

2024 TAXONATION 1577 (CALCUTTA)

CALCUTTA HIGH COURT**W. P. A 11464 of 2024****Touchwin Complex Pvt. Ltd.-Appellant****Versus****Assistant Commissioner OF Revenue, Ultadanga Cossipore and
Beigachhiya Charge and Others-Respondent****Coram: The Hon'ble Justice Raja Basu Chowdhury****Date of order: 02/07/2024****Decision-In Favour of Assessee**

Held That- The petitioner filed a writ petition challenging the rejection of their GST appeal due to a delay in filing. The petitioner argued that the delay was justified and that the Appellate Authority had acted mechanically in rejecting the appeal. The court agreed with the petitioner, set aside the rejection order, and remanded the matter back to the Appellate Authority for a fresh hearing on the merits within eight weeks.

Appearance:**Mr. Souradeep Majumdar for the Petitioner.****Mr. Anirban Ray Md. T.M. Siddiqui Mr. Tanoy Chakraborty Mr. Saptak
Sanyal Mr. K.K. Maiti Ms. Aishwarya Rajyashree For the Respondent****JUDGMENT**

1. The present writ petition has been filed, inter alia, challenging the order dated 22nd June, 2023 passed by the Appellate Authority under [Section 107](#) of the West Bengal GST/CGST Act, 2017 (hereinafter referred to as 'the said Act').

2. Records reveal that the proceedings under [Section 73](#) of the said Act was initiated in respect of the financial year 2017-18, vide a show cause notice dated 2nd February, 2023 concerning mismatch/discrepancy between GSTR 3B and GSTR 2A. Although, it is the petitioner's case that the petitioner had duly responded to the said show cause and had tried to explain the discrepancies, notwithstanding the aforesaid by an order dated 22nd June, 2023 the proper

officer had determined the liability of the petitioner to the extent of Rs.2,95,142/- on account of tax.

3. Being aggrieved with the aforesaid determination, an appeal was filed under [Section 107](#) of the said Act along with pre-deposit as is required to maintain the said appeal.

4. Since such appeal was filed belatedly, an application, inter alia, praying for condonation of delay was also filed. A medical certificate in support of such application for condonation of delay was also placed on record.

5. The records reveal that Appellate Authority by its order dated 24th November, 2023 by recording that there is a delay of six days and the appeal having been filed beyond the time prescribed as provided for in Section 107(4) of the said Act was, inter alia, pleased to reject the same.

6. Being aggrieved in the present writ petition has been filed.

7. Although, the statutory remedy in the form of an appeal from an order passed under Section 107 of the said Act is provided for, however, since the Appellate Tribunal under [Section 112](#) of the said Act, is yet to be constituted, the present writ petition has been filed.

8. It is submitted that the Appellate Authority had mechanically disposed of the said appeal without considering the petitioner's application for condonation of delay.

9. The learned Advocate representing the petitioner submits that in the facts noted hereinabove that this court may be pleased to set aside the order dated 24th November, 2023 and by condoning the delay in preferring the appeal, may direct the Appellate Authority to hear out the same.

10. Mr. Sanyal, learned Advocate enters appearance on behalf of the respondents.

11. Heard learned Advocates appearing for the parties and considered the materials on record. In this case it has been noticed that there is a statutory right of the Registered Tax Payer (RTP) to prefer an appeal from an order of adjudication passed under Section 73(9) of the said Act.

12. Admittedly, the petitioner had exercised its statutory right and had filed the appeal along with the pre-deposit as is required for maintaining the appeal. Factum of payment of such pre-deposit would corroborate from the Form GST APL-01. It appears that in filing the appeal there was some delay.

13. The petitioner had duly filed an application on 27th October, 2023 explaining the delay. Supporting documents to corroborate the explanation given by the petitioner were also annexed to the application for condonation of delay.

14. I find that the delay is only marginal.

15. Upon perusal of the application for condonation of delay, it appears that the petitioner had been able to appropriately explain the delay in filing the aforesaid appeal.

16. The powers of the Appellate Authority to condone the delay beyond one month from the time prescribed had duly been considered in the case of S.K. Chakraborty & Sons v. Union of India & Ors., reported in (2023) SCC Online Cal 4759. It has been held that in absence of non obstante clause rendering

Section 29(2) of the Limitation Act, 1963, non applicable and in absence of specific exclusion of Section 5 of the Limitation Act, 1963, it would be improper to read implied exclusion thereof. As such, the appellate authority is not denude of its power to condone the delay beyond one month from the prescribed period of limitation as provided for in Section 107(4) of the said Act.

17. Having regard to the aforesaid, I am of the view that the Appellate Authority had acted in a mechanical manner in purporting to reject the appeal on the ground that the same was filed beyond the period of limitation prescribed for filing of an appeal, by glossing over the explanation for the delay.

18. In view thereof, the order dated 24th November, 2023 cannot be sustained, the same is accordingly set aside.

19. Since, the explanation offered by the petitioner is found to be sufficient, while condoning the delay, I remand the matter back to the Appellate Authority for deciding the matter on merits by giving an opportunity of hearing to the petitioner of being heard.

20. The aforesaid process of disposal of the appeal shall be completed within a period of eight weeks from the date of communication of this order.

21. With the aforesaid directions, writ petition stands disposed of.

22. There shall be no order as to costs.

23. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.