11.11.2024
Item No.20
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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

**WPA/2314/2024**

NITAI SARKAR
VS
ADDITIONAL COMMISSIONER, DIRECTOR OF COMMERCIAL TAXES, SGST & ORS.

Mr. Jagriti Mishra,
Ms. Ananya Bhattacharya,
Ms. Mrinmayee Das,
. . . for the petitioner.

Mr. Momenur Rahman,
Mr. Pretom Das,
..for the State.

The petitioner has challenged an order dated 27th August, 2024 passed by the Additional Commissioner and Appellate Authority, Siliguri & Raiganj Circles (respondent no.1) by which the said authority has dismissed the petitioner's appeal preferred against the order dated 1st December, 2023 on the ground that the appeal has been filed beyond the maximum period of 120 days and is as such not maintainable since the authority under the provisions of Section 107 (1) of the West Bengal Goods and Services Tax Act, 2017 is denuded of the power to condone the delay. This issue had fallen for consideration of the Division Bench in M.A.T. 81 of

2022 and M.A.T. 82 of 2022 (S.K. Chakraborty & Sons Vs. Union of India & Ors.). By a judgment and order dated 1st December, 2023 the Division Bench had set aside the order of the Appellate Authority by which the appeal was rejected on having been filed beyond the period of limitation on the self-same logic. This matter has travelled upto the Supreme Court and I am told that the judgment and order dated 1st December, 2023 has been stayed vide order dated 5th August, 2024 and such order of stay is still in subsistence on being extended subsequently.

Without going into the discussion that stay of an order does not mean setting aside of the same but only amounts to suspension of the said order vis-à-vis between the parties involved as has been invited by the petitioner, I think justice will be sub-served if the order impugned dated 27th August, 2024 so far as it rejects the appeal on the ground of limitation be stayed till the disposal of the issue pending before the Supreme Court. This will keep the appeal of the petitioner pending, at the same time if the Hon'ble Supreme Court is of the view that the delay cannot be condoned then it will reach its automatic fate, on the other hand if the view expressed by the Division Bench of this Court in S. K. Chakraborty & Sons (supra) is upheld, then the application for condonation of delay in filing the appeal may be heard on merits.

The writ petition, therefore, is adjourned *sine die* with liberty to the parties to mention.

**(ARINDAM MUKHERJEE, J.)**