(2009) 05 DEL CK 0392

In the Delhi High Court

Case No : Writ Petition (C) 1552 of 2006

Ashok Pokharkar APPELLANT

Vs

Appellate Tribunal for Foreign RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Customs Act, 1962 — Section 108
Foreign Exchange Regulation Act, 1973 — Section 40

Citation : (2009) 05 DEL CK 0392

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Meenakshi Arora and Poli Kataki, for the Appellant; Rajdipa Behura, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—The petitioner-Mr. Ashok Pokharkar has impugned order dated 8th December, 2005 passed by the Appellate Tribunal for Foreign Exchange dismissing his application for waiver of pre-deposit of penalty amount of Rs. 20 lacs. By the impugned order, the petitioner has been asked to deposit Rs. 20 lacs, i.e., the entire penalty amount imposed by the Adjudicating Authority as a pre-condition for hearing of his appeal.

2. Learned Counsel for the petitioner states that the petitioner was a clearing house agent and in 1995 is alleged to have procured a false bill of lading to enable a co-noticee to get benefit under Duty Exemption Entitlement Certificate Scheme. She submits that the statement of the co-noticee and the petitioner u/s 108 of the Customs Act, 1962 cannot be relied upon in proceedings under Foreign Exchange Regulation Act, 1973. She relies upon K.T.M.S. Mohd. and another Vs. Union of India, and Noor Aga v. State of Punjab and Anr. 2008 (9) Scale 681. She states that the Adjudicating Authority did not take into consideration the statement of the petitioner recorded u/s 40 of Foreign Exchange Regulation Act. It is stated that the petitioner does not file income tax

returns as he does not have taxable income and it is impossible for him to pay Rs. 20 lacs, i.e., the penalty amount for hearing of his appeal. She has drawn my attention to page 101 of the paper book, which shows that the two cheques of Rs. 50,000/-and Rs. 53,776/- issued by the co-noticee in favour of the petitioner were received back dishonoured. She states that the petitioner does not own any immovable property and is residing in a rented accommodation. She has also drawn my attention to the licence agreement dated 18th December, 2001 which states that the petitioner has taken a flat on license basis @ Rs. 5,000/- per month and has paid security deposit of Rs. 50,000/-.

3. I need not at this stage dilate in detail on the merits of the adjudication order. However, it is undisputed that the petitioner was a clearing house agent and the allegation is that he had procured a false bill of lading for the co-noticee. There is no evidence or material on record to dispute the averment made by the petitioner that he does not own any immovable property and is a tenant. The fact that the petitioner is not filing any income tax returns is also not denied or disputed by the respondent-Enforcement Directorate. The petitioner has filed first appeal before the Appellate Tribunal and the same has to be heard. Quantum of penalty is also an issue before the Appellate Tribunal.

4. In these circumstances, the impugned order is modified with the direction that the appeal of the petitioner will be heard on the deposit of Rs. 2 lacs in two installments of Rs. 1 lac each. The first installment will be paid within thirty days of the passing of this order and the second installment will be paid within forty five days thereafter. The petitioner will also file an affidavit before the Adjudicating Authority giving details of his assets and movable and immovable assets of his wife and dependent children, i.e., children who are less than 18 years of age. The petitioner will file copy of latest bank account(s) along with the said affidavit with the Adjudicating Authority.

The writ petition is accordingly disposed of.