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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1722/2019**

OMAXE BUILDHOME LIMITED

..... Petitioner

Through: Mr Tanveer Ahmed Mir with Mr
Vaibhav Suri, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr Anurag Ahluwalia, CGSC for
UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

19.02.2019

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VIBHU BAKHRU, J

CM No.7927/2019

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 1722/2019

3. The petitioner has filed the present petition impugning an order dated 14.11.2018 (hereafter 'the impugned order'), passed by the Appellate Tribunal for Forfeited Property (hereafter 'the Appellate Tribunal') in appeal No. 153/DLI/2018.

4. By the impugned order, the Appellate Tribunal has rejected the petitioner's appeal on the ground that it was filed beyond the period as prescribed under Sub-section (1) of Section 68-O of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereafter 'the NDPS Act'). Admittedly,

the appeal filed by the petitioner was belated and the petitioner had also filed an application seeking condonation of the delay of 457 days in filing the said appeal. The Appellate Tribunal held that in view of the express language of Section 68-O of the NDPS Act, it had no power to condone the delay. The petitioner had also filed an application seeking direction from the Appellate Tribunal to permit it to approach this Court for seeking condonation of delay, however, that prayer was also rejected.

5. The principal question that falls for the consideration of this Court is whether the Appellate Tribunal can entertain an appeal from an order of a Competent Authority, which is filed after expiry of sixty days from the receipt of the order. This Court is also required to consider whether this Court can condone the delay beyond the said period in exercise of its powers under Article 226 of the Constitution of India.

6. Briefly stated, the aforesaid controversy arises in the following factual context:-

6.1 The investigating authorities of Narcotic Control Bureau had effected recoveries of psychotropic substances from certain persons, namely, Amit Kohli, Diwakar Gupta, Nafe Singh and Rajesh Sharma on 05.05.2008. The said persons were thereafter arrested on 06.05.2008, for alleged contravention of the provisions of the NDPS Act.

6.2 It is stated that during the course of investigation, the Investigating Officer became aware that the aforementioned accused persons had acquired certain immovable properties. It was alleged that the said properties were acquired from tainted money and illicit income generated from trafficking in psychotropic substances.

6.3 The Competent Authority passed an order confirming the order of the

Investigating Officer whereby certain properties of the aforementioned accused persons were frozen. The said properties also included (i) Flat No. 201, Florence D-Tower, Grandwood Omaxe, Sector 93B, Noida, U.P. standing in the name of Amit Kohli; and (ii) Flat No. 202, Florence D-Tower, Grandwood Omaxe, Sector 93B, Noida, U.P. standing in the name of Diwarkar Gupta.

6.4 The affected persons filed appeals before the Appellate Tribunal impugning the orders passed by the Investigating Officer as confirmed by the Competent Authority. The said appeals were disposed of by an order dated 16.12.2008, whereby the matter was remanded to the Competent Authority, with the direction to pass appropriate orders after affording the appellants therein a reasonable opportunity of being heard. Pursuant to the remand from the Appellate Tribunal, the Competent Authority passed an order dated 30.03.2017, once again affirming the order dated 16.05.2008 passed by the Investigation Officer.

6.5 The petitioner states that its authorized representative who was representing the petitioner before the Competent Authority left the services of the petitioner company on 01.06.2017, without informing the petitioner the status of the said proceedings and, therefore, the petitioner was not aware of the same. The petitioner further claims that it received a notice dated 23.04.2018 under Section 54 of the Prevention of Money Laundering Act, 2002 regarding the aforementioned properties and, on further inquiries, the petitioner became aware of the order dated 30.03.2017 passed by the Competent Authority.

6.6 On 01.08.2018, the petitioner filed an appeal against the order dated 30.03.2017 passed by the Competent Authority. The said appeal was also

accompanied by an application for condonation of delay.

6.7 The said appeals were listed for hearing on 11.09.2018 and the order passed on the said date indicates that the appeals were simply adjourned without any further observations. However, the petitioner claims that the Appellate Tribunal had observed that the delay in filing the appeal cannot be condoned by the Appellate Tribunal but the same can be done by this Court.

6.8 On 25.10.2018, the petitioner filed an application before the Appellate Tribunal, *inter alia*, praying that an order be passed enabling the petitioner to approach this Court for seeking condonation of delay in filing the appeal. The same was also rejected. Aggrieved by the same, the petitioner has filed the present petition.

Reasons and Conclusion

7. At the outset, it will be relevant to refer to Sub-Section (1) of Section 68-O of the NDPS Act which reads as under:-

“68-O. Appeals

(1) Any person aggrieved by an order of the competent authority made under section 68F, section 68-I, sub-section (1) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”

8. The plain reading of the proviso to Sub-section (1) of Section 68-O of

the NDPS Act indicates that the Appellate Tribunal has no jurisdiction to entertain an appeal which is filed beyond a period of sixty days from the date on which the order passed by the Competent Authority is served on the appellant. An appeal under Sub-section (1) of Section 68-O of the NDPS Act can be filed only within a period of 45 days from the date on which the order is served. However, the Appellate Tribunal can entertain an appeal even beyond the said period of 45 days if it is satisfied that the appellant was prevented by sufficient cause from filing the said appeal. However, this power is not available to entertain an appeal beyond a period of 60 days.

9. Mr Mir, the learned counsel appearing for the petitioner, has submitted that the right of appeal is an inherent right and the same could not be taken away on the grounds of delay. He submitted that the question of filing an appeal within the prescribed period was a matter of procedure and such procedural matters could not affect the petitioner's substantive right of appeal and the same being an inherent right could not be taken away.

10. The aforesaid contentions are unmerited. First of all, the contention that the petitioner has any inherent right to file an appeal against the order of the Competent Authority, is flawed. It is well settled that an appeal is a creature of statute and there is no inherent right of appeal.

11. In ***Durga Shankar Mehta v. Thakur Raghuraj Singh and Ors*** : AIR 1954 SC 520, the Supreme Court had held that “*It is well known that an appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself.*”

12. The aforesaid proposition has been reiterated by the Supreme Court in a number of decisions. In ***V.C. Shukla v. State (Delhi Administration)*** :

AIR 1980 SC 1382, the Supreme Court observed as under:

“We shall now deal with the contention that the procedure prescribed by the Act is harsh. In the first place, it was submitted that under s. 7 an appeal pending in the High Court stands transferred to the Supreme Court and that thus the appellant is deprived of a valuable right of having the appeal heard and decided by the High Court which is vested in him the moment he is convicted. Secondly, it was urged that if the appeal in the High Court was decided against the appellant, he would still have a right to move the Supreme Court under Art. 136 of the Constitution against conviction but that by reason of the appeal having been transferred to the Supreme Court, that right also has been taken away. In our opinion, there is no substance in this grievance. To begin with, an appeal being a creature of statute, an accused has no inherent right to appeal to a particular tribunal. The legislature may choose any tribunal for the purpose of giving a right of appeal.”

13. In **Ganga Bai v. Vijay Kumar and Ors. : 1974 (2) SCC 393**, the Supreme Court observed as under:-

“There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.”

14. In a recent decision in **Hindustan Petroleum Corporation. Ltd. v. Dilbahar Singh: 2014 (9) SCC 78**, the Constitution Bench of the Supreme

Court has observed as under:-

“Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision.”

15. Plainly, if the right of appeal is a creature of statute, it would be open for the legislature to curtail the said right as well. Therefore, there is no infirmity in the legislature providing a limited right of appeal. The Parliament has provided a right of appeal against an order of the Competent Authority, albeit, subject to the condition that the same be preferred within the specified period. It has expressly curtailed the power of the Appellate Tribunal to entertain an appeal which is filed beyond the specified period. Thus, a person aggrieved by an order of the Competent Authority has no right to an appeal if the same is not preferred within the prescribed period.

16. In *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Others.* : (2008) 3 SCC 70, the Supreme Court had considered the provisions of Section 35 of the Central Excise Act, 1944 which also limited the jurisdiction of the Commissioner of Appeals to condone the delay in filing an appeal, beyond a period of 30 days. The Court upheld the view that there was no power to condone the delay after expiry of the said period of 30 days. The relevant extract of the said decision is set out below:-

“6. At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows:

35. APPEALS TO COMMISSIONER (APPEALS).

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank

than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order :

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

7. It is to be noted that the periods 'sixty day' and 'thirty days' have been substituted for 'within three months' and 'three months' by Act 14 of 2001, with effect from 11.5.2001.

8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal.

The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.”

17. The aforesaid decision was referred in *Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited and Ors.*: (2017) 5 SCC 42. The Supreme Court considered the question whether the Supreme Court could condone the delay in filing the appeal under Section 125 of the Electricity Act, 2003, beyond the period as specified therein. Section 125 of the said Act also included a proviso which is similar to the proviso to Sub-section (1) of Section 68-O of the NDPS Act and is set out below:-

“125. Appeal to Supreme Court – (1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court, within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”

18. The Supreme Court referred to its earlier decisions including in *Singh Enterprises (supra)* and held that the delay beyond the specified period could not be condoned. It is important to note that the Supreme Court also rejected the contention that recourse to Article 142 of the Constitution of India was available for condoning such delay which was beyond the stipulated period. In this regard the Court observed as under:-

“To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.”

19. In *Union of India v. Popular Construction Co. : (2001) 8 SCC 470* , the Supreme Court noted the express language of Section 34 of the Arbitration and Conciliation Act, 1996 and held that the usage of the words “but not thereafter” as used in the proviso to Sub-section (3) of Section 34 of the said Act, would bar an application of Section 5 of the Limitation Act, 1963 and, therefore, the Court could not entertain an application to set aside an arbitral award beyond the period as specified therein.

20. It would also be relevant to refer to the decision of the Division Bench of this Court in *Amikna Bi Kaskar (Deceased) v. Union of India & Ors. : 194 (2012) DLT 57 (DB)*, wherein this Court considered the power of the Appellate Tribunal to entertain an appeal under Sub-section (4) of Section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and held that in terms of Sub-section (4) of Section 12

of the said Act which reads as under:-

“Section 12(4) of SAFEMA reads as under:-

12. Constitution of appellate tribunal.—

(1) xxxxxxxxxx

(2) xxxxxxxxxx

(3) xxxxxxxxxx

(4) Any person aggrieved by an order of the competent authority made under Section 7, Sub-section (1) of Section 9 or Section 10, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”

The Division Bench referred to the aforesaid provision and held as under:-

“It is clear that an appeal under Section 12(4) of SAFEMA has to be filed within 45 days from the date on which the order is served on the person aggrieved. The proviso extends that period by enabling the Tribunal to entertain an appeal even after the period of 45 days but restricts it to the period of 60 days. The stipulation is clear and categorical that the Tribunal cannot entertain any appeal after 60 days from the date on which the order is served on the aggrieved person. The question of the appellant being prevented by a sufficient cause in not filing the appeal within the initial period of 45 days can be looked into only for the balance period of 15 days after 45 days, that is, up to the 60th day.”

21. Mr Mir had referred to the decision of the Single Judge of the Madras High Court in *M/s Madhucon Granites Ltd. v. The Commissioner (Appeals) and Anr.*: W.P. (C) 22973/2018 decided on 22.11.2018, in

support of his contention that this Court would have the power to condone the delay in filing an appeal. It is relevant to note that the decision was not rendered in the context of the NDPS Act. Although, the said judgment indicates that the appeal was preferred before the Commissioner of Excise but it does not indicate the statutory provisions under which the said appeal had been filed. Clearly, if the reference to, in the said decision is to Section 35 of the Central Excise Act, 1944, the said decision is contrary to the authoritative view of the Supreme Court in *Singh Enterprises (supra)*. This Court is unable to concur with the view that if the right of an Appellate Authority to entertain an appeal beyond a stipulated period has been curtailed by the legislature, the Courts in exercise of powers under Article 226 of the constitution of India can overcome the said statutory limitation. It is well settled that the remedy under Article 226 of the Constitution of India is available to enforce a legal right.

22. In *Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal & Anr : AIR 1962 SC 1044*, the Supreme Court held as under:

“Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.”

23. Clearly, if the petitioner has no statutory right to file an appeal, the

question of issuing directions under Article 226 of the Constitution of India to provide the same, contrary to the statute, would not arise.

24. Since, the right to appeal is a statutory right, this court is not persuaded to accept that relief can be granted to the petitioner who has lost such a right on account of delay.

25. In view of the above, the petition is unmerited and is, accordingly, dismissed.

FEBRUARY 19, 2019

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VIBHU BAKHRU, J



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