

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 28840 of 2024

Reserved on : 08.01.2025
Pronounced on: 16.01.2025

M/s. Rashtriya Ispat Nigam Limited

...Petitioner

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

Mr. Rahul Tangri

Ms. Taniya Roy

... for the petitioner

Mr. A. Ray, G.P.

Mr. Md. T.M. Siddiqui

Mr. T. Chakraborty

Mr. S. Sanyal

... for the State

Rajarshi Bharadwaj, J:

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking judicial intervention to quash the impugned order passed by the appellate authority rejecting the petitioner's appeal solely on the grounds of delay. The petitioner contends that it is a central public sector undertaking and that such rejection, without addressing the merits of

the appeal, violates principles of natural justice and denies the petitioner a fair opportunity to present its case.

2. The facts in a nutshell are that the petitioner, a Central Public Sector Undertaking registered under GST in West Bengal, is engaged in supplying steel products. The entity is a bona fide tax-compliant organization that transitioned to the GST regime in July 2017.

3. During April–June 2017, the petitioner carried forward CENVAT credits amounting to ₹6,75,27,861/- and service tax credits of ₹8,95,695/-. These were transitioned to the GST regime via Form GST TRAN-1.

4. A mismatch was noted by the respondent in the petitioner's GST returns for July 2017–March 2018, leading to the issuance of an ASMT-10 notice and subsequent demand for ₹9,28,787/- under CGST and ₹33,092/- under WBGST.

5. Notices were uploaded in the "View Additional Notices and Orders" tab on the GST portal, bypassing regular communication modes, resulting in the petitioner's unawareness of proceedings.

6. An ex-parte order dated August 08, 2023 confirmed the demand, prompting the petitioner to file an appeal on July 11, 2024. The appeal was delayed by 246 days due to procedural anomalies.

7. The respondent rejected the appeal on grounds of limitation without considering the merits, compelling the petitioner to seek recourse before this Hon'ble Court.

8. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court finds that the petitioner has adequately explained the reasons for the delay in filing the appeal. Regrettably, the appellate authority failed to appropriately consider this aspect and proceeded to summarily observe that, since the appeal was filed after a delay of 246 days, no reasonable cause was demonstrated for the delay.

9. While the learned counsel for the petitioner, relying on the judgment in **Anhad Impex & Anr. v. Assistant Commissioner Ward 16 Zone 2 Delhi & Ors.** reported in **2024 (2) TMI 1070 (Del HC)**, sought to argue that the initial determination under Section 73(9) of the CGST Act was vitiated by a breach of natural justice principles, this Court is of the view that it is belated for the petitioner to raise such contentions before this Court under its extraordinary writ jurisdiction, especially after having availed the appellate remedy under Section 107 of the Act.

10. However, it is evident that the appellate authority mechanically dismissed the application for condonation of delay as well as the appeal, without adequately considering the petitioner's lack of knowledge regarding the impugned order's issuance. Such an omission renders the appellate order perverse.

11. It is pertinent to note the Division Bench ruling in **S.K. Chakraborty & Sons v. Union of India** reported in **2023 SCC OnLine Cal 4759**, wherein it was held that the appellate authority is empowered to condone delays extending beyond the statutory period under Section 107(4) of the Act.

12. In light of the above, the order dated September 25, 2024, passed by the appellate authority is unsustainable and is accordingly quashed. Considering the explanation provided by the petitioner, this Court deems it unnecessary to remit the matter to the appellate authority for reconsideration of the application for condonation of delay. Instead, by condoning the delay, the appellate authority is directed to hear and dispose of the appeal on merits after affording the petitioner an opportunity for a fair hearing, preferably within twelve weeks from the date of receipt of this order.

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

- 14.** All pending applications are accordingly disposed of.
- 15.** There shall be no order as to costs.
- 16.** Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata
16.01.2025
PA (BS)