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12.02.2025

WPA 30663 of 2024

M/s. Phonex Traders Private Limited
Vs.
Joint Commissioner of State Tax & Ors.

Mr. Vinay Shraff
Mr. Dev Agarwal
Ms. P. Paul
Mr. H. Gadodia
Ms. D. Dey
Mr. R. Parasrampuria

… … for the petitioner

Mr. A. Ray
Md. T.M. Siddiqui
Mr. N. Chatterjee
Mr. T. Chakraborty
Mr. S. Sanyal

… … for the State

The present writ petition has been filed, inter alia, challenging the order dated 19th September, 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 proceeding initiated under Section 73 of the said Act, for the tax period July, 2017 to March, 2018 an order under Section 73(9) of the said Act was passed on 11th December, 2021. Although, the petitioner preferred an appeal from the aforesaid order and simultaneously, with the filing of the appeal, had also made pre-deposit of Rs.5,85,290/- as is required for maintaining the appeal under the provisions of Section 107(6) of the said Act, there had been delay in filing of the appeal. In such circumstance, the petitioner had also filed an application on 1st July, 2024 explaining 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 the appellate authority is competent only to condone the delay provided the appeal is filed within the period of one month beyond the time prescribed. He submits that the aforesaid order is perverse. In light of the facts presented in this 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 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 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. 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 117 days in filing the appeal.

Taking into consideration that the petitioner has explained in details that the individual responsible for the matter, Mr. Bimal Kumar Mondal left the organization on 30th November, 2023 creating a temporary oversight gap and the file was passed on to Mr. SM Firoz Anwar, HOD, Accounts who faced significant health issue, of his father and had to attend to his ailing father in his village frequently resulting in his prolonged absence from the office for more than four months and as 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 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 had failed to exercise the jurisdiction vested in it. Having regard to the above and taking note of the explanations privided by the petitioner while setting aside the order dated 19th September, 2024, I condone the delay in preferring the appeal.

Accordingly, I direct the appellate authority to hear 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.)