D/L 46
23.04.2025
Court No.02
PRADIP

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

WPA 743 of 2025

Sankar Sarkar
Vs.
Assistant Commissioner of Revenue, Cooch Behar Charge & Ors.

Mr. Sumit Ghosh
Mr. Sourdeep Majumder
Mr. Abhilash Mittal
Mr. Sayantan Bhowmik
... for the Petitioner.

Mr. Joyjit Choudhury, Ld. AAG
Ms. Rima Sarkar
...for the State.

1. Affidavit of service filed in Court today is taken on record.
2. The petitioner is aggrieved by the order dated 13th June, 2024 passed by the Senior Joint Commissioner of Revenue Commercial Taxes, Appellate Authority, Jalpaiguri Circle.
3. The appeal of the petitioner stood dismissed on two grounds. First, there was delay in preferring the appeal and second, pre-deposit at the rate of ten percent under Section 107 (6), WBGST Act, 2017 has not been paid.
4. Learned advocate for the petitioner relies upon the judgment delivered by this Bench on ***1st October, 2024*** in ***WPA 2159 of 2024*** in the matter of ***Jharna Seal Vs. Additional Commissioner, State Taxes, Directorate of Commercial Taxes & SGST, Siliguri*** wherein the Court was pleased to remand the matter back to the appellate authority for consideration.

5. The State respondents oppose the submission of the petitioner.
6. It has been submitted that the issue regarding condonation of delay in preferring appeal beyond the statutory time period is pending consideration before the Hon'ble Supreme Court in the matter of ***S.K. Chakraborty & Sons.*** As regards pre-deposit for preferring appeal, it has been submitted that the petitioner is mandatorily liable to pay the pre-deposit.
7. It has been submitted that the petitioner never agitated before the appellate forum that he is not liable to pay the pre-deposit at all. The said issue has been agitated for the first time in the writ petition.
8. It has also been argued that application under the Limitation Act, 1963 was not filed at the time of preferring the appeal.
9. On a perusal of the impugned order, it appears that, the appellate forum did not taken into consideration the submission of the petitioner that the petitioner is not liable to pay the pre-deposit.
10. In ***Jharna Seal*** (supra) the Court considered the issue of applicability of stay order passed in other matters. The Court referred to the judgment delivered by this Court in the matter of ***Pijush Kanti Chowdhury Vs. State*** reported in ***2007 3 CHN 178***, wherein the Court was pleased to hold that the stay order in a case pending before the appellate Court does not amount to any declaration of law and the same is binding on the parties only to the said proceeding.
11. The petitioner has annexed documents in support of the submission that there are genuine reasons for the

delay in preferring the appeal before the appellate forum. As the matter was not adjudicated on merits and the same stood dismissed on the ground of delay and non-payment of pre-deposit, the petitioner was not in a position to raise the issue that he is not liable to pay the pre-deposit.

12. Considering the ratio laid down by this Court in the matter of ***Jharna Seal*** (supra) the Court is inclined to remand the matter back to the appellate forum to decide the same on merits.

13. In the event the petitioner prefers an application before the appellate forum within seven days annexing all documents explaining the delay, the appellate forum is requested to consider the same in accordance with law.

14. If the appellate authority is of the opinion that the delay may be condoned, then necessary order may be passed. The appellate forum will also consider the submission of the petitioner that he will not be liable to pay pre-deposit for preferring the appeal. Thereafter the appeal shall be heard and disposed of on merits.

15. The writ petition stands disposed of.

16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Amrita Sinha, J.)