32
11.6.2026
Ct. No. 10
SB

In The High Court At Calcutta
Appellate Side
Constitutional Writ Jurisdiction

WPA 263 of 2026

GSPR Developers Private Limited
Vs.
State of West Bengal & Ors.

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Paritosh Sinha
Mr. Amitava Mitra
Mr. Avr Majumder
Ms. Sreeja Mukherjea
Mr. Naman Agarwal
Ms. Anusuya Thathoi
Ms. Vedika Agarwal … for the petitioner

Mr. Samarjit Roy Chowdhury
Mr. Bijitesh Mukherjee… for the State Respondent

1. The core issue involved in the instant case is whether the first appellate authority has been justified in dismissing the appeal filed by the petitioner under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), on the ground of limitation despite the petitioner having paid the mandatory pre-deposit under Section 107(6) and having demonstrated sufficient cause for delay.

(i). Whether the initiation and continuation of garnishee / recovery proceeding during pendency of appeal is sustainable in law.

(ii). A further question arises as to whether the First Appellate Authority has been justified in refusing to condone the delay when sufficient cause has been shown and the statutory pre-deposit stood satisfied.

2. The petitioner submits that an order under Section 173 of the said Act has been passed by the adjudicating authority on 27.02.2025. The said Order has been communicated only to the registered Email ID and Mobile number of the Chartered Accountant of the petitioner, who has been entrusted with exclusive control over the GST Portal credentials.

3. Due to the professional lapse and /or negligence of the said Chartered Accountants the petitioner's management has not been informed of the proceedings. The petitioner came to learn of the entire proceedings only on 29.02.2025 when recovery proceedings has been initiated.

4. Pursuant to the recovery notice an amount of Rs. 74,00,000/- has been debited from the petitioner's bank accounts bearing number 328216460704, 40185354788, 40185355410, 40185355680, 40185355680 and 33334693081 having IFSC code SBIN0012360 maintaining with the State Bank of India.

5. The petitioner upon learning of the order, filed an appeal before the First Appellate Authority on 19.09.2025

after paying the mandatory pre-deposit of Rs. 14,58,320/- as required under Section 107(6) of the said Act.

6. The First Appellate authority dismissed the appeal vide Order dated 19.09.2025 holding inter alia, that the appeal has been filed beyond the statutory period prescribed under Section 107(1) and 107(4) of the said Act and that the application for condonation of delay could not be entertained after the initiation of recovery proceedings. GST Forms APL-02 has been issued accordingly.

7. It is contended by the petitioner that the delay in filing the appeal has not been willful but awkward due to circumstances beyond its control namely, the failure of the Chartered Accountant to communicate the order. Sufficient cause for delay has been demonstrated in the reply to the show cause notice dated 02.09.2025.

8. It is submitted that once the mandatory pre-deposit under Section 107(6) stands satisfied and the amount has been debited, the appeal ought to be entertained on merits.

9. The dismissal of the appeal solely on the ground of limitation without considering sufficient cause and the substantial compliance, defeats the very purpose of the appellate remedy under the statute. The petitioner relies upon Section 142B of the said Act and submits that intimation for recovery under Section 79 is required to be issued within 7 days. The recovery effected prior to proper communication is arbitrary.

10. The impugned order of the First Appellate Authority is arbitrary, in violation of principles of natural justice and is liable to be set aside.

11. The petitioner prays for setting aside the order dated 19.09.2025 for condonation of delay for a direction upon the First Appellate Authority to hear the appeal on merits in a time bound manner, and for staying the garnishee proceeding till disposal of the appeal.

12. The Learned Counsel appearing for the state respondents vehemently opposes the Writ Petition.

13. It is submitted that the appeal has admittedly filed beyond the statutory period of three months plus one months as prescribed under Section 107(1) and 107(4) of the said Act. The First Appellate Authority has no power to condone delay beyond the said period. It is further submitted that the recovery proceedings has been initiated in accordance with law after the statutory period for filing an appeal has expired and no appeal has been preferred.

14. After hearing the rival contention of the parties and upon perusing the materials available on records this Court is prima facie satisfied that the petitioner has demonstrated sufficient cause for further delay. The Order dated 27.02.2025 has been communicated to the Chartered Accountant who failed to inform the petitioner. The petitioner came to learn of the proceeding only on 29th May 2025 upon initiation of recovery.

15. Admittedly the petitioner has paid the mandatory pre-deposit of Rs. 14,58,320/- and filed the appeal on 01.09.2025. The amount of the Rs. 74, 00,000/- has already been recovered from the petitioner' bank account through garnishee proceeding.

16. The dismissal of the appeal solely on the ground of limitation without considering the sufficient cause shown and the substantial compliance which section 107(6), amounts to a hyper technical approach. When the mandatory pre deposit stands satisfied and recovery has already been affected, the appellate remedy cannot be rendered illusory.

17. To balance the equities and to secure the ends of justice, this court is of the view that the interference is warranted at this stage. The delay in preferring the appeal deserves to be condoned. The initiation of the recovery proceedings despite the debit of the mandatory pre deposit, is contrary to the scheme of the Act once an appeal is entertained.

18. In view of the above, the Order dated 19.09.2025 passed by the First Appellate Authority dismissing the appeal is hereby quashed and set aside.

19. The delay in filing the appeal from the date of communication of the order dated 27.02.2025 shall stands condoned and the First Appellate Authority is directed to admit and hear the appeal on merits.

20. The First Appellate Authority shall hear and dispose of the appeal peremptorily within a period of three weeks from the date of communication of this order and shall pass a reasoned order in accordance with law upon affording an opportunity of hearing to the petitioner.

21. The garnishee proceedings initiated by the department, pursuant to which the bank accounts of the petitioner has been frozen shall remain in force till the disposal of the appeal by the First Appellate Authority.

22. The petitioner shall not seek any further adjournment on the date fixed for hearing by the First Appellate Authority failing which the appeal shall be heard and a final order may be passed ex parte.

23. The learned advocate appearing for the petitioner is directed to communicate this order to the respondent No. 3 forth with. With above observations and direction the Writ Petition is disposed of.

24. Since the affidavits have not been called for the allegations made in the Writ Petition are deemed to have been denied and not admitted.

(Smita Das De, J.)