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13.02.2025

WPA 30487 of 2024

S.K. Enterprise
Vs.
Commissioner of Commercial Taxes & Ors.

Mr. Debasish Ghosh
Mr. Lalit Baid
Ms. Sudeshna Ghosh
Ms. Sanjana Shaw
… … for the petitioner

Mr. A. Ray
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 27th February, 2024, 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 not in dispute. In connection with a refund of account of ITC initiated under Section 54 of the said Act, for the tax period November, 2022 to January, 2023 an order under Section 54 of the said Act was passed on 15th May, 2023. Although, the petitioner preferred an appeal from the aforesaid order dated 16th September, 2023, there had been delay in filing of the appeal. In such circumstance, the petitioner had explained the delay in preferring the appeal. According to the petitioner, the appellate authority without appropriately taking note of the grounds for condonation of delay had rejected the appeal, inter alia, on the ground that appellate authority is competent only to condone the delay provided the appeal is filed within a period of one month beyond the time prescribed. He submits that the aforesaid order is perverse. In light of the facts of the case, this Court may be pleased to restore the appeal by condoning the delay.

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 54 of the said Act. 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 illness of the appellant there had been a delay in filing the appeal. There appears to be a delay of 01 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 grounds 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 a period of one month from the time prescribed. The aforesaid observation made by the appellate authority runs counter to the observation made by the Hon'ble Division Bench of this Court in the case of **S. K. Chakaraborty & Sons v. Union of India & Ors.**, reported in **2023 SCC Online Cal 4759**.

The aforesaid would demonstrate that the appellate authority failed to exercise the jurisdiction vested in it. Having regard to the above and taking note of the explanations, provided by the petitioner while setting aside the order dated 27^{th} February, 2024, I condone 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 12 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.)