

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

Present:

The Hon'ble Justice Biswajit Basu

And

The Hon'ble Justice Ajay Kumar Gupta

MAT 82 of 2025

With

CAN 1 of 2025

CAN 2 of 2025

Ashok Ghosh

Versus

The State of West Bengal and Ors.

For the Petitioner : Mr. Boudhayan Bhattacharyya,
Ms. Stuti Bansal,
Ms. Keya Kundu.

For the Respondents : Mr. Pretom Das,
Ms. Rima Sarkar.

Heard on : 04.11.2025

Judgment on : 04.11.2025

Biswajit Basu, J:

Affidavit of service filed on behalf of the appellant be kept with the record.

1. This intra-court appeal is directed against the order dated August 19, 2024 passed in WPA 1603 of 2024 whereby the learned Single Judge has dismissed the writ petition.

2. The appellant runs his business under the name and style of M/s. Ashok Ghosh, he was served with a pre-show cause notice under Section

73(5) of the Central Goods and Services Tax Act 2017 (hereinafter referred to as '**the said Act of 2017**' in short) followed by an order under Section 74 thereof dated May 19, 2022 of the Adjudicating Authority i.e., the Assistant Commissioner of Revenue, State Tax Bureau of Investigation (North Bengal) Alipurduar Zone.

3. The petitioner, aggrieved by the said order of the adjudicating authority, had preferred an appeal under Section 107(1) of the said Act of 2017 with a prayer for condonation of delay.

4. The Senior Joint Commissioner of Revenue, Jalpaiguri Circle, the respondent no.3 herein being the appellate authority by an order dated April 30, 2024 had dismissed the said appeal holding that the said appeal has been filed beyond the maximum period prescribed under Section 107 of the said Act of 2017.

5. The order of the Appellate Authority was under challenge in the writ petition. The Learned Single Judge had dismissed the said writ petition holding that there is no scope to condone the delay in preferring the appeal beyond four months and the said issue has been settled by the following judgments of the Hon'ble Supreme Court viz. **SINGH ENTERPRISES vs. COMMISSIONER OF CENTRAL EXCISE, JAMSHEDPUR AND OTHERS** reported in **(2008) 3 Supreme Court Cases 70** and **COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE vs. HONGO INDIA PRIVATE LIMITED AND ANOTHER** reported in **(2009) 5 Supreme Court Cases 791**. The learned Single Judge has further held that the operation of the unreported judgment of the Hon'ble Division Bench of this Court in the case of **S.K. CHAKRABORTY & SONS vs. UNION OF INDIA & ORS** dated December 01, 2023 passed in M.A.T. 81 of 2022 on which the learned advocate for writ petitioner placed reliance since has been stayed by the Hon'ble Supreme Court, is of no help of the writ petitioner.

6. Mr. Boudhayan Bhattacharyya, the learned Advocate for the appellant submits that the decisions of ***SINGH ENTERPRISES (supra)*** and ***HONGO INDIA PRIVATE LIMITED (supra)*** are on the Central Excise Act, 1944 as such are not applicable in the present case.

7. He submits that in the decision of ***S.K. CHAKRABORTY (supra)***, it has been held that the Section 107 of the said Act of 2017 is directory in nature not mandatory, the effect of the said judgment is not diluted by the order of the Hon'ble Supreme Court staying the operation of it. In support of such contention, reliance is placed on another decision of the Hon'ble Division Bench of this Court in the case of ***PIJUSH KANTI CHOWDHURY vs. STATE OF WEST BENGAL & ORS.*** reported in **2007(3) CHN 178**.

8. He further submits that the Hon'ble Division Bench of this Court in the case of ***RAM KUMAR SINHAL vs. STATE OF WEST BENGAL*** reported in **[2025] 177 taxmann.com 48 (Calcutta)**, even after taking into consideration the said order of stay, has held that Section 107(4) of the said Act of 2017 is not mandatory but directory. Therefore, according to Mr. Bhattacharyya, the Appellate Authority was not justified in refusing to condone the delay in filing of the said appeal.

9. Ms. Sarkar, learned Advocate for the State submits that the proposition of law is clear from the judgments cited on behalf of the appellant, nonetheless the decision of ***S.K. CHAKRABORTY (supra)*** is still under challenge before the Hon'ble Supreme Court.

Heard learned Advocate for the parties.

10. The decisions of ***SINGH ENTERPRISES (supra)*** and ***HONGO INDIA PRIVATE LIMITED (supra)*** are on the Central Excise Act, 1944, a completely different Act, as such the proposition of law laid down in the said two decisions is no pointer to the issue under consideration.

11. The Hon'ble Division Bench of this Court in the case of **S.K. CHAKRABORTY (supra)** has held that the time to file an appeal prescribed under Section 107(4) of the said Act of 2017 is not mandatory but directory in nature. The said decision though is under challenge before the Hon'ble Supreme Court and an order staying the operation of the said judgment has been passed nonetheless another Hon'ble Division Bench of this Court in the case of **RAM KUMAR SINHAL (supra)**, even after taking note of the said order of stay, has held that the proposition of law laid down in the said decision of **S.K. CHAKRABORTY (supra)** is correct, the paragraphs 31 and 32 of the said report are quoted below for ready reference:

“31. In S.K. Chakraborty (supra), S.K. Chakraborty & Sons (supra) the Co-ordinate Bench of this Court categorically observed that the timelines stipulated in Section 107(4) of the WBGST Act are not mandatory and the provisions of the Limitation Act are applicable.

32. The mere fact that an order of stay has been passed in respect of the said judgment does not take away the value of the same as a precedent. The operation of the order between the parties therein has been stayed, but the ratio therein is binding on co-ordinate Benches as per the Law of Precedents.”

12. The Hon'ble Division Bench of this Court in the case of **PIJUSH KANTI CHOWDHURY (supra)** has held that the 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 proceedings. Paragraph 13 of the said judgment is quoted below for ready reference: -

“13. Therefore, 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 judgment of the High Court as a precedent because while granting the interim order, the Apex Court had no occasion to law down any proposition of law inconsistent with the one declared by the High Court which is impugned.”

13. Having considered the aforesaid judgments and the materials-on-record, we are of the opinion that the Appellate Authority, in appropriate cases, has the power to condone the delay in filing the appeal beyond the time prescribed under Section 107(4) of the said Act of 2017, subject to proper explanation being offered.

For the reasons discussed above, the order impugned consequently the order of the Appellate Authority dated April 30, 2024 are set aside.

The Appellate Authority is directed to re-consider the prayer of the appellant for condonation of delay after giving the parties opportunity to bring the materials on record in support of their respective cases.

MAT 82 of 2025 and the connected applications thereto being CAN 1 of 2025 and CAN 2 of 2025 are disposed of without any order as to costs.

Parties to act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

I agree.

(Ajay Kumar Gupta, J)

(Biswajit Basu, J.)