

Court No. - 7

Case :- WRIT TAX No. - 53 of 2024

Petitioner :- M/S A.R. Enterprises Thru. Its Managing Partner Rakesh

Respondent :- Addl. Commissioner Central Goods And Service Tax
Appeal Lko. And 2 Others

Counsel for Petitioner :- Manas Shukla

Counsel for Respondent :- Dipak Seth, Manish Misra

Hon'ble Alok Mathur, J.

Heard learned counsel for the parties.

By the impugned order dated 08.12.2023, the Additional Commissioner CGST (Appeals), Lucknow has rejected the appeal of the petitioner on the ground that the same is filed beyond the period of limitation.

It is submitted by learned counsel for the petitioner that the appeal was filed by the petitioner on 16.08.2023, which was beyond the period of three months from the date of receipt of the copy of the order dated 27.03.2023 passed by the Superintendent, CGST Range-I, Division Lucknow-I. The appellate authority, therefore has rejected the appeal on the ground that he has no authority to condone the delay beyond the period of 30 days as provided under Section 107(4) of the CGST Act, 2017.

Having heard the learned counsel for the parties and perused the order passed by the first appellate authority, it is noticed that the appeal was not filed within stipulated time, the reason for delay has been explained in supplementary affidavit filed by the petitioner. From which, it transpires that due to financial condition and hardship of the petitioner, he could not arrange any counsel for filing the appeal and also on 20.07.2023, Managing Director of the petitioner had fallen seriously ill and was advised bed rest. He also annexed a copy of the medical certificate issued by Dr. Sanjay Pandey. It is stated that in the aforesaid circumstances, the deponent personally filed the appeal before the appellate authority.

Learned counsel for the petitioner has also placed reliance on a Division Bench judgment of this Court in the case of *M/s Central Industrial Security Forces, FGUTPP Unit vs. Commissioner of Central Goods and Service Tax and Central Excise and 2 others* in which this Court has observed as follows:

"Admittedly the appeal was filed beyond time, however, in the facts and circumstances we are of the considered opinion that the delay was not occasioned because of any fault on the part of the petitioner but was due to circumstances which was beyond his control. However since the Act does not empowers the appellate authority to condone the delay 30 days beyond the prescribed limitation, no illegality is found to have been committed by the appellate authority however in the interest of justice we feel that the petitioner is entitled to be afforded an opportunity of hearing on merits."

Considering the submission of learned counsel for the petitioner and the decision cited, the impugned order dated 08.12.2023 passed by the appellate authority is set aside and the matter is remanded before the first appellate authority (respondent no.1) with a direction to consider and adjudicate upon the appeal filed by the petitioner on merits without raising any objection on the limitation, after notice and opportunity of hearing to all concerned.

The writ petition is, accordingly, **disposed of**.

(Alok Mathur,J.)

Order Date :- 19.9.2024

Ashutosh