

Item No.2.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 20.01.2023

DELIVERED ON: 20.01.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. No.1924 of 2022
with
I.A. No.CAN 1 of 2022

Kajal Dutta.
Vs.
Assistant Commissioner of State Tax, Suri Charge & Ors.

Appearance:-

Mr. Sumit Ghosh,
Mr. Souradeep Majumdar ... **for the appellant.**

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee
Mr. V. Kothari ... **for the State.**

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 18th November, 2022 passed by the learned Single Bench in W.P.A. No.22764 of 2022. In the said writ petition, the appellant had challenged the correctness of the order passed by the Senior Joint Commissioner of Commercial Taxes, Durgapur Circle dated 17th August, 2022, who is the appellate authority under the provisions of the GST Act, 2017 read with the GST Rules. The appeal had been dismissed on the ground of limitation. The learned Single Bench declined to interfere with the said order and challenging the correctness of the order passed in the writ petition, the appellant had filed the present appeal.

2. On perusal of the affidavit filed in support of the writ petition as well as the documents annexed to the stay application, we find that the appellant could not present the appeal on account of illness for which a doctor's certificate has also been enclosed.

3. The correctness of the stand taken by the appellant that he was sick and unable to take steps to file the appeal within the period of limitation is not disputed by the revenue. However, the appellate authority was of the opinion that the period of

one month beyond the statutory period of limitation is available to the said authority, which expired on 30th June, 2022 and the appeal was presented only on 17th August, 2022 and therefore, the appeal is barred by the law of limitation. It is true that in terms of Section 107(1) read with Section 107(4) of the G.S.T. Act, the time limit for preferring the appeal beyond the period of three months is 30 days, which is a grace period. However, the statute does not state that beyond the said date, the appellate authority cannot exercise jurisdiction. It is not a case that deliberately the appellant had presented the appeal beyond the condonable period. Therefore, while exercising jurisdiction under Article 226 of the Constitution this Court can examine the factual circumstances and grant appropriate relief as the appellate remedy is a very valuable remedy since the appellate authority can re-appreciate the factual position. Thus, for such reason, we are inclined to exercise discretion.

4. In the result, the appeal is allowed, the order passed in the writ petition is set aside and consequently, the writ petition is allowed and the order passed by the appellate authority dated 17th August, 2022 is set aside and the delay in filing the appeal before the appellate authority is condoned and the appellate authority is directed to consider and decide the

appeal on merits in accordance with law after affording opportunity of personal hearing to the authorised representative of the appellant.

5. We make it clear that this order shall not be treated as a precedent and has been passed considering the peculiar facts and circumstances of the case.

6. The learned Advocate appearing for the appellant submitted that garnishee proceedings have been initiated by the authorities by way of attachment of the appellant's bank account.

7. When the appeal was presented, the mandatory pre-deposit of 10% of the disputed tax has been complied with by the appellant. If that be so, no coercive action should be taken against the appellant till the appeal is heard and disposed of. In terms of the above direction, the appellant is granted liberty to file an appropriate interim application in the appeal petition and the appellate authority shall consider the same and pass appropriate orders for the purpose of lifting the garnishee order and the bank attachment. The appellant shall file the application in the statutory appeal not later than 10th February, 2023.

8. There shall be no order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)