

Form No. J(2)

CALCUTTA HIGH COURT
IN THE AT CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

Present:

The Hon'ble Justice Saugata Bhattacharyya

W.P.A. 1476 of 2025

Madhu Agarwal

-vs-

**The Joint Commissioner of Revenue, Sales Tax, Jalpaiguri
Circle & Ors.**

For the Petitioner : Mr. Sandip Chorania,
Mr. Rajeev Parik

For the State : Mr. Anirban Banerjee,
Ms. Rima Sarkar

Heard on : 28.07.2025

Judgment on: 28.07.2025

Saugata Bhattacharyya, J.:

1. Affidavit-of-service filed on behalf of the petitioner is taken on record.
2. Precisely a case has been attempted to be made out for condonation of delay of 394 days in preferring appeal under Section 107 of West Bengal Goods and Service Tax Act, 2017 (hereinafter referred to as the "said Act of 2017").
3. According to the petitioner, Adjudicating Authority passed an order on 16th January, 2024 and on being

dissatisfied with such order an appeal was preferred on 15th May, 2025 whereas in terms of Section 107 of the said Act of 2017 last date for filing an appeal was 16th May, 2024. Therefore, there was a delay of 394 days.

4. In support of prayer for condonation of delay in entertaining the appeal preferred by the petitioner, it is submitted by the learned advocate that there was marital discord resulting in informal separation between them which compelled the petitioner to stay at Jalpaiguri whereas husband of the petitioner was staying at Siliguri. Petitioner could not take steps within the time to prefer appeal since the company was run by the husband though proprietor was the petitioner.
5. It is also submitted that there was violation of natural justice based on a document at page 25 of the writ petition which is part of summary show cause notice wherein date was fixed for submitting reply on 15th January, 2024 but no date of personal hearing was fixed which prevented the petitioner to appear before the Adjudicating Authority.

6. According to the petitioner order of the Adjudicating Authority dated 16th January, 2024 was passed without granting opportunity of hearing to her.
7. State GST Authority is represented by learned advocate who has opposed the prayer of the petitioner by making submission that delay of 394 days which may not be condoned since in terms of Section 107(4) grace period is 30 days not beyond that.
8. It is also submitted that there was no formal separation in between the petitioner and her husband and returns were filed at the material point of time. Therefore, it may not be concluded that petitioner was prevented by sufficient cause from preferring appeal within the time prescribed under Section 107.
9. In order to buttress the stand of the Authority in consideration of the point taken relating to violation of natural justice by issuing summary show cause notice dated 14th December, 2023 not fixing a date of hearing notice of this Court has been drawn to a detailed show cause notice dated 14th December, 2023 wherein petitioner was duly informed to appear on 15th January, 2024.

10. Having considered the respective submissions made on behalf of the parties, this Court is considering the validity of the order dated 27th May, 2025 passed by the Appellate Authority not the order dated 16th January, 2024 passed by the Adjudicating Authority.
11. It is contended on behalf of the petitioner that due to informal separation in between the petitioner and her husband compelling the petitioner to stay separately was the main reason for causing delay in preferring appeal. But it needs to be taken into consideration that at relevant point of time returns were filed. Therefore, it ought not to be inferred that an assessee who was filing returns in time would not prefer appeal under Section 107 within the time prescribed therein.
12. Adjudicating Authority passed order on 16th January, 2024 whereas appeal was filed on 15th May, 2025 causing 394 days of delay which in absence of cogent reasons this Court ought not to condone on taking note of the order of the Appellate Authority dated 27th May, 2025.
13. Section 107(4) prescribes if appeal is not presented within the regular period of 90 days in that event on

expressing satisfaction Appellate Authority can condone the delay to the extent of one month and not beyond that.

14. When statute has prescribed condonation of delay in entertaining the appeal to the extent of one month in absence of cogent reason for condoning such delay, delay of 394 days should not be condoned which would render provisions under Section 107(4) otiose.
15. What is important in the present case is the reasons assigned in support of condonation of delay are found not to be appropriate reasons.
16. Attempt is made on behalf of the petitioner to question order of the Adjudicating Authority dated 16th January, 2024 on the ground of violation of natural justice since date of hearing was not duly notified.
17. Such submission made on behalf of the petitioner pales into insignificance in view of detailed show cause notice dated 14th December, 2023 wherein petitioner was directed to appear before the Adjudicating Authority on 15th January, 2024 but the petitioner did not appear.
18. In view of aforesaid consideration, no relief can be granted to the petitioner.

19. The writ petition stands dismissed.
20. However, there shall be no order as to costs.
21. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)

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