

Court No. 2
(1490)

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

07.04.2025
(JPD 56)
(S. Banerjee)

WPA 687 of 2025

Fency Khatun
Vs.
The State of West Bengal & Ors.

Mr. Dhiraj Lakhotia
Ms. Radhika Lakhotia
Ms. Meghna Joshi
Ms. Khushi Kundu

... for the petitioner

Mr. Subir Kumar Saha
Ms. Rima Sarkar

... for the State

The petitioner has challenged the order of the
Additional Commissioner of State Tax (Appeals),
Siliguri Circle, Siliguri dated March 5, 2025.

By the said order the appeal filed by the
petitioner under Section 107 of the WBGST Act
2017 stood rejected on the ground that the appellate
authority does not have the power to extend the
period of limitation. However, after arriving at such
finding the appellate authority entered into the
merits of the application for condonation of delay
and rejected the same on the ground that there is
no cogent reason. The appellate authority has also
observed that the reasons for the delay in the

application for condonation of delay are not satisfactory.

When the appellate authority has observed that it does not have the power to extend the time limit for preferring an appeal, such authority could not have entered into the merits of the said application.

Mr. Saha, learned Additional Government Pleader, assisted by Ms. Sarkar, learned advocate, submits that the appellate authority does not have the power to extend the period of limitation.

The issue as to whether the appellate authority has the power to condone the delay in preferring the appeal filed under Section 107 of the WBGST Act, 2017 read with CGST Act, was considered by this Court in WPA 1829 of 2024 in the case of *Abdul Aziz Sarkar –Vs.- Assistant Commissioner of Revenue, Jalpaiguri Charge, Jalpaiguri & Ors..* The relevant part of the said order is extracted hereinafter:

“The effect of the order of stay in a pending appeal before the Hon’ble Apex Court fell for consideration before a Co-ordinate Bench in the case of Pijush Kanti Chowdhury Vs. State of West Bengal and others reported at 2007(3)CHN 178.

In paragraph 13 of the said reports the Co-ordinate Bench held that the effect of the order of stay in a pending appeal before the Apex Court does not amount to ‘any declaration of law’ but is only binding upon the parties to the said proceedings and at the same time, such interim order does not destroy the binding effect of the judgement of the High Court as a precedent because while granting the interim order, the Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned. In view of the decision in the case of Pijush Kanti Chowdhury (supra) this Court is not inclined to accept the submission of the learned advocate appearing for the State that the decision of the Hon’ble Division Bench in S.K. Chakraborty and Sons (supra) cannot be said to be a binding precedent upon this Court.

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 statute 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.”

The said decision shall squarely apply to the facts of the case on hand. Accordingly, the order of the appellate authority dated March 5, 2025 stands set aside. The application for condonation of delay filed by the petitioner before the appellate authority, stands restored to the file of the appellate authority.

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

With the above observations and directions WPA 687 of 2025 stands allowed.

(Hiranmay Bhattacharyya, J.)