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W.P.No.6095 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 08.03.2024**

**CORAM**

**THE HONOURABLE MRS. JUSTICE N.MALA**

**W.P.Nos.6095 and 6096 of 2024 and**  
**W.M.P.Nos.6738 and 6742 of 2024**

M/s.Sundaram Brake Linings Limited  
S.No.1384, 1385, 1386, 1392, 1393  
Karattur Village  
Padi, Chennai – 600 050  
Rep by its Managing Director

...Petitioner

Vs.

1. The Director/Appellate Authority  
Industrial Safety & Health,  
T.S.No.47/1, SIDCO, Industrial Estate,  
Guindy, Chennai – 32.

2. The Additional Director,  
Industrial Safety & Health,  
T.S.No.47/1, SIDCO, Industrial Estate,  
Guindy, Chennai – 32.

3. The Joint Director – II,  
Industrial Safety & Health,  
T.S.No.47/1, SIDCO, Industrial Estate,  
Guindy, Chennai – 32.

...Respondents



W.P.No.6095 of 2024

**PRAYER in W.P.No.6095 of 2024:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3<sup>rd</sup> Respondent in proceedings Na.Ka.A/2000/2023 dated 03.01.2024 and the consequential order of the 1<sup>st</sup> Respondent dated 13.02.2024 in Appeal proceeding No.C3/3426/2024 and quash the same, further direct the first respondent to consider the appeal on its own merits or the 3<sup>rd</sup> respondent to pass speaking orders after considering the reply dated 09.12.2023 submitted by the petitioner.

**PRAYER in W.P.No.6096 of 2024:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3<sup>rd</sup> respondent in proceedings Na.Ka.A/2001/2023 dated 03.01.2024 and the consequential order of the 1<sup>st</sup> Respondent dated 13.02.2024 in Appeal proceeding No.C3/3426/2024 and quash the same, further direct the first Respondent to consider the appeal on its own merits of the 3<sup>rd</sup> respondent to pass speaking orders after considering the reply dated 09.12.2023 submitted by the petitioner.

For Petitioner : Mr.Anand Gopalan

For Respondents : Mr.G.P.Sanjay Gandhi  
Government Advocate

### **COMMON ORDER**

The writ petitions in W.P.Nos.6095 and 6096 of 2024 are filed challenging the proceedings in Na.Ka.A/2000/2023 and Na.Ka.A/2001/2023



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dated 03.01.2024 and the consequential order of the first Respondent dated 13.02.2024 in Appeal proceeding No.C3/3426/2024.

2. The petitioner's factory was inspected by the third respondent on 09.11.2023 and based on the inspection report, show cause notices were issued to the occupier of the petitioner's factory on 14.11.2023 and 23.11.2023 respectively in proceedings Nos.A/2000/2023 and A/2001/2023 complaining of certain violations of provisions of the Factories Act, 1948. The petitioner sent a reply to the show cause notices on 09.12.2023, and the third respondent passed the impugned order dated 03.01.2024. Aggrieved by the said order, the petitioner filed an appeal challenging the same under Section 107 of the Factories Act before the first respondent on 06.02.2024. The first respondent vide proceeding No.C3/3426/2024 dated 13.02.2024 rejected the appeal on the ground that the criminal prosecution was already initiated on 30.01.2024, on the basis of the sanction given by the second respondent vide Sanction order No.A2/5320/2023 dated 11.01.2024. Hence the petitioner filed W.P.Nos.6095 and 6096 of 2024 challenging the impugned show cause notices as well as the order in the appeal.



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3. The learned counsel for the petitioner submits that to the show cause notices, the petitioner gave a detailed reply explaining about the compliance of the violations pointed out in the inspection report. The learned counsel submits inspite of the detailed reply, the respondent without considering explanation, passed a non speaking order rejecting the same on 03.01.2024. Challenging the same the petitioner preferred the appeal and the same was rejected by the impugned order dated 13.02.2024. The learned counsel relying on the judgment of the Division Bench of this Court submits that the impugned order should be set aside. The learned counsel for the respondents submits that considering the seriousness of the issue, the authority rejected the objections of the petitioner that too on the basis of the re-inspection conducted on 28.12.2023 and therefore no fault could be found with the impugned order.

4. Heard both counsels and perused the materials placed on record.

5. A bare reading of the impugned order lucidly shows that the reply of the petitioner dated 09.12.2023 giving explanation and status on each and everyone of the violations was not considered by the respondent. In the impugned order, the authority without assigning any reasons for rejecting the



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petitioner's explanation rejected the appeal on the ground of pendency of the criminal prosecution. As the impugned order is passed without citing any reasons for rejecting the petitioner's reply, the same in my view cannot be sustained.

6. The Hon'ble Division Bench in 2007(4) LLN 828, held as follows:

*“Without considering the explanation offered by the management appellant proceeded to initiate prosecution proceedings against the respondent on the grounds that the prosecution has to be started within 90 days from the date of knowledge of accident.*

*...Employer filed writ petition challenging its prosecution since the explanation was not considered.*

*...Department aided that the complaint was to be filed within 90days of the prosecution and that the employer/petitioner wanted to drag the prosecution launched. Reason given by the respondent – Inspector not justified stating that the employer has last right for filing appeal against the order of the Inspector – petition allowed and the explanation as submitted by the petitioner/employer be considered”.*

7. In view of the above discussions, the impugned order is set aside and the respondent is directed to pass fresh orders in the appeal considering the



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objections of the petitioner dated 09.12.2023 within a period of three (3) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

**08.03.2024**

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

To

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**N.MALA,J.**

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