Authority had failed to exercise jurisdiction vested in it while rejecting the appeal solely on the ground that it does not have the competence to condone the delay beyond one month of the time prescribed.

Mr. Siddiqui, learned advocate enters appearance on behalf of the respondents and opposes the petition. He, however, submits that since, the statute provides for the period for which delay can be condoned, there is no irregularity on the part of the Appellate Authority in refusing to condone the delay beyond the period of one month from the time prescribed.

Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly in this case, it would appear that the appeal had been dismissed solely on the ground that the same had been filed beyond one month of the time prescribed for filing the appeal. The appeal therefore, was obviously barred by limitation. However, at the same time, the aforesaid could not prevent the petitioner from maintaining an application for condonation of delay by invoking the provisions of Section 5 of the Limitation Act, 1963. The issue whether the Appellate Authority is competent to condone the delay beyond one month from the prescribed period for filing of an appeal has already been conclusively decided by the Hon'ble Division Bench of this Court in the case of **S. K. Chakraborty & Sons Vs. Union of India** reported in **2023 SCC Online Calcutta 4759**.

Having regard to the aforesaid I am of the view that the Appellate Authority ought to have taken note of the explanation given in the application for condonation of delay under Section 5 of the Limitation Act, 1963.

Having regard to the aforesaid, while setting aside the order of rejection of appeal dated 26th June, 2024 as appearing in Form GST APL 02 and taking note of the fact that no fruitful purpose will be served by remanding the aforesaid matter on the issue of condonation of delay to the Appellate Authority and also considering the explanation given by the petitioner, I am of the view that the petitioner has been able to sufficiently explain the delay in filing the appeal belatedly. In view thereof, I restore the aforesaid appeal to its original file and number and direct the Appellate Authority to hear out the same in accordance with law on merit within a period of two months from the date of communication of this order.

Since no affidavit-in-opposition has been called for, the allegation made in the writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities

(Rajarshi Bharadwaj, J.)