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

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Judgment delivered on: 18.11.2022

+ W.P.(C) 15907/2022

GOVT. OF NCT OF DELHI & ORS.

..... Petitioners

versus

KRISHAN KUMAR

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mrs. Avnish Ahlawat, Standing Counsel for GNCTD with Ms. Aliza Alam, Advocate.

For the Respondent : Mr. Sachin Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 49494/2022 (for exemption)

Exemption is allowed, subject to all just exceptions.

W.P.(C) 15907/2022 & CM APPL. 49493/2022 (for stay)

1. Issue notice.

2. Notice is accepted by learned counsel appearing for the respondent. With the consent of parties, the petition is taken up for final disposal today.
3. Petitioners impugn order dated 19.07.2022, whereby the Original Application ('OA') filed by the respondent has been allowed. By the impugned order show cause notice dated 14.09.2016 and the Appellate Authority's order dated 01.11.2017 has been set aside and the matter remitted to the Appellate Authority to pass an order on merits.
4. Tribunal has passed the impugned order holding that since the Appellate Authority has rejected the appeal only on the ground of limitation, the same needed to be considered on merits.
5. The Tribunal had noticed that the penalty order was received by the respondent on 19.06.2017 and he filed the appeal on 06.07.2017, which was within 30 days and, as such, the same was within time and the Appellate Authority was incorrect in rejecting it on the ground of limitation.
6. Insofar as the observation of the Tribunal with regard to limitation of the appeal before the Appellate Authority is concerned, we are of the view that there is no infirmity in the order of the Tribunal holding that the appeal was filed within time.
7. However, perusal of the order of the Appellate Authority shows that the Appellate Authority has not only rejected the appeal on the ground of limitation but has also considered the merits of the case of the respondent and passed a speaking order on merits rejecting the appeal.

8. The Tribunal by the impugned order has not examined the validity and sufficiency of the order passed by the Appellate Authority on merits and has merely allowed the OA assuming that the Appellate Authority has rejected the appeal solely on the ground of limitation, which we find is contrary to the records of the case, *inter alia*, the order of the Appellate Authority.

9. We are of the view that the impugned order of the Tribunal dated 19.07.2022 is not sustainable to that limited extent ie: of directing a remit but in fact calls for a remit to the Tribunal for considering the OA of the respondent, on merits.

10. We also noticed that the Tribunal has set aside the show cause notice dated 14.09.2016. The Tribunal has erroneously set aside the show cause notice whereas, pursuant to the show cause notice, the order of punishment has been passed on 28.03.2017, which was the subject matter of the appeal. Accordingly, the part of the order setting aside the show cause notice dated 14.09.2016 is also set aside

11. In view of the above, the impugned order dated 19.07.2022 is modified. The order of remit and quashing of show cause notice dated 14.09.2016 is set aside. The matter is restored to its original number on the records of the Tribunal and the Tribunal is directed to consider the OA afresh with regard to the merits of the order passed by the Appellate Authority rejecting the appeal of the respondent on merits.

12. The petition along with the pending application is disposed of in the above terms.

13. Parties shall appear before the Tribunal for directions on 16.01.2023.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

NOVEMBER 18, 2022/nd

