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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 31064 of 2024

M/s. Bina Medico & Anr.
Versus
The State of West Bengal & Ors.

Mr. S. P. Dalapati
Mr. Sudhakar Thakur
Mr. Asumdipta Santra

... For the petitioners.

Mr. Anirban Ray, Ld. GP,
Mr. T. M. Siddiqui, Sr. Advocate,
Mr. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal

... For the State.

1. Affidavit of service filed in Court today is taken on record.
2. Challenging the order dated 27th June, 2024 passed by the appellate authority under Section 107 of the West Bengal/Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “said Act”), rejecting the appeal filed by the petitioners on the ground of delay, the instant writ petition has been filed.
3. The records would reveal that on the basis of a show-cause notice issued on the petitioners, the proper officer had passed an order under Section 73(9) of the said Act on 17th December, 2023 and had raised a demand in Form GSTDRC-07. Challenging such order, the petitioners had preferred an appeal before the appellate

authority under Section 107 of the said Act. Simultaneously, with the filing of the appeal, the petitioners had duly made the pre-deposit as is required for maintaining such appeal. Since, there was a delay in filing of the appeal, the petitioners had also applied for condonation of delay. The appellate authority taking note of the delay had issued a show cause on the petitioners to explain the delay. However, since the petitioners or their authorized representative did not appear, the appellate authority by inferring that the petitioners have no reasonable explanation to offer for the delay in filing the appeal, had rejected the same.

4. Mr. Dalpati, learned advocate appearing on behalf of the petitioners would submit that there is a delay of only 8 days in preferring the appeal. Appropriate explanation had been provided for the delay. Unfortunately, the appellate authority by overlooking the same had rejected the application.
5. Mr. Siddiqui, learned Senior Advocate and Additional Government Pleader appearing on behalf of the State on the other hand would submit that admittedly in this case the appeal was barred by limitation. Although, a show cause notice was issued, the petitioners chose not to turn up or provide any explanation. Having regard thereto, there is no irregularity in the order passed by the appellate authority in rejecting the appeal. No

interference is called for.

6. Having heard the learned advocates appearing for the respective parties and having considered that there is a marginal delay in filing the aforesaid appeal and also noting that although the petitioners have a further right to prefer an appeal before the Appellate Tribunal, by reasons of the Appellate Tribunal not being constituted, the petitioners have been compelled to approach this Court. The appeal has not been adjudicated on merits.
7. Having regard to the peculiar facts made out and noting that some explanation is available for the delay, I am of the view that the matter ought to be remanded back to the appellate authority for a decision on merits and accordingly the order dated 27th June, 2024 passed by the appellate authority is set aside.
8. Subject to payment of cost of Rs.5000/- to be paid by the petitioners to the Bar Association Benevolent Fund, High Court, Calcutta, within two weeks from date, the appellate authority is directed to hear the appeal filed by the petitioners on merits upon giving an opportunity of hearing to the petitioners. The petitioners shall produce the copy of the receipt issued by the Bar Association before the appellate authority.
9. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)