

Managing Director M/S Wani Brothers vs Ut Of J&K on 2 December, 2022

Author: Rahul Bharti

Bench: Rahul Bharti

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HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

MA No. 11/2021
CM No. 3396/2021
CM No. 3399/2021
CM No. 3398/2021

Managing Director M/s Wani Brothers
Shopian

.....Appellant(s)/Petitioner(s)

Through: Mr. Tariq M. Shah, Advocate

Vs

UT of J&K

.....Respondent(s)

Through: Mr. Sunil Malhotra, GA vice
Mr. Amit Gupta, AAG

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
ORDER

02.12.2022 Heard learned counsel for the parties in CM no. 3396/2021, for seeking condonation of delay of 659 days in preferring the accompanying appeal under section 71 of the Food Safety and Standards Act, 2006 against an order dated 23.04.2019 passed by the Food Safety Appellate Tribunal, Jammu in terms whereof an appeal filed by the applicant herein against an order dated 06.10.2018 of the Adjudicating Officer (Additional District Magistrate) Jammu levying a penalty of Rs. Four lac on the appellant, has been dismissed.

Section 71 of the Food Safety and Standards Act, 2006 provides for filing an appeal and also provides for condonation of delay. The mandate of Food Safety and Standards Rules, 2011 in terms of rule 3.3.4 provides the mechanism for the Appellate Tribunal to follow with respect to pronouncement of orders and its consequent communication. For facility of reference, rule 3.3.4 reads as under:-

"A certified copy of every order passed by the Appellate Tribunal shall be communicated to the Adjudicating Officer and to the parties, as the case may be."

It is a beaten principle of law that if a law prescribes a particular thing/action to be done in a particular manner/mode, then any departure/deviation therefrom shall not result in any prejudice to a person visiting him with civil consequences. Sub-rule 2 of rule 3.3.4 in a very express and categorical intent mandates it upon the Appellate Tribunal to communicate a certified copy of every order passed by it to the adjudicating officer and to the parties as the case may be.

In the present case, the Appellate Tribunal adopted to apply this rule only in favour of the adjudicating officer, as the parting para of the impugned order dated 23.01.2019 carries a direction of the Appellate Tribunal for forwarding a copy of the said order dated 23.01.2019 to the Adjudicating Officer, whereas leaving the party aggrieved deprived of the benefit of the service of this very same order. Now whether the provisions of rule 3.3.4 are directory or mandatory in nature as an issue pales into insignificance when the Appellate Tribunal serves the sub-rule (2) of 3.3.4 in favour of the Adjudicating Officer but excludes the applicant herein from the benefit of the service of the very said rule. As such, the applicant herein cannot be penalized by rejection of its appeal as time barred against the impugned order dated 23.01.2019.

Learned counsel applicant relies upon the judgment of the Hon'ble Supreme Court in case titled "Collector of Central Excise, Madras Vs M. M. Rubber and Co. Tamil Nadu," reported in AIR 1991 SC 2141, which in clear terms deals with the import and importance of communication of adjudicatory orders/quasi judicial orders to the litigants. In this case, the fact remains that the applicant herein was not served with the certified copy of the order impugned dated 23.04.2019 by the Food Safety Appellate Tribunal, Jammu and, as such, the applicant can very safely have the benefit of a plea that when that it came to have the copy of the said order the appeal has come to be preferred without wasting any time. Seeing thus, the application for condonation of delay is allowed. Delay of 659 is condoned.

Application is, accordingly, disposed of.

The accompanying appeal is taken on record.

Issue notice to the respondent. Send for the record of File no. 07/2018 of the Food Safety Appellate Tribunal, Jammu and of the File no. 518/FSO/Pallanwala of the Adjudicating Officer (Additional Deputy Commissioner/Additional District Magistrate), Jammu disposed of in terms of an order dated 06.10.2018.

The petitioner to furnish registered postal covers for service of the respondent within a period of seven days.

In the meantime, operation of the impugned orders dated 06.10.2018 and 23.04.2019 shall remain stayed.

List this appeal on 10.02.2023.

(Rahul Bharti) Judge Jammu 02.12.2022 Muneesh