Sl. No.3
08.04.2026
akg
Ct 05

IN THE HIGH COURTAT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION

WPA 2314 of 2024

Nitai Sarkar
Versus
Additional Commissioner,
Director of Commercial Taxes, SGST & Ors.

Mr. Jagriti Mishra
Ms. Ananya Bhattacharya
Ms. Mrinmoyee Das
Ms. Dayeeta Datta

… For the petitioner

Mr. Momenur Rahman
Mr. Pretom Das

…For the State

1. Challenging an order dated 1st December 2023 passed by the proper officer under the provisions of section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as "the said Act) in form GST DRC-07 dated 1st December, 2023, an appeal was filed before the appellate authority under section 107 of the said Act. There was some delay in filing the appeal.
2. The appellate authority by its order dated 27th August 2024 had rejected the appeal on the ground that the same was barred by limitation and the delay beyond the period of 4 months could not be condoned.
3. Admittedly, the scheme of the act provides for

testing out an order passed by an appellate authority by the Appellate Tribunal under section 112 of the said Act. Unfortunately, at the stage, when the writ petition came up for consideration, the Appellate Tribunal was yet to be constituted. Accordingly, the writ petition was entertained and the order impugned in the writ petition, pending further consideration of the issue as to whether the delay could be condoned in a matter which travelled upto the Hon'ble Supreme Court, was stayed.

4. Mr. Rahman, learned Advocate representing the GST authorities, would submit that the situation has since changed. Today, an Appellate Tribunal has not only been constituted but a public notice has been issued intimating the setting up and the address of the Tribunal. He would, however, be candid enough in submitting that the judicial hearing before the Tribunal is yet to commence. He, however, submits that by reason of the stay the matter could not reach its finality which is resulting in the loss of revenue for the exchequer. In the facts as aforesaid, the matter has been mentioned and has been taken up for consideration.

5. Having heard the learned Advocates appearing for the respective parties, I, however, notice that the instant writ petition was entertained at a point of time when the Appellate Tribunal had not been constituted. The matter has been pending before this Court for approximately two years. In absence of adjudication, both the petitioner and the State are suffering since, the State is unable to recover the revenue, resulting in loss to the exchequer.
6. In this factual scenario, since the writ petition was admitted, and the parties insist the same should be disposed of on an expeditious basis, the writ petition should be decided on merits. However, considering the fact that diverse factual issues would be required to be considered, and the appellate machinery provided under the said Act is far more equipped to deal with the factual issues as all records are readily available on the online portal, I am of the view that it would be just and fair in the facts of the case to remand the matter back to the appellate authority for a decision on merits especially having regard to the fact that the Appellate Tribunal is yet to be made functional, and

the writ petition was entertained and remains pending.

7. Accordingly, the writ petition stands disposed of by remanding the matter back to the appellate authority with a direction upon the appellate authority to decide the same in accordance with law on merits on an expeditious basis, preferably within a period of six weeks from the date of communication of this order.

8. In the light of the above, the order passed by the appellate authority dated 27th August, 2024 is set aside.

9. The above order has been passed without entering into the merits of the case and it shall be open to the appellate authority to decide the matter on merits being uninfluenced by any of the observations made herein above.

(Raja Basu Chowdhury, J.)