

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)**

I.A. No.197/2022/EZ
In
Appeal No.26/2022/EZ

In the matter of:

M/S Shristhi LPG Bottling Plant Private Limited
A company within the meaning of the Companies Act, 2013,
Registered Office at AK-1/06, GF, Indirapuram Ghaziabad UP,
Pin – 201014 and its Branch Office at House No. 68, 2nd Floor,
Anandanagar, GMCH Road, Christian Basti, Kampur, Guwahati,
Assam – 781005, through its Authorised Representative Sri Sankar
Ashish Dey @ Shankarasish Dey,

...Appellant(s)

Versus

1. State Pollution Control Board, Assam,
Through Member Secretary,
Bamunimaidam, Milanpur, West Jyotinagar,
Guwahati – 21, Assam,
Pin – 781021,
2. The Member Secretary,
State Pollution Control Board, Assam,
Bamunimaidam, Milanpur, West Jyotinagar,
Guwahati – 21, Assam,
Pin – 781021,
3. The Senior Environmental Engineer,
State Pollution Control Board,
Regional Office, Guwahati-I, Bamunimaidam,
Milanpur, West Jyotinagar, Guwahati – 21, Assam,
Pin – 781021,

...Respondent(s)

Date of hearing: 29.09.2022.

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Appellant(s) : Ms. Arpita Chowdhury, Advocate a/w
Ms. Rupa Singh, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Shayamvar Deb, Adv. for SPCB, Assam, (in Virtual Mode)

ORDER

1. The I.A. No. 197/2022/EZ filed in Appeal No. 26/2022/EZ is taken up.
2. This I.A. has been filed by the Appellant, seeking condonation of delay of 55 days beyond the statutory period of limitation in the matter of filing of the present Memo of Appeal No. 26/2022/EZ.
3. This Tribunal vide its order dated 06.09.2022 had issued notice on the I.A. No. 197/202/EZ granting time to the learned Counsel for the State Pollution Control Board, Assam, (hereinafter referred to as 'SPCB, Assam') for filing objections, if any.
4. Objections on affidavit dated 23.09.2022 have been filed on behalf of the SPCB, Assam, but we find that in its objection the SPCB, Assam, has also entered into the merits of the Appeal by disputing that the 'activity of bottling of liquid petroleum has not been specified in the Classification of Industries' as stated in para 8 of the affidavit.
5. We also find that the Senior Environmental Engineer-cum-Nodal Officer (Legal) in the SPCB, Assam, has also denied and disputed that the Appellant made communication with the learned Advocate on record on 03.08.2022 or the 'learned Advocate on record' instructed the Appellant to meet him personally.
6. The deponent has also denied and disputed that the 'learned Advocate on record' organized a meeting with the learned Advocate in the presence of the Appellant on 14.08.2022.
7. We fail to understand as to how this denial has been made by the deponent on behalf of the SPCB, Assam, which matters are purely within the knowledge of the Appellant or his Counsel and it is not

stated by the deponent that these facts are within his personal knowledge.

8. For reasons stated above, we allow the I.A. No. 197/2022/EZ and condone the delay of 55 days in filing the present Memo of Appeal.

(APPEAL No. 26/2022/EZ):-

1. Heard Ms. Aprita Chowdhury, learned Counsel appearing along with Ms. Rupa Singh, learned Counsel (in Virtual Mode) for the Appellant as well as Mr. Shayamvar Deb, learned Counsel appearing (in Virtual Mode) for the State Pollution Control Board, Assam.
2. In this Appeal the Appellant is assailing the impugned order dated 30.05.2022 passed by the SPCB, Assam, Guwahati, (Annexure-J to the Appeal). By this order the Appellant's Bottling Plant has been directed to close down its operations with immediate effect and it is also mentioned that Environmental Compensation is to be collected from the Unit from the date of commissioning as per the directions of the National Green Tribunal.
3. It appears that the Appellant is operating a LPG Bottling Plant in the name and style of M/s Shrishthi LPG Bottling Plant Private Limited, located at Kendubam, Khetri, District-Kamrup(M), Assam. The Respondent No.1, SPCB, Assam, issued a show cause notice to the Appellant Plant on 12.02.2021 (Annexure-F to the Appeal), alleging therein that the Appellant had been directed to apply for Consent to Establish and Consent to Operate to the Board which directions the Appellant has failed to carry out and the Appellant's Bottling Plant was granted 15 days time to submit its reply.

4. The Appellant submitted its reply to the show cause notice vide his letter dated 27.02.2021 (Annexure-G/1 to the Appeal).
5. Thereafter, the Respondent No.1, SPCB, Assam, by its letter dated 09.09.2021 (Annexure-H to the Appeal), directed the Appellant to furnish copy of the Gazette Notification No. 1752 dated 13.06.2019. The Appellant by his letter dated 18.09.2021 (Annexure-I to the Appeal) furnished the copy of the said Gazette Notification.
6. In the impugned order of closure dated 30.05.2022, the Respondent No.1, SPCB, Assam, has only referred to the reply to the show cause notice dated 18.09.2021 and has rejected the same as being not satisfactory. There is no reference to the Appellant's reply dated 27.02.2021 even though the SPCB, Assam letter dated 09.09.2021 refers to its show cause notice dated 12.02.2021 and also the Appellant's letter dated 27.02.2021.
7. Thus, from the impugned order it is evident that the Appellant's reply dated 27.02.2021 has not been considered at all by the SPCB, Assam, even though it was available with the Board. The impugned order of 30.05.2022 also does not discuss the Gazette Notification dated 13.06.2019 which they had required the Appellant to furnish and which was duly furnished by the Appellant through his letter dated 18.09.2021.
8. In this view of the matter, the impugned order of closure cannot be said to be a speaking order since it does not consider the Appellant's reply dated 27.02.2021 or the Gazette Notification dated 13.06.2019 or its relevancy. The impugned order only mentions that the reply dated 18.09.2021 is 'not found satisfactory' and no reasons have been given and, therefore, it cannot be said to be a speaking order.

9. Mr. Shayamvar Deb, learned Counsel appearing (in Virtual Mode) for the Respondent No.1, Assam SPCB, requested that time for filing counter-affidavit to the Appeal may be granted.
10. Considering that the impugned order of closure dated 30.05.2022 on the face of it, is not a speaking order and it does not even refer to the Appellant's reply dated 27.02.2021 though it is on their record, we are not inclined to grant any time to the SPCB, Assam, since the illegality in the impugned order speaks for itself.
11. We, therefore, allow this Appeal and set aside the impugned closure order dated 30.05.2022 and remit the matter to the SPCB, Assam, with a direction to pass fresh orders in accordance with law taking into consideration the Appellant's reply dated 27.02.2021 and the Gazette Notification dated 13.06.2019.
12. We also make it clear that we have not entered into the merits of the Appeal itself as to whether the Appellant's Plant has valid Consent to Establish (CTE) or Consent to Operate (CTO) or is environmental compliant as these matters are still to be considered by the State Pollution Control Board, Assam.
13. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Saibal Dasgupta, EM

September 29, 2022,
I.A. No.197/2022/EZ
In
Appeal No.26/2022/EZ
AK