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Judgment No.: 151
Dt.: 08-07-2024



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Judgment Deals With

The GST Appeal can be filed belatedly with an application for condonation of delay by invoking the provisions of Section 5 of the Limitation Act, 1963.

Section/Rule	Section 107
Authority	Calcutta High Court
Case Name	Partha Pratim Dasgupta VS The Joint Commissioner of State Tax
Dated	10 th June, 2024
Citation	WPA 12584 of 2024

Brief Facts of the Case:

The order dated 4th October, 2023 was passed under Section 73(9) of the GST Act. The petitioner had filed an appeal on 27th February, 2024 in Form GST APL-01 along with 10% pre deposit of the disputed amount of tax. A system generated provisional acknowledgement form as proof of submission of appeal was also issued.

Since, the said appeal was filed beyond the time prescribed the same was accompanied by an application for condonation of delay. There was a delay of 55 days in filing the appeal.

On 14th March, 2024 the petitioner had received a notice as to why the appeal should not be rejected due to the delay as the same was filed beyond 1 month of the prescribed period.

Contention of the Petitioner:

The order impugned was passed by the Appellate Authority by ignoring the explanation given by the petitioner.

The petitioner has not only a statutory right to prefer an appeal but also has a right to seek condonation of delay in preferring an appeal.

It would be apparent and clear from the impugned order that the Appellate Authority had failed to exercise jurisdiction vested in it while rejecting the appeal solely on the ground that it does not have the competence to condone the delay beyond 1 month of the time prescribed.

Findings & Decision of the Court:

The appeal had been dismissed solely on the ground that the same had been filed beyond 1 month of the time prescribed for filing the appeal. The appeal therefore, was obviously barred by limitation.

However, at the same time, the aforesaid could not prevent the petitioner from maintaining an application for condonation of delay by invoking the provisions of Section 5 of the Limitation Act, 1963.

The Appellate Authority ought to have taken note of the explanation given in the application for condonation of delay under Section 5 of the Limitation Act, 1963.

Thus, the order of rejection of appeal dated 28th March, 2024 in Form GST APL-02 was set aside, taking note of the fact that no fruitful purpose will be served by remanding the aforesaid matter on the issue of condonation of delay to the Appellate Authority.

Also considering the explanation given by the petitioner, the petitioner has been able to sufficiently explain the delay in filing the appeal belatedly.

Therefore, the aforesaid appeal was restored to its original file and number and the Appellate Authority was directed to hear out the same in accordance with law.