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

+ **W.P.(C) 11874/2024 & CM APPL. 49387/2024**

M/S VRV LAND DEVELOPERS

.....Petitioner

Through: Mr. Vanshul Pali, Advocate.

versus

COMPETENT AUTHORITY & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

29.08.2024

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1. The Petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India, 1950¹ challenging the Appellate Tribunal's order dated 21st December, 2023,² which dismissed their appeal as time-barred under Section 68-O(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985.³ They also seek setting aside of order dated 5th April, 2023 passed by the Competent Authority and pray for condonation of the delay in filing the appeal.

2. The relevant portion of the impugned order reads as follows:

“3. On the other hand, the respondent inter alia pleaded/submitted that the application for CoD needs to be dismissed, as the present appeal is filed much beyond the prescribed period of limitation of 45 days and extended period of 60 days. And that this Appellate Tribunal is competent to

¹ “Constitution”

² “Impugned order”

³ “NDPS Act”



entertain appeal after the period of 45 days, but not after 60 days, if it is satisfied that the appellants were prevented by sufficient cause from filing the appeal in time during 46th to 60th day. It was also contended that the proof of service is still awaited from respondent No.2.

4. *After hearing rival contentions from both the sides on the application for CoD and after carefully considering the materials available on record, it is seen that the appellant has neither stated the date of service of the order nor the total number of days of delay in filing the appeal. Therefore, the date of passing of impugned order i.e. 05.04.2023 is taken as the date of service of the impugned order. Thus, the period of limitation for filing the appeal starts from 05.04.2023 and the 45th day for filing the appeal has expired on 20.05.2023 and the extended period of next 15 days (60th day) has expired on 04.06.2023. However, the present appeal is filed by the appellant on 29.08.2023 i.e. on the 146th day from the date of the impugned order. In other words there is a delay of 86 days from the expiry of the extended period of 60 days i.e. total delay occurred in filing the appeal from date of expiry of limitation of 45th day is 101 days. The judgment Tofan Singh Vs. State of Tamil Nadu [2021] 4 SCC 1 cited and relied upon by the appellant is neither relevant nor applicable to decide Condonation of Delay in the given facts and circumstances of the case.*

5. *Section 68-O of the NDPS Act, 1985 provides for appeals before this Tribunal. Section 68-O (1) provides as below:-*

“[Any officer referred to in sub-section (1) of section 68E or 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.”

6. *The full bench of this Appellate Tribunal while deciding a similarly situated appeal involving similar question of law in the matter of **Ms. Amarjeet Kaur & Ors. v. Competent Authority in Appeal No. FPA-ND- 42/DLI/2015** passed on 24th March, 2017 held that :-*

“26. Considering the relevant fact, provision of law and judgments noted above, it is held that this Tribunal has no power even to condone a single day delay after sixty days from the date of service of impugned order on the appellant, hence on the grounds discussed above, the appeal is dismissed being not maintainable on the ground of uncondonable delay. In the circumstances there is no order as to cost.”

7. *The aforesaid order was passed by full bench (supra) relying on the judgments of Hon’ble Supreme Court in the matter of **ONGC v/s Gujarat Energy Transmission Corporation Ltd. and Others in civil no. 1315 of 2010 reported in 2017 SCC online SC 223, Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission& others reported in (2010) 5 SCC 23 and Fair Growth Investments Limited v/s Custodian reported in (2004) 11SCC 472 and orders of Hon’ble Delhi High Court in the matter of **Hasina and Amina Bi.*****

8. *It is evident that this Tribunal cannot entertain an appeal filed after the period of 60 days as provided under the statute vide Proviso to Section 68-O (1) of NDPS Act, 1984. In view of specific provisions of law, the huge delay in filing the appeal cannot be condoned by this Tribunal. Hence, on the grounds discussed above, this Tribunal has no power even to condone a single day delay after sixty days from the date of service of impugned order, the appeal is dismissed being not maintainable on the ground of uncondonable delay.”*

3. As can be seen from the aforenoted extracts of the Impugned order, the Appellate Tribunal has declined to entertain the appeal as the same was



filed after the period of 60 days, as provided under the statute. The Appellate Tribunal held that they have no power to condone the delay after 60 days from the date of service of the Impugned order. The aforementioned understanding of the Appellate Tribunal is based on the referred case law. On this issue, this Court has also, in several decisions,⁴ in similar situations declined to interfere, holding that in view of the explicit provision, the Appellate tribunal has no power to condone the delay beyond the period of 60 days from the receipt of the order.

4. Counsel for Petitioner seeks to differentiate the aforementioned decisions by arguing that the delay has occurred owing to the fault of the counsel and the Petitioner should not be penalised for the same. However, the Court is not convinced to make an exception on this ground, in view of the explicit language of the statute. It is an admitted position that there was a delay of 86 days from the extended period of 15 days, that is the grace period to the 45 days of limitation defined under Section 68-O of the NDPS Act.

5. Additionally, the Petitioner has also invoked section 5 of the Limitation Act, 1963⁵ read with section 29(2) of the Limitation Act to argue that the delay in filing the appeal may be condoned. In this regard, it is important to note the language of Section 68-O (1) of the NDPS Act which reads as follows:

“68-O. Appeals.—(1) 1 [Any officer referred to in sub-section (1) of section 68E or 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

⁴ *Shri Joni @ Jona and Anr v. Union of India through Ministry of Finance and Ors*, W.P.(C) 9283/2024; *Suman Kumar Rana v. Competent Authority and Administrator & Anr.*, 2023: DHC: 7790; *Omaxe Buildhome Limited v. Union of India & Anr*, 2019: DHC: 1159;

⁵ “Limitation Act



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”

Emphasis Supplied

A plain reading of the proviso to section 68-O(1) of the NDPS Act makes it crystal clear that the delay cannot be condoned beyond a period of 60 days. In the case of *Union of India v. Popular Construction Co.*,⁶ the Supreme Court examined the explicit language of Section 34 of the Arbitration and Conciliation Act, 1996. The Court observed that the phrase “but not thereafter” in the proviso to Sub-section (3) of Section 34 prevents the application of Section 5 of the Limitation Act, 1963. Consequently, the Court cannot entertain an application to set aside an arbitral award if it is filed beyond the specified time limit. Similarly, in this case, the legislature has expressly curtailed the power of the Appellate Tribunal to entertain the appeal, limiting it to sixty days and hence, there is complete exclusion of section 5 of the limitation Act.⁷

6. Accordingly, the Court finds no infirmity in the Impugned order and therefore, the present petition cannot be entertained.

7. For the foregoing reasons, the present petition is dismissed, along with pending application.

SANJEEV NARULA, J

AUGUST 29, 2024

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⁶ (2001) 8 SCC 470

⁷ See also: *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Ors*, (2008) 3 SCC 70.