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02.04.2025
Court No.2
BP

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

WPA 1829 of 2024

Abdul Aziz Sarkar
-versus-
Assistant Commissioner of Revenue, Jalpaiguri
Charge, Jalpaiguri & Ors.

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

Mr. Momenur Rahman
Mr. Pradip Sarkar
..for the State

Mr. Ratan Banik
Mr. Biswaraj Agarwal
..for the respondent nos. 4 and 6

The petitioner has challenged the order dated July 16, 2024 passed by the Senior Joint Commissioner of Revenue being the Appellate Authority, Jalpaiguri Circle thereby rejecting the appeal on the ground that the same was filed beyond the maximum period of four months from the date of communication of the order appealed against.

Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that 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 read with SGST Act has been settled by the Hon'ble Division Bench in M.A.T. 81 of 2022 in the case of S.K. Chakraborty and Sons Vs. Union of India and others.

Mr. Rahman, learned advocate appearing for the State submits that the revenue has preferred a special leave petition being Special leave Petition (Civil) Diary No.(s) 28069 of 2024 against the said order of the Hon'ble Division Bench in S.K. Chakraborty and Sons (supra) and by an order dated 5th August, 2024 the Hon'ble Supreme Court has been pleased to pass an order of stay. He, therefore, submits that the decision of the Hon'ble Division Bench in the case of S.K. Chakraborty and Sons (supra) cannot be said to be a binding precedent upon this Court.

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.

After going through the impugned order this Court finds that the appellate authority rejected the appeal on the ground that the same was filed beyond the prescribed period of limitation from the date of communication of the order appealed against.

The appellate authority did not consider the prayer for condonation of delay on its merit.

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 impugned.

Accordingly the order dated July 16, 2024 stands set aside and quashed. 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 said application 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 1829 of 2024 stands allowed.

No order as to costs.

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

(Hiranmay Bhattacharyya, J.)