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Judgment No.: 142
Dt.: 07-06-2024



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Judgment Deals With

Appellate Authority has the power to condone delay in Filing GST Appeals beyond limitation period	
Section/Rule	Section 107
Authority	Calcutta High Court
Case Name	Mukul Islam VS The Assistant Commissioner of Revenue
Dated	01 st May, 2024
Citation	WPA 917 of 2024

Brief Facts of the Case:

The petitioner is aggrieved by the refusal on the part of the appellate authority to condone the delay in maintaining the appeal u/s 107 of WBGST Act, 2017 by its order dated 27th March, 2024.

Contention of the Petitioner:

It is the petitioner's case that being aggrieved with the determination u/s 73 of GST Act dated 26th June, 2023, the petitioner had filed an appeal u/s 107. Since, the appeal was filed beyond the period of limitation the same was accompanied by an application under Section 5 of the Limitation Act, 1963. The appellate authority, however, rejected the said application for condoning the delay by its order dated 27th March, 2024 and had consequentially disposed of the appeal.

As per the provisions of Section 107(4) of the GST Act, the appellate authority was competent to entertain the appeal beyond 1 month of the time prescribed, the petitioner had filed an application for condonation of delay on the ground stated therein.

The appellate authority had, however, by overlooking the fact that the petitioner had made out sufficient grounds for condonation of delay, had rejected the said application for condonation of delay and consequentially disposed of the appeal.

This is failure on the part of the appellate authority to exercise jurisdiction so vested in it. There is

nothing in the provisions of the GST Act, which even impliedly bars the appellate authority from exercising its jurisdiction, to condone the delay beyond 1 month of the prescribed period as provided for in the GST Act.

Contention of the Department:

As per the provisions of Section 107(4) of the GST Act, there is no power available to the appellate authority to condone the delay beyond the period of 1 month from the prescribed period of 90 days, provided for in preferring the appeal.

The GST Act is a self-contained code and excludes the applicability of the provisions Section 5 of the Limitation Act 1963. Though, the provisions of Section 5 of the Limitation Act, 1963 may not have been expressly excluded, the same stands impliedly excluded.

Findings & Decision of the Court:

The legal issue that falls for consideration is whether the appellate authority had failed to exercise jurisdiction in rejecting the application for condonation of delay on the ground that the same was filed beyond the maximum period of 4 months from the date of communication of the order.

It was concluded 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.

Therefore, the appellate authority is not deprived of its power to condone the delay beyond 1 month from the prescribed period of limitation as provided for in Section 107(4) of the GST Act.

The appellate authority had failed to exercise jurisdiction in refusing to consider the application for condonation of delay in its proper perspective, since the same was filed beyond the prescribed period of 4 months from the date of communication of the order appealed against.

Thus, the order dated 27th March, 2024 passed by the Appellate Authority in rejecting the appeal on the ground of delay was set aside.

Therefore, the delay in preferring the appeal under Section 107 of the GST Act was condoned, and appeal was restored to its original file and number. The appellate authority was directed to hear out and dispose of the appeal on merits.