

12.06.2024
Item No.
M/L 34
Court No.5
Saswata

W.P.A. 12830 of 2024

**Krishna Enterprise
Versus
The Commissioner, State Tax, West Bengal & Ors.**

Mr. Debasish Ghosh
Ms. Antara Biswas

...For the petitioner

Mr. Tanay Chakraborty
Mr. Debraj Sahu

...For the State

1. The present writ petition has been filed, inter alia, challenging the order dated 28th March 2024 rejecting the petitioner’s appeal under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the “said Act”) on the ground of delay and on the ground that the petitioner had failed to make out sufficient cause for filing the appeal beyond the statutory period.
2. Records reveal that the petitioner was served with a show cause notice dated 3rd August 2023 under Section 73 of the said Act on the ground of discrepancies found during scrutiny for the financial year 2017-18 in respect of the tax period July 2017-March 2018. The same ultimately, culminated in the order dated 9th November 2023. Being aggrieved the petitioner had preferred an appeal under Section 107 of the said Act along with pre-deposit of 10 per cent of the disputed tax. Such fact would corroborate from the form GST APL – 01.

3. Admittedly, since the appeal was filed beyond the prescribed period of limitation, the petitioner appears to have affirmed an affidavit through its proprietor on 18th March 2024, indicating that the petitioner is a proprietorship firm and that its proprietor was unwell on or after February 2024 and his physician had advised him complete rest for a month. In support of his contention, a medical certificate had also been disclosed. The said affidavit also identifies that there is a delay of 38 days in filing of the appeal.
4. Before the aforesaid appeal was taken up for consideration, the petitioner was served with a notice dated 19th March 2024 asking the petitioner to show cause by 27th March 2024 as to why the appeal should not be rejected for filing the same beyond the statutory period. Pursuant to the aforesaid, the petitioner's representative appeared before the appellate authority and in support of his contention for condonation of delay, had placed the above affidavit affirmed by the petitioner's proprietor on 18th March, 2024 that the petitioner's proprietor was unwell on or after February 2024 and under the treatment of Dr. Bhaskar Mondal.
5. The appellate authority despite acknowledging the factum of the illness of the petitioner's proprietor and the medical certificate, had proceeded to dismiss the appeal on the ground that there was no explanation offered by the petitioner for the period prior to February 2024 and that the petitioner otherwise had sufficient time to file the appeal.

6. Mr. Ghosh, learned advocate appearing for the petitioner submits that the petitioner had sufficiently explained the reasons for the delay. Unfortunately, the appellate authority, despite acknowledging the illness of the petitioner's proprietor had purported to reject the same. In the facts as noted hereinabove it is submitted that the order dated 28th March 2024 rejecting the petitioner's appeal should be set aside and the matter should be remanded back to the appellate authority for hearing of the appeal on merits.
7. Mr. Chakraborty, learned advocate appearing for the respondents, on the other hand, has strenuously argued that the petitioner has failed to offer any explanation as to what prevented the petitioner from preferring the appeal up to February 2024. In absence of such explanation being offered by the petitioner, it cannot be said that the appellate authority had committed any irregularity in rejecting the appeal. He submits that no case for interference has been made out and the writ petition should be dismissed with costs.
8. Heard the learned advocates appearing for the respective parties and considered the materials on record.
9. Admittedly, in this case the order passed under Section 73(9) of the said Act had been received by the petitioner on 9th November 2023. It is true that there is no appropriate explanation provided by the petitioner for the period between 9th November 2023

and February 2024. However, there appears to be some explanation given by the petitioner for the period from February 2024 till 18th March 2024 when the appeal was filed. The doctor's certificate has also been disclosed. The appellate authority has acknowledged the factum of the petitioner's proprietor's illness.

10. Taking into consideration the aforesaid, I am of the view that justice will be sub-served if the appeal is directed to be heard out on merits subject to payment of costs of Rs.5,000/- to be paid by the petitioner to the State Revenue Authorities. If such payment is made within two weeks from date, the appellate authority shall hear out and dispose of the appeal on merits preferably within a period of two weeks from the date of communication of this order. As a sequel thereto, the order dated 28th March 2024 stands set aside.

11. With the above directions and observations, the writ petition being WPA 12830 of 2024 is disposed of.

12. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)