Item no.7
14.08.2025
Saswata

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

WPA 1604 of 2025

Greentech Enterprises
-versus
The Senior Joint Commissioner State Tax, State Tax, Appellate Authority, Jalpaiguri & Ors.

Mr. Prosenjit Das
Ms. Khusi Kundu
...For the Petitioner
Mr. Joyjit Choudhury, Ld. AAG
Ms. Rima Sarkar
...For the State

1. The instant writ petition has been filed, inter alia, challenging the order of rejection of the appeal filed by the petitioner under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act") vide order dated 11th June 2025. The aforesaid appeal arose out and in connection with the determination made under Section 73 of the said Act on 20th June 2024 in respect of the tax period from April 2019 to March 2020. Although, a show cause in form GST DRC -01 was issued, no response to the same had been filed by the petitioner and ultimately, the determination was made under Section 73 of the said Act.

2. Ms. Kundu, learned advocate appearing for the petitioner would submit that although, the petitioner has a statutory right of appeal before the appellate tribunal yet since, the appellate tribunal is yet to be

constituted, the petitioner has approached this Court. According to her the petitioner has a bonafide defence. Unfortunately, by reasons of the death of the petitioner's managing partner the entire business has been in disarray. This apart the petitioner has, also, been prejudiced by reasons of its accountant falling sick and as such, there had been a delay in filing the appeal.

3. She submits that although, an appropriate application was filed praying for condonation of delay along with the appeal, the appellate authority by the order impugned had refused to accept the explanation filed by the petitioner on the ground that the petitioner had been regularly filing its returns and as such could not demonstrate that the petitioner was prevented by sufficient cause from filing the appeal in time. It is further submitted that this Court should hear out the matter or in the alternative, the matter should be remanded back to the appellate authority so that the petitioner's case can be decided on merits.

4. Ms. Sarkar, learned advocate led by the Learned AAG enters appearance on behalf of the State. She submits that admittedly in this case there is a delay of 222 days. According to her, even after the appellate order has been passed on 11th June 2025 rejecting the appeal, the writ petition has been filed more than 30 days therefrom. On such ground, the

writ petition should not be entertained. In any event she submits that the appeal has been rightly rejected as the petitioner has failed to sufficiently explain the delay.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I notice that in the instant case, a show cause notice has been issued against the petitioner. Such show cause notice was not responded to. Consequentially, the above order under Section 73 of the said Act was passed. Although, an appeal was filed along with the pre deposit as is required for maintaining the appeal, there appears to be a delay of 222 days. Although, an explanation was provided by the petitioner, such explanation has also not been accepted by the appellate authority. The appellate authority has found that the petitioner has been filing returns, the ill health of the petitioner's accountant did not stand in the way of the petitioner filing the returns or running its business. On such ground, the appellate authority has found the explanation to be not sufficient. In this context, I may note that since the petitioner has been complying with the provisions of the said Act, the petitioner cannot be penalized therefor.

6. Be that as it may, the fact that there has been delay, cannot be overlooked by this Court. I may also note

that although, there is a statutory remedy available to the petitioner, by reason of the appellate tribunal not being constituted, the petitioner has approached this Court. For this Court to decide the matter on merits records of the case would be required. Such records are ordinarily available on the portal which the appellate authority can directly access.

7. As such, it shall be prudent at this stage to remand the matter back to the appellate authority. At the same time, I am of the view that justice will be sub-served if the petitioner is directed to secure 10 per cent of the tax in dispute in addition to the amount already paid by the petitioner while maintaining the appeal. If such payment is made within four weeks from date, the appellate authority shall hear out and dispose of the appeal on merits in accordance with law upon providing an opportunity of hearing to the petitioner.

8. While deciding the appeal, the appellate authority shall consider all documents that may be relied by the petitioner in defence of its claim.

9. With the above observations and directions, the writ petition is disposed of.

10. There shall be no order as to costs.

11. Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Raja Basu Chowdhury, J.)