

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 81 of 2022

With

IA No: CAN 2 of 2022

With

M.A.T. 82 of 2022

With

IA No: CAN 2 of 2022

S.K. Chakraborty & Sons Vs.

Union of India & Ors.

For the Appellant : Ms. Suman Sehanabis (Mandal), Adv.

For the State : Mr. Subir Kumar Saha, AGP
Ms. Rima Sarkar, Adv.

Hearing Concluded on : November 28, 2023

Judgement on : December 01, 2023

DEBANGSU BASAK, J.:-

1. Two appeals have been heard analogously as they involve similar issues and are between the same parties. In

MAT No. 81 of 2022 the appellant has assailed the order dated

March 24, 2021 passed in WPA 133 of 2021. In MAT No. 82 of

2022, the appellant has assailed the judgement and order dated March 13, 2021 passed in WPA 107 of 2021.

2. For the sake of convenience and since, WPA 107 of 2021 was filed prior in point of time and was also disposed of prior in point of time than WPA 133 of 2021 and since, the learned Single Bench in WPA 133 of 2021 has followed the decision rendered by the coordinate Single Bench in WPA 107 of 2021, it would be appropriate that the facts obtaining in WPA 107 of 2021 are alluded to herein.

3. The appellant has claimed itself to be a partnership firm. It had been served with a show cause notice dated September 12, 2018 from the office of the Deputy Commissioner of State Goods and Service Tax, Bureau of Investigation, Unit - IV, Siliguri alleging suppression of sales by the appellant for the period 2017-2018 and 2018-2019. Appellant had replied that to. An assessment order had been passed on April 23, 2019 by the Deputy Commissioner. The appellant had preferred an appeal against the order dated April 23, 2019 on December 16, 2019 which was beyond 60 days. The appellate authority, by an order dated December 24, 2019 had refused to condone the delay on the ground of section 170 of the West Bengal Goods and Services Tax Act, 2017. The appellant

had assailed such order of the appellate authority in the writ petition being WPA 107 of 2021 resulting in one of the impugned orders.

4. The learned Single Bench had construed the provisions of section 107 of the Act of 2017 as well as the ratio of the decision reported in **2020 Volume 5 Supreme Court Cases**

757 (New India Assurance Company Ltd vs. Hilli Multipurpose Cold Storage Private Limited) and held that, no appeal could be preferred, in any event, beyond the period of 4 months from the date of communication of the order. The learned Single Bench had held that, since the appeal before the appellate authority was filed beyond the period of 4 months, the appellate authority rightly applied the ratio of **New India Assurance Company Ltd (supra)** and could not extend the time period for filing the appeal beyond 4 months from the date of communication of the order. Consequently, the learned single judge had dismissed the writ petition.

5. Ms. Suman Schanabis (Mondal), learned advocate appearing for the appellant has submitted that, since section 107 of the Act of 2017 does not prohibit the applicability of section 5 of the Limitation Act, 1963, the same is attracted.

She has relied upon **(2023) 97 GST 154 (Calcutta) (Kajal Dutta vs. Assistant Commissioner of State Tax, Suri Charge and Ors.)** and **2020 Volume 17 Supreme Court Cases 692 (Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and Another vs. Excise and Taxation Officer Sunder Nagar/Assessing Authority)** in support of her contention that, Section 5 of the Limitation Act, 1963 was attracted and that, the delay in filing the appeal beyond 4 months from the date of receipt of the order of the adjudicating authority could be condoned by the appellate authority.

6. Ms. Rima Sarkar, learned advocate appearing for the State has contended that, the delay in approaching the appellate authority was not adequately explained and therefore, even if the appellate authority had the power to condone the delay in filing the appeal, beyond the period of 4 months, then also, no case for condonation of delay was made out by the appellant.

7. Learned advocate appearing for the State has relied upon **2020 Volume 19 Supreme Court Cases 681 (Assistant Commissioner (CT) LTU. Kakinada vs. Glaxo Smith Kline Consumer Healthcare Limited)** as well as **New**

India Assurance Company Ltd (supra) in support of her contention that, delay in filing the appeal beyond a period of 4 months from the date of communication of the order of the adjudicating authority could not be condoned under section 107 of the Act of 2017.

8. The issue that has fallen for consideration is whether the provisions of the Act of 1963 are attracted to the appeal filing period of limitation prescribed under Section 107 of the Act of 2017 or not.
9. Parties have referred to Section 107 of the Act of 2017, and the portion thereof relevant to limitation is as follows: –

“107. Appeals to Appellate Authority.- (1) Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of central tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act or the Central Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said

decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under subsection (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.”

- 10.** The Act of 2017 has made the order of Adjudicating Authority subject to revision under Section 108, relevant portion thereof in the context of the issue of limitation is as follows :-

“108. Power of Revisinal Authority.- (1) Subject to the provisions of section 121 and any rules made thereunder, the Revisinal Authority may, on his own motion, or upon information received by him or on request from the Commissioner of central tax, call for

and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the Central Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Revisional Authority shall not exercise any power under sub-section (1), if-

(a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or

(b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

(c) the order has already been taken for revision under this section at an earlier stage; or

(d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that subsection, whichever is later.”

11. Parties have agreed that, Appellate Tribunal contemplated under Section 109 of the Act of 2017 has not been established so far as the State of West Bengal is concerned, as on date. The statutory remedy of approaching the Tribunal against the order of the Appellant Authority impugned in the writ petition is therefore not available to the appellant.
12. In ***Assistant Commissioner (CT) LTU. Kakinada (supra)***, the Supreme Court has considered the issue as to whether the High Court in exercise of its writ jurisdiction ought to entertain a challenge to an assessment order on the sole ground that the statutory remedy appeal against that order stood foreclosed by the law of limitation or not. It has answered such issue in the negative against the writ petitioner and in favour of the revenue. It had observed that, where the writ

petitioner has statutory alternative remedy available and did not avail of such remedy within the statutory period of limitation prescribed the writ courts should exercise selfrestrain and not entertain a writ petition at the behest of such writ petitioner.

13. In ***Assistant Commissioner (CT) LTU. Kakinada (supra)*** provisions of Andhra Pradesh Value Added Tax Act, 2005 had been considered and in particular, Section 31 thereof.

14. A Bench of a higher strength in ***Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and Another (supra)*** has considered the provisions of HP Value Added Tax Act, 2005 and the limitation period prescribed for filing revision before the High Court against an order made by the Tribunal. There, the Supreme Court has held that, the key principle for determining applicability of provisions of the Limitation Act, 1963 to a special law is to consider the scheme of such special law so as to determine whether there is any express or implied exclusion of the provisions of the Act of the Act of 1963 or not.

15. A Constitution Bench of the Supreme Court has, in ***New India Assurance Company Ltd (supra)*** held that, the period of limitation for filing reply/response to the complaint, under the provisions of Section 13 of the Consumer Protection

Act, 1986 cannot be extended beyond the prescribed period of 30 days along with a discretionary extension of 15 days aggregating to 45 days from the date of receipt of the copy of the complaint.

16. The Co-ordinate Bench in ***Kajal Dutta (supra)*** has construed the provisions of Section 107 (1) and (4) of the Act of 2017 and held that, the statute does not state that beyond the prescribed period of limitation the appellate authority cannot exercise jurisdiction.

17. It is in the interest of the nation that litigations come to an end as expeditiously as possible. To achieve such purpose, legislature has enacted the Act of 1963 and prescribed various period of limitation beyond which, the right to approach an authority for redressal of the grievances remain suspended. Apart from the general law of Limitation as prescribed in the Act of 1963,

special statutes prescribe period of limitation for specific scenarios and mandates completion of proceedings within the time period specified. Prescription of a period of limitation by a special statute may or may not exclude the applicability of the Act of 1963. In the context of the issue that has fallen for consideration herein the provision of the Act of 1963 particularly Section 29 (2) thereof should be considered.

- 18.** Section 29 (2) of the Act of 1963, has provided for situations where special or local law prescribes a period of limitation different from the period prescribed by the Act of 1963. It has provided that the provisions of Section 3 shall apply as if such period were the period prescribed by the schedule to the Act of 1963, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 both inclusive shall apply only insofar as and to the extent to which they are not expressly excluded by the special or the local law.
- 19.** Section 107 of the Act of 2017 does not exclude the applicability of the Act of 1963 expressly. It does not

exclude the applicability of the Act of 1963 impliedly also if one has to consider the provisions of Section 108 of the Act of 2017 which provides for a power of revision to the designated authority, against an order of adjudication. In case of revision a far more enlarged period of time for the Revisional Authority to intervene has been prescribed. Two periods of limitations have been prescribed for two different authorities namely, the Appellate Authority and the Revisional Authority in respect of the same order of adjudication. Any interference with the order of adjudication either by the Appellate Authority or by the Revisional Authority would have an effect on the defaulter/noticee. Section 107 does not have a non-obstante clause rendering Section 29(2) of the Act of 1963 nonapplicable. In absence of specific exclusion of the Section 5 of the Act of 1963 it would be improper to read an implied exclusion thereof. Moreover, Section 107 in its entirety has not expressly stated that, Section 5 of the Act of 1963 stands excluded.

- 20.** Therefore, in our view, since provisions of Section 5 of the Act of 1963 have not been expressly or impliedly

excluded by Section 107 of the Act of 2017 by virtue of Section 29 (2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the

discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filing the appeal can be extended by the Appellate Authority.

- 21.** The issue that has been framed is answered in the affirmative, in favour of the appellant and against the revenue.
- 22.** In the facts of the present case, the Appellate Authority has not assessed the quality of the claim of the appellant for condonation of delay. It has proceeded on the basis that it did not possess any power to condone the delay beyond the period of 60 days from the date of communication of the adjudication order. The learned Trial Judge has also taken the same view that since the appeal had been filed beyond the period of 60 days, the same could not be entertained.
- 23.** In view of the discussion above, the impugned orders of the learned Single Judge in the two writ petitions are set

aside. The orders of the Appellate Authority, impugned in the two writ petitions are also set aside. The Appellate Authority is requested to consider and decide the application for condonation of delay filed by the appellant on merits. If, the explanations advanced for condonation of delay are accepted to be sufficient, the Appellate Authority may condone the delay in preferring the appeal and hear and dispose of the appeals on merits.

- 24.** With such observations M.A.T. 81 of 2022 with IA No: CAN 2 of 2022 and M.A.T. 82 of 2022 with IA No: CAN 2 of 2022 are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

- 25.** I agree.

[MD. SHABBAR RASHIDI, J.]