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**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL**  
**CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,**  
**JABALPUR**

**NO. CGIT/LC/EPFA-MISC-20-2019**

**PRESENT: P.K.SRIVASTAVA**  
**H.J.S.(Retd.)**

**Indira Exports Pvt. Ltd.**

**APPELLANT**

**Versus**

**The Assistant Provident Fund Commissioner**  
**Indore(M.P.)**

**RESPONDENT**

**Shri Uttam Maheshwari**

**: Learned Counsel for Appellant.**

**Shri J.K.Pillai**

**: Learned Counsel for Respondent.**

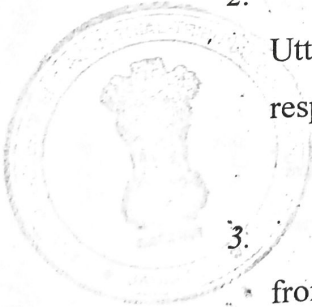
**(O R D E R.)**

**(Passed on this 23-3-2022 )**

1. Application for restoration of Appeal No.220/2017 has been filed by appellant/applicant with affidavit and an application for condonation of delay with affidavit has also been filed by the applicant.

2. I have heard arguments of learned counsel for the appellant Shri Uttam Maheshwari and Shri J.K.Pillai, learned counsel for the respondent and have perused the record.

3. Appeal No.220/2017 was pending before the Tribunal in Delhi from where it was received on transfer. Notices were set to learned counsel for the parties and were served. Notice of transfer to the learned counsel for appellant/applicant Shri S.K.Gupta was sent on his email-id which was received by him. On the date of hearing, none appeared for the appellant, hence the said appeal was dismissed



vide order dated 19-9-2019. Restoration application has been filed by the appellant/applicant on 15-11-2019 and an application for condonation of delay has been filed with affidavit wherein it has been stated that the appellant was regularly pursuing the appeal recently neither his learned counsel informed about the current status nor the Respondent Commissioner respected the interim order which lead the applicant to believe that the appeal has not been diligently followed by his learned Counsel. Thereafter, he got the record inspected on 11-11-2019 and come to know that the appeal was dismissed due to non presence of his learned counsel also it has been submitted that the copy of the dismissal order was never received by him. Hence the delay in filing the restoration which is less than of one month, be condoned and the appeal be restored on its original number for disposal on merits.

4. Learned Counsel for the Respondent/OP has put an objection stating the period of limitation of filing application of restoration of appeal dismissed in default of appeal is 30 days from the date of the order. There is no provision for extension of limitation provided in the Act. Since the appeal has not been filed within 30 days of the order, it is barred by limitation, there is no question of condonation of delay, hence dismissing the application for condonation of delay, the restoration application deserves to be dismissed as barred by limitation.

5. According to the learned counsel, the delay in filing restoration is liable to be condoned under Section 5 of the limitation Act. The learned counsel has further submitted that cases should be decided on merits, the doors of justice should not be closed on technicalities, hence the delay is liable to be condoned and restoration should be allowed.

6. Learned Counsel for Respondent has submitted that since the Employees Provident Fund And Misc. Provisions Act, 1952, herein

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after referred to the word 'Act', provides a separate scheme of limitation, hence the general law as mentioned in Limitation Act 1963 will not apply in the case in hand. He further submitted that since the Act is a special legislation, providing special provisions regarding limitation, they are applicable in the case in hand. According to the learned counsel, the limitation prescribed for filing restoration of appeal dismissed in default is 30 days from the date of dismissal, the application for condonation of delay and restoration are liable to be dismissed, as submitted by learned counsel for the Respondent.

7. Rule 15(2) of the Tribunal Procedure Rules 1997 made under the Employees Provident Fund and Misc Provisions Act-1952 prescribes limitation of 30 days from the date of dismissal of appeal in default for an application for restoration. Rule 15(2) is being reproduced as follows:-

**Action on appeal for appellant's default, Rule 15(2).**

**(2) Where an appeal has been dismissed for default and the appellant files an appeal within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his nonappearance when the appeal was called for hearing, the Tribunal shall make an order setting aside the order dismissing the appeal and restore the same.**

**Provided, however, where the case was disposed of on merits the decision shall not be re-opened except by way of review.**

8. The Rule does not prescribe for extension of limitation. Registry has reported that copy of the dismissal order was sent to the appellant via speed post on 9-9-2019 receipt No. RI 584981096IN. The registered post has not been reverted back by the post office.





9. Reference of Order 5 Rule 20 of Civil Procedure Code & Section 27 of General Clauses Act, 1897 requires to be mentioned here which are being reproduced as follows:-

**Rule 19A Order V of Code of Civil Procedure 1908  
"Simultaneous issue of summons for service by post  
in addition to personal service"**

(1) The Court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive), also direct the summons to be served by registered post, acknowledgement due, addressed to the defendant, or his agent empowered to accept the service, at the place where the defendant, or his agent, actually and voluntarily resides or carries on business or personally works for gain:

Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary.

(2) When an acknowledgement purporting to be signed by the defendant or his agent is received by the Court or the postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons, when tendered to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant: Provided that where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgement due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost or mislaid, or for other reason, has been received by the Court within thirty days from the date of the issue of the summons.

**Section 27 of General Clauses Act, 1897:- Meaning of service by post.—Where any 2 [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression**

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is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

10. In the light of the above provisions, it is clear that there will be a presumption of service of a registered post if it has not been reverted back, hence there will be a presumption of service of post containing copy of dismissal order sent by the Registry on 25-9-2019 by speed post, maximum within 30 days from the date of its sending, Hence the maximum date of deemed service of post would be around 25-10-2019 in all probabilities.

11. The rules do not provide any condonation of limitation nor is there any provision in the Act providing condonation of delay. Since it is a settled law that when there are special provisions they will override the general provisions. Since the Act and rules as referred to above have special provisions of limitation, hence provisions of general law as given in Limitation Act, 1963, will not apply to the case in hand. A five Judge Bench decision of Hon'ble Apex Court in Civil Appeal No.210/2005 with Appeal No.8578 of 2014, Judgment dated 25-2-2016 in **Pankajakshi(dead)Through L.Rs Chandrika & Others** may be referred to in this respect.

12. Though there is no provision for condonation of delay in the Act and Rules framed there under, even if we take it from the date of knowledge there should have been an explanation; date wise regarding the steps taken by appellant applicant from the maximum date of extended service i.e. 25-10-2019 which is not their in the application for condonation of delay or affidavit in support. Accordingly, there appears no ground of condoning of delay in filing the appeal, hence dismissing the application for condonation

of delay, the application for restoration is dismissed as barred by limitation.

**ORDER**

Dismissing the application for condonation of delay in filing restoration of appeal No.220/2017, the restoration application is dismissed as barred by limitation.

  
(P.K.SRIVASTAVA)

**PRESIDING OFFICER**

**Order signed and dated.**

  
(P.K.SRIVASTAVA)

**PRESIDING OFFICER**

**Date: 24-3-2022**

