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By Nidhi, Advocate



Judgment No.: 038
Dt.: 30-12-2023



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Judgment Deals With

Section/Rule	Section 107
Authority	Patna High Court
Case Name	M/s. Prince Sanitation VS The State of Bihar
Dated	07 th December, 2023

Brief Facts:

The petitioner is before this Court challenging an order in appeal, which rejected the appeal for reason of delay of 5 days.

The Central Board of Indirect Taxes and Customs (CBIC) have brought out a notification dated 02.11.2023 bearing no. 53 of 2023- Central Tax. This notification only permits appeals to be filed from orders passed by the proper officer on or before 31.03.2023, in cases in which it was not instituted in time or within the time permitted for a delayed appeal, and in cases where such delayed appeals has been rejected.

In the petitioner's case, the date on which the proper officer, being the Assessing Officer, has passed the order on 27.04.2023. The petitioner would not squarely fall under the notification.

Findings & Decision of the Court:

Section 107(4) of the B.G.S.T. Act clearly stipulates a period of 3 months time for an appeal to be filed and a further period of 1 month within which a delayed appeal has to be filed. Going by the statutory provisions, there is absolutely no power vested either in the Appellate Authority or in Constitutional Court acting under Article 226 to extend the period of limitation, especially when there is a specific stipulation and period prescribed for the purpose of filing a delayed appeal.

However, there is NO rationale for the date fixed of 31.03.2023, as a cut-off date. The notification itself was brought out on 02.11.2023 and in such circumstances any order passed in at least 3 months before that date; the time provided for filing an appeal, ought to have been considered for such beneficial treatment.

In the above circumstances, the petitioner also can be allowed to comply with the conditions in Notification No. 53 of 2023 upon which the order passed in appeal would stand set aside and a fresh consideration will be made by the first Appellate Authority.

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