

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 14369 of 2024

**VA Tech Wabag Ltd.
-versus
Assistant Commissioner of Revenue, Salt Lake &
Ors.**

**Mr. Boudhayan Bhattacharyya.
Ms. Stuti Bansal.
Ms. Chaya Kumary.
Ms. Shubhangi Banerjee.
...For the Petitioner.**

**Mr. Bhaskar Prosad Banerjee.
Ms. Ekta Sinha.
... for the CGST Authority.**

**Ms. Manasi Mukherjee.
Mr. Bijitesh Mukherjee.
... For the State respondent.**

1. The core issue involved in the instant case is whether the first appellate authority has been justified in dismissing the appeal filed by the petitioner under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), on the ground of limitation despite the petitioner having paid the mandatory pre-deposit under Section 107(6) and having demonstrated sufficient cause for delay.
2. The question arises is as to whether the First Appellate Authority has been justified in refusing to condone the delay when sufficient cause has been shown and the statutory pre-deposit stood satisfied.
3. The petitioner submits that an order under Section 73 of the said Act has been passed by the adjudicating authority on 13.03.2023. The

said order has been communicated to the petitioner through the GST portal.

- 4.** The petitioner upon learning of the order, filed an appeal before the First Appellate Authority on 21.08.2023 disputing the quantum of the interest charged by the respondent authorities.
- 5.** The First Appellate Authority dismissed the appeal vide Order dated 29.11.2023 holding inter alia, that the appeal has been filed beyond the statutory period prescribed under Section 107 (1) and 107(4) of the said Act and that the application for condonation of delay could not be entertained. GST Forms APL-02 has been issued accordingly.
- 6.** It is contended by the petitioner that the delay in filing the appeal has not been willful but occurred due to circumstances beyond its control namely medical condition of the entrusted person to communicate the order. Sufficient cause for delay has been demonstrated in the reply to the show cause notice dated 6.10.2023.
- 7.** It is submitted that once the mandatory pre-deposit under Section 107(6) stands satisfied and the amount has been debited, the appeal ought to be entertained on merits.
- 8.** The dismissal of the appeal solely on the ground of limitation without considering sufficient cause and the substantial compliance, defeats the very purpose of the appellate remedy under the statute.
- 9.** The impugned order of the First Appellate Authority is arbitrary, in violation of principles of natural justice and is liable to be set aside.
- 10.** The petitioner prays for setting aside the order dated 29.11.2023 for condonation of delay for a

direction upon the First Appellate Authority to hear the appeal on merits in a time bound manner.

- 11.** The learned counsel appearing for the state respondents vehemently opposes the writ petition.
- 12.** It is submitted that the appeal had admittedly been filed beyond the statutory period of three months plus one months as prescribed under Section 107(1) and 107(4) of the said Act. The First Appellate Authority has no power to condone delay beyond the said period.
- 13.** After hearing the rival contentions of the parties and upon perusing the materials available on records this Court is prima facie satisfied that the petitioner has demonstrated sufficient cause for the delay. The order dated 13.03.2023 was communicated to the petitioner; however, he remained unaware of the said order, as the person whom he had entrusted with looking after the affairs of the business fell seriously ill, as is evident from the medical documents annexed at page 52 of the writ petition.
- 14.** Admittedly, the petitioner had paid the mandatory pre-deposit and filed the appeal on 21.08.2023.
- 15.** The dismissal of the appeal solely on the ground of limitation without considering the sufficient cause shown and the substantial compliance which section 107(6), amounts to a hyper technical approach. When the mandatory pre deposit stands satisfied, the appellate remedy cannot be rendered illusory.
- 16.** To balance the equities and to secure the ends of justice, this Court is of the view that the interference is warranted at this stage. The delay

in preferring the appeal deserves to be condoned.

- 17.** In view of the above, the Order dated 29.11.2023 passed by the First Appellate Authority dismissing the appeal is hereby quashed and set aside.
- 18.** The delay in filing the appeal from the date of communication of the order dated 13.03.2023 shall stand condoned and the First Appellate Authority is directed to admit and hear the appeal on merits.
- 19.** The First Appellate Authority shall hear and dispose of the appeal peremptorily within a period of three weeks from the date of communication of this order and shall pass a reasoned order in accordance with law upon affording an opportunity of hearing to the petitioner.
- 20.** The petitioner shall not seek any further adjournment on the date fixed for hearing by the First Appellate Authority failing which the appeal shall be heard and a final order may be passed ex parte.
- 21.** The learned advocate appearing for the petitioner is directed to communicate this order to the respondent no. 3 forth with.
- 22.** With above observations and direction, the writ petition is disposed of.
- 23.** Since the affidavits have not been called for the allegations made in the writ petition are deemed to have been denied and not admitted.

(Smita Das De, J.)