Sl.17
08.04.2025
Court No.2
BP

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

WPA 2642 of 2024

Arghya Kusum Seth
-versus-
Assistant Commissioner, SGST Siliguri
Charge & Ors.

Mr. Boudhyan Bhattacharyya
Mr. S. Banerjee
Ms. Stuti Bansal
Ms. Keya Kundu
Ms. Prerana Dey
Ms. Chayna Kumary
..for the petitioner
Mr. Ratan Banik
Mr. Bishwa Raj Agarwal
..for the respondent
nos. 4 and 6

Ms. Rima Sarkar
..for the State

The petitioner has challenged the order dated August 2, 2024 passed by the Additional Commissioner of State Tax (Appeals), Siliguri Circle, Siliguri, West Bengal in Appeal Case No. GST/APP/179/2024-2025 rejecting the appeal on the ground that the same was filed beyond the period of four months from the date of communication of the order appealed against.

Mr. Bhattacharyya, learned advocate for the petitioner submits that it is well settled that the authority has the power to condone the delay.

The issue as to whether the appellate authority has the power to condone the delay, was considered by this Court in WPA 1829 of 2024 (Abdul Aziz Sarkar –Vs.- Assistant Commissioner of Revenue, Jalpaiguri Charge, Jalpaiguri & Ors.) order passed on 2nd April, 2025, wherein this Court has held that in the absence of specific exclusion of Section 5 of the 1963 Act it would be improper to read an implied exclusion thereof. The relevant part of the said order is extracted hereinafter:

"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 statue 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."

The said decision is squarely applicable to the case on hand.

This Court, therefore, holds that the appellate authority was not justified in rejecting the appeal on the ground that the same was filed beyond the period of four months from the date of service of the order appealed against.

At this stage Mr. Bhattacharyya submits that the appellate authority has also rejected the application for condonation of delay by entering into the merit of the said application.

Mr. Bhattacharyya, however, submits that the application for condonation of delay was not happily drafted.

It is well settled that when an authority is of the view that there is no power to condone the delay, such authority could not have entered into the merits of the application.

The petitioner will be at liberty to file a supplementary affidavit stating in detail the grounds for which the appeal could not be preferred within the stipulated time.

For all the reasons as aforesaid, this Court is inclined to interfere with the order impugned. Accordingly, the order dated 2nd August, 2024 is set aside and quashed. The application for condonation of delay is restored to the file of the appellate authority.

The appellate authority is directed to consider the application for condonation of delay afresh and dispose of the same on merits and in accordance with law by passing a reasoned order after giving an opportunity of hearing to the respective parties and without being influenced by the observations made in the order dated 2nd August, 2024.

State and the CGST authorities are represented by their respective learned advocates.

With the above observations and directions, WPA 2642 of 2024 is disposed of.

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.)