Sl No. 09

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION

PRESENT:

THE HON'BLE JUSTICE GAURANG KANTH

W. P. A. 1140 OF 2025

M/S RAM KUMAR SINHAL
VS.
STATE OF WEST BENGAL & ORS.

For the Appellant	:	Mr. Dhiraj Lakhotia, Ms. Radhika Agarwal, Ms. Meghana Jashi, Ms. Khushi Kundu.
For the respondents	:	Mr. Momenur Rahman, Ms. Rima Sarkar.
Heard on	:	11.06.2025
Judgment on	:	11.06.2025

<u>Gaurang Kanth, J.</u> :-

1. The petitioner has preferred the present writ petition assailing:-

   i. The assessment order dated 12.08.2024 passed by respondent no. 2 under Section 73(9) of the WBGST Act, 2017 and CGST Act, 2017 read with Section 20 of IGST Act, 2017 whereby the respondent no. 2 being the assessing officer confirmed a total demand of Rs.17,79,242/- against the petitioner;

   ii. The appellate order dated 23.04.2025 passed by the respondent no. 3 whereby the appellate authority refused to condone the delay in filing the appeal and dismissed the same on the sole ground of limitation.

2. Facts leading to the present case are as follows:-

The return filed by the petitioner under Section 39(1) read with Section 44 of WBGST and Services Tax Act, 2017 for the period of 01.04.2019 to 31.03.2020 were duly verified by the respondent authority. Upon such verification, certain discrepancies were detected. Accordingly, an intimation, in FORM GST DRC-01A along with a detailed notice dated 01.04.2024 to the petitioner pointing out the said discrepancies. The petitioner was directed either to discharge the said amount along with applicable interest through FORM GST DRC-03 or to furnish a written response with supporting documents in Part B of FORM GST DRC-01A on or before 12.04.2024, failing which proceedings under Section 73(1) of the Act would be initiated by issuance of a formal Show Cause Notice. However, the petitioner failed to submit any reply within the stipulated period. Subsequently, show-cause notice dated 10.05.2024 was issued, directing the petitioner to explain why tax, interest and penalty could not be imposed. In response to the aforesaid Show Cause Notice, the petitioner submitted a detailed written reply dated 10.06.2024. After considering the reply, the respondent authority proceeded to pass the assessment order dated 12.08.2024 determining a final demand of Rs.17,79,242/-. The order was uploaded on the WBGST portal. The petitioner thereafter filed a belated appeal on 02.04.2025 which is 7 months and 20 days after the date of the assessment order. The appellate authority, vide its order dated 23.04.2025, refused to condone the delay and accordingly dismissed the above on the sole ground of limitation. Being aggrieved by the same, the petitioner has preferred the present writ petition.

3. Learned Counsel Mr. Dhiraj Lakhotia submits that the petitioner became aware of the assessment order dated 12.08.2024 only in the month of March 2025. It is submitted that the said order was not available under the commonly

accessed tab titled *“View Notices and Orders”* on the WBGST portal, but was instead uploaded under a different tab titled *“View Additional Notices and Orders”*. As a result, the petitioner was not in possession and/or aware of the passing of the final order. It is finally submitted that no personal intimation whether by SMS or Email was sent to the petitioner regarding the said order. Learned Counsel further submits that during the relevant period one of the partners of the petitioner’s firm underwent surgery, while the mother of another partner was critically ill and undergoing intensive medical treatment. Owing to these medical emergencies, the petitioner was unable to prefer the appeal within the prescribed period. Learned Counsel further contends that the delay in filing the appeal was neither deliberate nor intentional but occurred due to bona fide and unavoidable circumstances. Accordingly, he prays for condonation of delay and for the matter to be remanded back to the appellate authority for consideration on merits.

4. Per contra, learned Counsel for the respondent Ms. Sarkar submits that the petitioner has failed to demonstrate any sufficient cause for condonation of delay in filing the appeal. It is submitted that the appeal was preferred only on 02.04.2025 i.e. after a delay of 7 months and 20 days from the date of the assessment order dated 12.08.2024. Learned Counsel further submits that the medical documents relied upon by the petitioner pertain only to the months November 2024 and January 2025, whereas the delay continued even thereafter and the appeal was filed much beyond the statutory period. It is therefore contended that no justifiable ground has been made by the petitioner for condoning such delay and in the absence of sufficient cause no relief for condonation can be granted under Section 107 of WBGST Act, 2017. Learned Counsel further points out that the additional notices were also available on the

same page of the portal. She further states that the note appended at the portal further clarifies the notices which have been appended on the portal under the *"View Additional Notices and Orders"*. Learned Counsel further points out that the show-cause notice itself shows that the petitioner was granted personal hearing as well as an opportunity to file his reply to the same.

5. This Court has heard the arguments advanced by the parties and has examined the materials on record. The issue regarding the power of the appellate authority to condone the delay in filing appeal under Section 107(4) of the WBGST Act is no longer *res integra*. The Division Bench of this Hon'ble Court in ***S.K. Chakraborty & Sons. Vs. Union of India*** reported as ***(2024) 123 GSTR 229*** has already upheld the power of the appellate authority to condone such delay subject to statutory limitations. Thus, the only question remains for consideration is whether the petitioner had shown sufficient grounds for condoning the delay in preferring the appeal. The appellate authority has specifically addressed this issue in the impugned order and recorded the following finding:-

> *"Heard the Ld. A/R, gone through the reasons of delay & 02 medical documents. It is observed that Mother visited doctors during 27.11.2024. 21.01.2025 & 20.01.2025 and partner admitted for surgery on 13.01.2025 & discharged on 14.01.2025.*
>
> *But the Order against which the instant appeal has been filed passed on 12.08.2024 & made available in GST Common Portal on 12.08.2024 which is admitted by the appellant.*
>
> *Thus, I find no logical connection of delay in filing appeal with the medical issues mentioned in reason no.(ii). Again, as per Section 169(1) (d) of The WBGST Act, 2017, by making it available on the common portal is considered as service of notice/order. Again, under GST System whenever any notice or order issued through B.O. Portal, a SMS in registered person's registered mobile no & an email to his registered email Id automatically sent by the system. Ld.A/R failed to prove the failure of the system as claimed by producing registered mobile no or make available the registered mail id to check the claims. Hence, the reason no (i) not found valid one.*

Appellant mentioned 02 judgments of Hon'ble Calcutta High Court vide Sanyukta Bhattacharjee vs Union of India AND Kajal Dutta Vs. Assistant Commissioner of State Tax where the Hon'ble Court expressed its view that appellate authority can condone a delay beyond prescribed period u/s 107(4) of the Act in reasoned cases only. In the later case, the Hon'ble Court observed that appellate authority did not disputed the reason of delay cited by the appellant but still rejected the appeal on limitation ground citing Section 107(4) of the Act. But in the instant case, the reasons cited are found not satisfactory one rather invalid. Ld.A/R of the Appellant failed to forward any logical reason for the delay of filing of appeal at hearing stage. In the first case, Hon'ble Court has found the appellant has explained the delay satisfactorily & sufficiently explained. But in the instant case, appellant neither forwards any satisfactory reason of delay nor could explain the delay logically.

In the recent judgment of Hon'ble Calcutta High Court in the matter of S.K. Chakraborty & Sons vs. Union of India M.A.T. 81 of 2022, Hon'ble Court ruled out that appellate authority may condone delay beyond 120 days only in case where the reason of delay is cogent and sufficient cause preventing filing appeal in time. In the instant case, the appellant failed to produce any logical grounds of delay. As discussed above, the reason cited for delay of filing of appeal is found not satisfactory one or cogent.

Hence, I found the reasons of delay cited in condonation prayer are not satisfactory one. The reasons cited are found not sufficient cause preventing him filing appeal in time. Thus condonation of delay u/s 107(4) is not acceptable in the instant case.

Here the order impugned was issued and uploaded in the common portal on 12-08-2024 and the delay in filing appeal is found more than 4 months and 20 days.

In view of the foregoing discussions, I do not find any cogent reason to accept the instant appeal on the ground of limitation."

6. As the appellate authority has correctly observed, the medical prescriptions tendered by the petitioner relate only for the months November 2024 and January 2025, whereas the assessment order has already passed on 12.08.2024 and was uploaded on the GST portal on the same day. Under the WBGST regime, every registered person is deemed to have notice of orders made available on the designated electronic portal as per Rule 142 (1A) read with Section 169. The petitioner being a registered taxable person, cannot plead ignorance of any order merely because it was placed under a different sub folder. The Hon'ble Supreme Court has repeatedly held that when the statute prescribes an electronic mode of service, the onus lies on the assessee

to remain vigilant. Tax statutes, especially those governing indirect tax administration, mandate rigid adherence to timelines to ensure certainty and finality in revenue collection. Section 107(1) and (4) of the WBGST Act reads as follows:-

> *"107. Appeals to Appellate Authority.*
>
> *(1) Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*
> *(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."*

7. The appeal in the present case was preferred 3 months and 20 days beyond the outer condonable limit, bring the total delay to 7 months and 20 days. The medical prescriptions submitted explain only a part of the delay and fail to justify why the appeal could not have been drafted and filed during the substantial period from February 2025 to April 2025. The petitioner is a partnership firm, even if one of the partners is indisposed, nothing prevented the other partner or authorized signatory from acting. Section 169(1)(d) provides that any of the modes of service listed therein is sufficient service. Uploading the order on the portal fulfills the statutory mandate, supplementary intimation by SMS or E-mail is facilitative, not obligatory. In the absence of any cogent or comprehensive explanation that covers the entire period of delay, the petitioner has failed to demonstrate sufficient cause within the meaning of Section 107(4). Consequently, the refusal to condone the delay is perfectly in consonance with the statutory framework and the settled principles of fiscal discipline.

8. For all the foregoing reasons, no perversity or jurisdictional error is discernible in the impugned order, it warrants no interference under Section 226 of the Constitution.

9. Accordingly, the present writ petition is dismissed.

10. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)