

04.01.2024  
Item No.35  
gd

WPA/2904/2023  
ARVIND GUPTA  
VS  
ASSISTANT COMMISSIONER OF REVENUE  
STATE TAXES, COOCH BEHAR CHARGE & ORS.

Mr. Boudhayan Bhattacharyya,  
Ms. Stuti Bansal,  
Ms. Rinki Saha  
..for the Petitioner.

Mr. Pretom Das,  
Mr. Dilip Kumar Agarwal  
..for the State.

Mr. Ratan Banik,  
Mr. Biswaraj Agarwal  
..for the Respondent Nos.5 and 7.

Affidavit of service filed in court today is taken  
on record.

The petitioner has challenged the order of the Senior Joint Commissioner of Revenue, Jalpaiguri Circle, being the appellate authority, dated October 30, 2023 whereby the appellate authority rejected the appeal on the ground of delay upon holding that there is no scope under the provisions of WBGST Act, 2017 read with the corresponding Chapter and Section of the CGST Act, 2017 for condoning the delay in submitting the appeal beyond four months.

It is not in dispute that the appeal was presented beyond the time limit stipulated in the relevant statute.

It appears from the annexure to FORM GST APL-01 that the petitioner has specifically stated the period of delay and the reasons for filing the appeal petition beyond the statutory period of limitation.

The petitioner has cited the following reasons for delay:

“1. The appellant is suffering from carcinoma maxilla.

2. During the month of July, 2023 he went to Apollo Hospital, Delhi for his treatment (Prescription enclosed).

3. He has to frequently visit Doctors at Delhi for his precarious health condition”

It further appears from the said annexure that the prescriptions in support of the medical treatment of the petitioner was also enclosed.

Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that the grounds for rejection of the appeal on the ground that the appellate authority lacks power to condone the delay cannot be sustained in view of the judgment and order dated December 01, 2023 passed by the Hon’ble Division Bench in MAT 81 of 2022 heard analogously with MAT 82 of 2022 in the case of S.K. Chakraborty & Sons v. Union of India & Ors.

Heard Mr. Agarwal, learned advocate appearing for the State and Mr. Banik, learned advocate representing the respondent nos.5 and 7 on such submission.

The Hon'ble Division Bench in S.K. Chakraborty & Sons (*supra*) 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 nonapplicable. 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 prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filling the appeal can be extended by the Appellate Authority.*

*21. The issue that has been framed is answered in the affirmative, in favour of the appellant and against the revenue.”*

The Hon'ble Division Bench held that Section 107 of the Act of 2017 does not exclude the applicability of the Act of 1963 expressly.

The Hon'ble Division Bench further observed 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. It follows therefrom that the appellate authority is left with the discretion to allow an appeal to be presented within a period of one month after expiry of the period of limitation stipulated from the date of communication of the order upon sufficient cause being shown. Since the

applicability of the 1963 Act has not been expressly or impliedly excluded, the appellate authority has the power to condone delay in preferring the appeal beyond the limitation specified in Section 107 of the said Act in view of the decision in S.K. Chakraborty (*supra*).

In view of the aforesaid settled position of law, this court is of the considered view that it was well within the power of the appellate authority to consider the prayer of the petitioner for condonation of delay. The impugned order passed by the appellate authority that there is no scope to condone the delay beyond four months suffers from infirmity.

Having answered such issue in favour of the petitioner, this court has to consider whether the petitioner has made out sufficient cause for presenting the appeal beyond the statutory period of limitation.

After going through the reasons for the delay as evident from the annexure to FORM GST APL-01, this court is of the considered view that the petitioner was prevented by sufficient cause for not preferring the appeal within the statutory period.

This court, therefore, holds that the appellate authority failed to exercise its jurisdiction in the case on hand.

In view thereof, the delay in presenting the appeal before the appellate authority is condoned. The appeal is restored to the file of the appellate authority.

The appellate authority, being the 3<sup>rd</sup> respondent in the writ petition, is directed to consider the appeal on merit and decide the same in accordance with law upon giving an opportunity of hearing to the petitioner.

With the above observations and directions, WPA 2904 of 2023 stands allowed.

There shall be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

**(HIRANMAY BHATTACHARYYA, J.)**