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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 14144/2024 & CM APPL. 59245/2024**
ASHISH JAIN & ORS.Petitioners

Through: Mr. P.B.A. Srinivasan, Ms. Aanchal
Pundir, Ms. Srishti Bansal and Mr.
Sumit Swami, Advocates.

versus

**NARCOTICS CONTROL BUREAU THROUGH ITS DIRECTOR
GENERAL & ORS.**Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

% **ORDER**
25.11.2024

1. The present writ petition impugns order dated 7th May, 2024¹ in FPA-ND-544/CHN/2023 passed by the Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976,² thereby dismissing the Petitioner's appeal on the ground of limitation. The said order reads as under:

"Arguments heard on application for condonation of delay. In the present case, impugned order was passed on 18.10.2022, whereas, present appeal is filed on 30.01.2023. As per the contention of applicant/appellant, he received copy of the impugned order on 25.10.2022. Therefore, the period of limitation of 45 days will start running from 25.10.2022. The said period of 45 days stands expired on 09.12.2022.

2. As per proviso to section 68-O of NDPS Act, the Appellate Tribunal may entertain an appeal after the said period of 45 days, but not

¹ "Impugned Order"

² "SAFEMA Act"



after 60 days from the date aforesaid if it is satisfied that appellant was prevented by sufficient cause from filing the appeal in time. Therefore, this Appellate Tribunal is empowered to condone only delay of 15 days as per proviso to section 68-O and after the expiry of 60 days, this Appellate Tribunal is not empowered to entertain any appeal. In view of the above statutory limitation, this court is not empowered to entertain the appeal filed beyond 60 days. The further period of 15 days from 06.12.2022 expired on 21.12.2022, whereas the present appeal is filed on 31.01.2023 with further delay of 40 days even after the expiry of 60 days. Hence, present application for condonation of delay is hereby dismissed as per proviso to Section 68-O of NDPS Act, and consequently, appeal is dismissed being time barred.

Application for COD alongwith Appeal Dismissed.”

2. Counsel for Petitioners submits that the delay was due to unavoidable circumstances, including the time spent in procuring necessary documents and not due to any deliberate or inconsiderable delay. Accordingly, she urges that the delay in filing the appeal should be condoned. Further submissions are made regarding the procedural irregularities by the NCB during investigation and concerns regarding the seizure of the quantity of the drug in question.

3. The Court is not inclined to go into the merits of the case, as the appeal has been rejected purely on the ground of limitation. Having regard to the language of Section 68-O of the Narcotic Drugs & Psychotropic Substances Act, 1985, this Court has, in several decisions, held that the Appellate Authority has no power to condone delay beyond the period prescribed and therefore a writ petition would correspondingly be also not maintainable. Reference may be made to the order of this court in W.P.(C) 9284/2024,³ the relevant portions of which reads as follows:

³ Order dated 10th July, 2024 passed in **Shri Joni @ Jona And Ors Vs. Union Of India Through Ministry Of Finance And Ors**



“ ..XX.. ..XX.. ..XX..

6. *It is well settled that an appeal is a creature of a statute and there is no Inherent right of appeal. This principle has been reiterated by the Supreme Court in **Durga Shankar Mehta v. Thakur Raghuraj Singh and Ors.**, wherein the Supreme Court 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.”*

7. *The Appellate Tribunal under SAFEMA is a creation of statute and is vested with the power to condone delay which falls within the permissible limit of 15 days beyond the period of 45 days from the date of receipt of the order by the appellant. This can be done on the ground that the appellant was prevented by sufficient cause from filing the appeal in time. Therefore, in light of the clear stipulation laid down by the legislation, this Court finds no error in the view taken by the Appellate Tribunal in the impugned order.*

8. *As regards the question whether this Court would have power to condone the delay in case of Special Acts which provide for a period of limitation, has been dealt by the Supreme Court in several judgments. In the context of Section 125 of the Electricity Act, 2003, the Supreme Court in **Chattisgarh SEB v. Central Electricity Regulatory Commission**, expressly held that in absence of any clause condoning the delay in the special law, the language used in the said provision, which prescribes the period of limitation, has to be taken into account. Where the clause in the statute does not allow condonation of delay beyond the period provided, the High Court would not be justified in condoning the delay after the expiry of the prescribed period.*

9 *In view of the above discussion, the Court is not persuaded to accept the Petitioners' contentions that the statutory limitation provided under Section 68-O of the NDPS Act can be subjugated through the Court's power under Article 226 of the Constitution. The remedy under Article 226 of the Constitution is available to enforce a legal right. Since the Petitioners statutory right to file an appeal is no longer available in view of the above- mentioned provision under the NDPS Act, there is no question of condoning the delay by this Court under Article 226 of the Constitution.*

..XX.. ..XX.. ..XX.. ”

4. Accordingly, the Court is not inclined to entertain the present petition.



5. Dismissed along with pending applications.

SANJEEV NARULA, J

NOVEMBER 25, 2024

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