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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4534/2017 & CM No. 19797/2017**

JAGJIT SINGH @ LADI

..... Petitioner

Through: Mr Sunav Rastogi and Mr Lakshay
Dhamija, Advocates.

versus

THE COMPETENT AUTHORITY SMUGGLERS
& FOREIGN EXCHANGE & ANR

..... Respondents

Through: Mr Manish Mohan, CGSC with Ms
Manisha Saroha, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.07.2019

1. The petitioner has filed the present petition impugning an order dated 31.03.2017 (hereafter 'the impugned order') passed by the Appellate Tribunal for Forfeited Property, New Delhi.
2. The said order was passed in an appeal preferred by the petitioner against an order dated 22.04.2016 passed by the Competent Authority under Section 68(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), confirming the freezing/seizing order dated 27.03.2016 passed by the Station House Officer, Police Station Dinanagar, District Gurdaspur, Punjab.
3. The Appellate Tribunal rejected the appeal filed by the petitioner on the ground that it was filed beyond the period of 60 days from receipt of the

order dated 22.04.2016. The Tribunal held that in terms of the proviso to Section 68O of the NDPS Act, the appeal had to be preferred within a period of 45 days from the receipt of order. The Tribunal was empowered to entertain an appeal beyond the said period of 45 days but not later than 60 days from the date of passing of the impugned order.

4. In the present case, the order impugned before the Tribunal (order dated 22.04.2016) passed by the Competent Authority was served on the petitioner on 28.04.2016, while he was in judicial custody and had been produced before the Sessions Court, Amritsar. The petitioner had filed the appeal before the Tribunal on 28.06.2016.

5. The Tribunal proceeded on the basis that the said appeal was filed on the 61st day from the receipt of the order passed by the Competent Authority. The Tribunal held that it could condone the delay of 15 days – that is, till the 60th day after receipt of the order – but it could not condone the delay of the remaining one day.

6. Concededly, the petitioner also did not raise any objection before the Tribunal as to the calculation of the period of delay. However, the learned counsel appearing for the petitioner submitted that by virtue of Section 12(1) of the Limitation Act, 1963, the date on which the order was served has to be excluded for calculating the period of limitation. The learned counsel appearing for the respondent does not dispute that if the date of service of the order dated 22.04.2016 is excluded, the delay in filing the appeal can be condoned by the Tribunal.

7. Insofar as the merits of the petitioner's appeal before the Tribunal are concerned, it is conceded by the learned counsel for the respondent that the

same was liable to be allowed, since the order confirming attachment had not been received by the petitioner. According to him, the matter would require to be remanded to the Competent Authority.

8. The petitioner's contention that the date of service of the order is to be excluded for the purposes of calculating the time within which the appeal had to be preferred is persuasive. The learned counsel appearing for the respondents also does not contest the same. Although the said contention was not advanced before the Tribunal, this Court does not consider it apposite to deny the petitioner the opportunity to consider the same.

9. This court also does not consider it necessary to remand the matter to the Tribunal. This is because it is conceded before the Tribunal as well as before this Court that the order dated 22.04.2016 passed by the Competent Authority is required to be set aside and the matter requires to be remanded to the Competent Authority for consideration afresh.

10. In view of the above, the impugned order dated 31.03.2017 as well as the order dated 22.04.2016 passed by the Competent Authority are set aside and the matter is remanded to the Competent Authority to consider afresh.

11. The petition is allowed in the aforesaid terms.

12. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JULY 17, 2019
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