

### **Appeal can be accepted after one month from the prescribed period of limitation**

The Hon'ble Calcutta High Court in the case of *Sushil Kumar Hazra v. State of West Bengal [Writ Petition Application No. 11649 of 2024 dated May 16, 2024]* condoned the delay in filing the appeal as the Assessee was prevented by medical reasons for filing an appeal on time and held that an appeal can be accepted after one month from the prescribed period of limitation.

#### **Facts:**

Mr. Sushil Kumar Hazra ("**the Petitioner**") was issued an Adjudication Order issued under FORM GST DRC-07 dated September 05, 2023. An appeal was filed before the Appellate Authority ("**the Respondent**") on February 6, 2024, by the Petitioner. However, the said appeal was barred by limitation.

The Petitioner was issued a Show Cause Notice dated February 16, 2024 ("**the SCN**"). In response to the SCN, the Petitioner had not only submitted a response explaining the delay in filing the appeal due to medical reasons but also appeared before the Respondent and had made a submission explaining the delay.

The Appeal was dismissed vide Order passed under FORM GST APL-02 dated March 06, 2024 ("**the Impugned Order**").

Hence, aggrieved by the Impugned Order the Petitioner filed the present writ petition.

#### **Issue:**

Whether an appeal can be accepted after one month from the prescribed period of limitation?

#### **Held:**

The Hon'ble Calcutta High Court in ***Writ Petition Application No. 11649 of 2024*** held as under:

- Observed that, the condonation of delay was sought for medical reasons. The Respondent did not disbelieve the medical certificate but concluded the proceedings since the Petitioner could carry on business. There was no reason for the Petitioner not to file the appeal within the prescribed period. The Respondent proceeded to dismiss the appeal by holding that there is no provision laid down under Section 107 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") to accept an appeal after one month from the prescribed period of limitation.
- Relied on, the case of ***S.K. Chakroborty & Sons [2023 SCC Online Cal. 4759]*** wherein the Appellate Authority had failed to exercise jurisdiction in refusing to condone the delay despite taking note of the explanation given by the petitioner that he was otherwise prevented by sufficient cause from filing the appeal within the time prescribed.
- Noted that, the Respondent had failed to exercise the jurisdiction vested in it in refusing to consider the application for condonation of delay on the ground that the same was filed beyond one month from the prescribed period of limitation.
- Opined that, the Respondent did not choose to question the medical certificate produced by the Petitioner. Once, the Respondent had accepted the medical certificate, there was nothing on record for the Respondent to conclude since the Petitioner could carry on business despite illness by submission of FORM GSTR-1 and FORM GSTR-3B in due time, the illness could not be a reason for the Petitioner not to file the appeal in time. The Petitioner cannot be penalized for complying with the statutory obligations. Since, on the disclosure made by the Petitioner it was apparent that the Petitioner was prevented by medical reasons from filing the appeal in time, the Respondent ought to have, by considering the same condoned the delay. The

discretion exercised by the Respondent in refusing to accept the explanation did not appear to be justifiable, rather arbitrary. Hence, the delay in preferring the appeal was condoned.

- Held that, the Respondent shall hear out and dispose of the appeal on merit after giving an opportunity of hearing to the Petitioner as expeditiously as possible, preferably within six weeks from the date of communication of this order. Further, a sum of Rs.5,16,348/-has already been debited from the Petitioners' electronic cash/ credit ledger consequent upon dismissal of the aforesaid appeal, the said issue was kept open for the same to be duly taken care of by the Respondent while disposing of the aforesaid appeal and setting aside the Impugned Order.

**Our Comments:**

Section 107 of the CGST Act talks about “*Appeals to Appellate Authority*”. According to Section 107(4) of the CGST Act, the Appellate Authority may, if it is satisfied that the Appellant was prevented by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorized officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

In Pari Materia case, of ***Great Height Developers LLP v. Additional Commissioner and Ors. [W.P.No.1324 of 2024 dated February 01, 2024]*** the Madras High Court allowed the appeal before the Appellate Authority and held that if the Assessee demonstrates that the delay in filing the appeal was due to valid mitigating circumstances such as medical condition then the Appellate Authority can condone the delay and consider the appeal on its merits.

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