

25.06.2025
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Sl. No. 05
Ct. No. 05

WPA 7273 of 2024

Sanjit Acharya
Vs.
Assistant Commissioner of Revenue, Directorate of
Commercial Tax, and State GST 48 & ors.

Mr. Siddhartha Pratim Datta
Ms. Sukanya Dutta
Ms. Sanjana Jha
Ms. Kusum Sharma

.... for the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T. M. Siddiqui, Ld. AGP
Mr. Tanoy chakraborty
Mr. Saptak Sanyal

....for the State

1. Affidavit-of-service filed in Court today be kept on record.
2. Though service with the office the learned Government Pleader is not complete, Mr. Siddiqui learned Senior Advocate and AGP accept the service of the writ petition in Court today.
3. Accordingly, considering the urgency involved in the writ petition, the writ petition is taken up for consideration. The matter pertains to a challenge to an order dated 15th January, 2025 rejecting the appeal filed under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act) arising out of the order dated 20th November, 2023 passed under Section 73 of the said Act for the tax period of 1st July, 2017 to 31st March, 2018.
4. The petitioner's case proceeds on the premise that the petitioner is the proprietorship concern and is engaged in the business of supply and distribution of Gas. The

petitioner claims to be physically handicapped and his disability has been confirmed to the extent of 30% by the office of the Superintendent, Barasat HD Hospital, North 24 Parganas, Government of West Bengal. According to the petitioner, the petitioner remained unaware of the order dated 20th November, 2023 due to his medical treatment since during the relevant period he had remained totally bed ridden. On 5th August, 2024, the petitioner had been able to provide necessary documents to his tax consultant whereupon the appeal was filed on 11th August, 2024.

5. Ms. Sukanya Dutta, learned advocate representing the petitioner would submit that though the petitioner had afforded appropriate explanation and had also deposited the pre-deposit amount of Rs. 2,24,148/- for maintaining the appeal, the appellate authority by its order dated 15th January, 2024 by relying on the Judgment delivered by the Hon'ble High Court of Punjab and Haryana and the Judgment delivered in the case of ***Commissioner of Customs and Central Excise v. M/s Hongo India private limited & Anr.*** as noted therein, by choosing to ignore the directives issued by the Division Bench of this Court in the case of ***S.K. Chakraborty v. Union of India & Ors.***, reported in **2023 SCC Online CAL 4759** has proceeded to pass the order thereby dismissing the appeal on the ground of delay. According to her, there has been no consideration of the explanation given by the petitioner for condoning

the delay. She would submit that by reasons of the petitioner being unwell, the petitioner could not appropriately respond to any of the show-cause notices which ultimately, led to the passing of the order dated 20th November, 2023. The petitioner should not be penalized and should be given an opportunity to place his case especially taking into consideration the physical condition of the petitioner.

6. Mr. Siddiqui, learned AGP representing the respondents though would however submit that in the instant case admittedly, the petitioner had not responded either to the notice issued in form ASMT 10 or to the notice issued in form GST DRC 01A or GST DRC 01. The proper officer having no alternative had passed the order impugned. Even thereafter, no appeal was filed within the specified period. The appellate authority in the circumstances has rejected the appeal as being barred by limitation since according to him, the explanation offered was not proper.
7. Having heard the learned advocates appearing for the respective parties, it would *prima facie* transpire that on the basis of the scrutiny conducted under Section 61, steps were taken against the petitioner. Following the above, the notice in form ASMT 10 was also issued. This followed the pre-show-cause notice in form DRC 1A and the show-cause in form DRC 01. None of the aforesaid notices were responded to by the petitioner. No explanation was afforded to the proper officer. I,

however, find that the Ms. Dutta, learned advocate would contend that since, the petitioner was unwell, the petitioner could not respond to the same. On merits, I find that the matter pertains to wrongfully utilized of Impute Tax Credit (ITC). Incidentally, it is also noted that interest has also been levied on the petitioner for availing ITC though it is not clear from the records whether the petitioner has utilized the ITC.

8. Be that as it may, for this Court to examine the matter, it would necessary to call for the records which are generally available on the portal. Considering the peculiar facts noted hereinabove and taking note of the fact that the petitioner may have been prevented from responding to the above notices and preferring the appeal within time by reasons of his physical disability and his medical treatment including, his bed ridden state as claimed by the petitioner, I am of the view that it shall be prudent at this stage for this Court to remand the matter back to the proper officer for affording an opportunity to the petitioner to file an appropriate response.
9. As a sequel thereto, the orders passed by the proper officer dated 20th November, 2023 and the appellate order dated 15th December, 2025 stands set aside. The petitioner shall be at liberty to file a response to the show-cause issued in form DRC 01 dated 16th March, 2023 for the tax period July, 2017 to July, 2018 within 16th July, 2025. In the event, such reply is filed or in the

alternative, the petitioner fails to file the reply, the proper officer shall having regard to the provisions contained in Section 75(4) of the said Act shall hear out and dispose of the proceedings by giving an opportunity of hearing to the petitioner. It is made clear that the direction for filing the response is preemptory and no extension shall be afforded to the petitioner. The pre-deposit made by the petitioner shall however be retained to the credit of the proceedings and shall abide by the result of the proceedings and may be utilized by the petitioner in future for availing the multi tiered adjudicatory process. The order of attachment issued in form GST DRC 13 dated 23rd July, 2024 forming annexure P7 to the writ petition shall stands quashed.

10. With the above observations and directions, the writ petition is disposed of.

(Raja Basu Chowdhury, J.)