Court No. 2
(1490)

03.04.2025
(JPD 24)

(S. Banerjee)

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

WPA 582 of 2025

Poddar Car World Private Limited
Vs.
The Superintendent of Cost and Central Excise. JPG Range, Division & Ors.

Mr. Boudhayan Bhattacharyya
Ms. Stuti Bansal
Ms. Keya Kundu
Ms. Prerna Dey
Ms. Chayna Kumary
... for the petitioner

Mr. Dilip Kumar Agarwal
Mr. Bishwa Raj Agarwal
... for the respondents

The order dated January 29, 2025 passed by the Additional Commissioner, Siliguri Appellate Commissionerate, Siliguri is under challenge in this application under Article 226 of the Constitution of India. By the said order the appeal filed by the petitioner under Section 107 of the Central Goods and Services Tax Act, 2017 was dismissed on the ground that the same was not filed within the prescribed time limit as provided under Section 107(4) of the 2017 Act.

Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that an application for condonation of delay under Section 5 of the Limitation Act was filed but the same was rejected on the ground that the appellate authority cannot extend the time limit for preferring the appeal. He further submits that the said appeal was also dismissed on the ground that the same was filed manually and there is no notification for accepting such manual appeal. Mr. Bhattacharyya places reliance upon a notification, being no. 29/2023-Central Tax dated July 31, 2023, in support of his contention that an appeal of such nature shall be presented manually before the appeallate authority.

The issue as to whether the provisions of Section 5 of the Limitation Act shall be applicable for condonation of delay in preferring an appeal under Section 107 of the 2017 Act was considered by this Court in a writ petition being WPA 1829 of 2024 wherein this Court passed an order dated April 2, 2025 the relevant portion of which is extracted hereafter.

> "The Hon'ble Division Bench in S.K. Chakraborty and Sons (supra) held that since the provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29(2) of the Act of 1963, Section 5 of

the Act of 1963 stands attracted. The Hon'ble Division Bench held thus :

16. The Co-ordinate Bench in **Kajal Dutta (supra)** has construed the provisions of Section 107(1) and (4) of the Act of 2017 and held that, the statue does not state that beyond the prescribed period of limitation the appellate authority cannot exercise jurisdiction.

17. It is in the interest of the nation that litigations come to an end as expeditiously as possible. To Achieve such purpose, legislature has enacted the Act of 1963 and prescribed various period of limitation beyond which, the right to approach an authority for redressal of the grievances remain suspended. Apart from the general law of Limitation as prescribed in the Act of 1963, special statutes prescribe period of limitation for specific scenarios and mandates completion of proceedings within the time period specified. Prescription of a period of limitation by a special statute may or may not exclude the applicability of the Act of 1963. In the context of the issue that has fallen for consideration herein the provision of the Act of 1963 particularly Section 29(2) thereof should be considered.

18. Section 29(2) of the Act of 1963, has provided for situations where special or local law prescribes a period of limitation different from the period prescribed by the Act of 1963. It has provided that the provisions of Section 3 shall apply as if such period were the period prescribed by the schedule to the Act of 1963, and for the purpose of determining any period

of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 both inclusive shall apply only insofar as and to the extent to which they are not expressly excluded by the special or the local law.

19. Section 107 of the Act of 2017 does not exclude the applicability of the Act of 1963 expressly. It does not exclude the applicability of the Act of 1963 impliedly also if one has to consider the provisions of Section 108 of the Act of 2017 which provides for a power of revision to the designated authority, against an order of adjudication. In case of revision a far more enlarged period of time for the Revisional Authority to intervene has been prescribed. Two periods of limitations have been prescribed for two different authorities namely, the Appellate Authority and the Revisional Authority in respect of the same order of adjudication. Any interference with the order of adjudication either by the Appellate Authority or by the Revisional Authority would have an effect on the defaulter/noticee. Section 107 does not have a non-obstante clause rendering Section 29(2) of the Act of 1963 non-applicable. In absence of specific exclusion of the Section 5 of the Act of 1963 it would be improper to read an implied exclusion thereof. Moreover, Section 107 in its entirety has not expressly stated that, Section 5 of the Act of 1963 stands excluded.

20. Therefore, in our view, since provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by

> Section 107 of the Act of 2017 by virtue of Section 29(2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted."

Thus it is well settled that in the absence of specific exclusion of Section 5 of the Act of 1963 it would be improper to read an implied exclusion thereof.

By applying the ratio laid down by the Hon'ble Division Bench in S. K. Chakraborty and Sons (supra), this Court is of the considered view that the appellate authority was not justified in rejecting the appeal petition solely on the ground that the same was filed beyond the maximum period of four months.

For such reason, this Court is inclined to interfere with the order passed by the appellate authority thereby rejecting the appeal on the ground of limitation.

Accordingly, the application for condonation of delay is restored to the file of the appellate authority.

The appellate authority shall consider such application on merits and decide the same in accordance with law after giving an opportunity of hearing to the respective parties and by passing a reasoned order.

Insofar as the rejection of the appeal on the ground that the same was filed manually, this Court directs the appellate authority to take into consideration the notification being no. 29/2023-Central Tax dated July 31, 2023 and pass a reasoned order as to whether manual filing of such appeal is permissible.

For all the reasons as aforesaid, the impugned order is set aside. WPA 582 of 2025 stands disposed of with the aforesaid directions.

(Hiranmay Bhattacharyya, J.)