

20.06.2025
Court No.1
Item No.02
(PP)

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

**MAT 27 of 2025
With
IA No: CAN 1 of 2025**

**Assistant Commissioner of Revenue (WBGST)
versus
Bablu Agarwal**

Mr. Subir Kumar Saha, AGP,
Ms. Rima Sarkar

....for the appellant.

Mr. Dhiraj Lakhota,
Ms. Radhika Agarwal,
Ms. M. Joshi,
Ms. Kushi Kundu

....for the respondent.

Re: CAN 1 of 2025

Affidavit-in-opposition and reply thereto filed in Court today are taken on record.

This is an application for condonation of delay in filing the appeal.

On a conjoint reading of the application along with the opposition and reply, we find that the only ground on which the prayer for condoning the delay in filing the appeal has been opposed relates to suppression of material fact.

It is the case of the respondent that the order of the learned Single Judge which is under challenge had set aside the order dated 6th March, 2024 passed under

Section 73(9) of the West Bengal Goods and Services Tax Act, 2017 read with Central Good and Services Tax Act, 2017 and Rule 142(5) of West Bengal Goods and Services Tax Act, 2017.

It is also submitted that prior to passing of the order dated 23rd September, 2024, being the order impugned, the appellant had refunded the money. It is submitted by the appellant that on 23rd September, 2024, the learned Single Judge had passed the order. On 24th September, 2024, the concerned department without having notice and knowledge of the said order dated 23rd September, 2024 had deducted the assessed amount of Rs.1,69,722/- from the credit ledger of the respondent (assessee). Immediately after coming to know about the order dated 23rd September, 2024, the department has refunded the said sum of Rs.1,69,722/-

It is the contention of the appellant that this fact cannot disentitle the appellant from challenging the order of the learned Single Judge as contended by the respondent. Furthermore, the omission of this fact being stated in the application for condonation of delay cannot be construed as suppression of material fact or can be construed that the appellant has accepted the order of the learned Single Judge and have acted upon the same to refuse the prayer for condonation of delay.

In response, it is submitted by the respondent that the act of refund in itself amounts to accepting the

order dated 23rd September, 2024 and acting upon the same. After having done so, the appellant is not entitled to file the appeal far less the condoning of delay.

After hearing the parties and considering the materials on record, we find the objection raised by the respondent relates to the merit of the matter which can be urged and gone into while deciding the appeal and its maintainability. At this stage, we are only concerned about the delay being condoned.

The facts of the case as aforesaid, does not persuade us to hold that the application for condonation of delay should be disallowed on the grounds urged by the respondent. The grounds cited for the delay are satisfactory and they demonstrate the reasons for which the appellant was prevented from filing an appeal within the prescribed period.

The application for condonation of delay, being CAN 1 of 2025, in filing the appeal is, therefor, allowed by condoning the delay. The appeal is admitted.

The condonation of delay or the admission of the appeal will not disentitle the respondent from taking the point of maintainability of the appeal on the ground that the order appealed against has been accepted and acted upon.

Re: MAT 27 of 2025

Since the appeal has been admitted, the same has to be heard.

The appellant is directed to prepare sufficient number of informal paper books after having the index of the papers to be included in such informal paper books settled through the respondent. The settlement of index shall be made within a period of 3 weeks thereafter. The paper books should be prepared within three weeks thereafter.

Once the paper books are prepared, the parties shall be at liberty to mention the appeal for being enlisted for hearing.

(Arindam Mukherjee, J.)

(Partha Sarathi Chatterjee, J.)