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jks 05.02.2025

WPA 29452 of 2024

Jai Kumar Jaiswal
Vs.
Superintendent, Central GST & Ors.

Mr. Souradeep Majumdar
… … for the petitioners
Mr. Bhaskar Prasad Banerjee
Mr. K. K. Maiti
… … for the CGST Authority
Mr. Bipul Kumar Mandal
Mr. Pradip Kumar Kundu
… … for the UOI

Learned counsel appearing for the petitioner submits that an order dated 23rd November, 2023 was passed on 19th December, 2023 in Form GST DRC 07, raising a demand of tax of Rs.13,47,828/- along with 10 per cent penalty of Rs.1,34,783/- totaling to Rs.14,82,611/- (equally segregated under CGST and WBGST). Being aggrieved with the order, an appeal was preferred before the appellate authority being the respondent no.2. However, the appeal got rejected on the ground of limitation as the petitioner while filling up the form under GST APL-04 instead of explaining the period of delay and the reason of delay wrote "NA" in the portal by mistake and the appellate authority rejected the appeal by an order dated 15th July, 2024 on the ground of limitation.

Learned counsel appearing for the petitioner prays for a direction that the petitioner be allowed to file an application for condonation of delay and to consider the application for the delay before entering into the merits of the case.

Admittedly, in this case the petitioner had filed an appeal challenging the order passed under Section 73(9) of the said Act. Simultaneously, with the filing of the appeal, the petitioner had also made a pre-deposit of Rs.10,900/- as is required for maintaining the appeal. As such there is no lack of bona fide on the part of the petitioner in preferring the appeal. There appears to be a delay of 19 days in filing the appeal.

Taking into consideration that the petitioner is a small businessman and there is no lack of bona fide on the part of the petitioner and one does not stand to gain by filing a belated appeal, this Court quash the order dated 15th July, 2024, the appellate authority shall allow the petitioner to file an application of condonation of delay.

Accordingly, I direct the appellate authority to hear and dispose for the application for condonation of delay and if the delay is condoned then hear the matter on merit upon giving an opportunity of hearing to the petitioner.

The petitioner shall file the application for condonation of delay within one month from date and the application for condonation of delay be heared and disposed within thirty days from the date of filing of the application for condonation of delay.

Accordingly, the writ petition being WPA 29452 of 2024 is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Hon'ble Court.

(Rajarshi Bharadwaj, J.)