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jks 05.02.2025

WPA 29727 of 2024

JP Aviation Services Pvt. Ltd.
Vs.
Deputy Commissioner, State Tax & Ors.

Mr. Debanuj Basu Thakur
… … for the petitioner

Mr. A. Ray
Mr. Md. T. M. Siddiqui
Ms. S. Shaw
Mr. T. Chakraborty
Mr. S. Sanyal
… … for the State

The present writ petition has been filed, inter allia, challenging the order dated 28th December, 2023, passed by the appellate authority under Section 107 of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), whereby the petitioner's appeal had been rejected on the ground that the same was barred by limitation. The facts are incorrect and not in dispute. In connection with a proceeding Learned counsel appearing for the petitioner submits that the petitioner has preferred an appeal under Section 107 of the Act with an application for condonation of delay as there was a delay of five days in filing the appeal before the appellate authority. The appeal was dismissed as the petitioner could not appear before the concerned authority was issued show-cause notice to explain the reasons of delay and thereby the appellate authority without entering into the merits of the case is rejected the appeal on the ground the limitation**.**

Mr. Siddiqui, learned advocate enters appearance on behalf of the State-respondents.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

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 requisite pre-deposit. As such there is no lack of bona fide on the part of the petitioner in preferring the appeal. It appears that the petitioner had also made a prayer for condonation of delay, inter alia, claiming that by reasons of lack of proper knowledge of the GST portal there had been delay in filing the appeal. There appears to be a delay of 05 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, I am of the view that in the instant case, the appellate authority ought to have appropriately considered the application for condonation of delay filed by the petitioner.

The appellate authority, however, appears to have rejected the appeal on the ground of limitation by, inter alia, holding that the delay can only be condoned provided the same is filed within the period of one month of the time prescribed.

The aforesaid would demonstrate that the appellate authority had failed to exercise the jurisdiction vested in it. Having regard to the above and taking note of the explanation give by the petitioner while setting aside the order dated 28th December 2023, I condoning the delay in preferring the appeal.

Accordingly, I direct the appellate authority to hear out and dispose of the appeal, on merit, upon giving an opportunity of hearing to the petitioner, within a period of 8 weeks from the date of communication of this order.

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

There shall be no order as to costs.

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

(Rajarshi Bharadwaj, J.)