
(2006) 12 DEL CK 0172
In the Delhi High Court
Case No : L.P.A. 2324 of 2006

Binod Agarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Foreign Exchange Management Act, 1999 — Section 49(3), 49(4), 49(5), 49(8)
Foreign Exchange Regulation Act, 1973 — Section 50, 51

Citation : (2007) 93 DRJ 771

Hon'ble Judges : Dr. M.K. Sharma, C.J;Hima Kohli, J

Bench : Division Bench

Advocate : R.K. Handoo, for the Appellant; Rajesh Banali, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.

CM 16922/2006

1. By this application the appellant prays for condonation of delay of two days in filing the appeal. For the reasons stated in the application, we allow the same. Delay of two days in filing the appeal stands condoned.

2. The application stands disposed of.

CM 16924/2006

3. Exemption allowed subject to just exceptions.

LPA 2324/2006 & CM 16923/2006

4. This appeal is directed against the order dated 10th October, 2006, passed by the learned Single Judge dismissing the writ petition filed by the appellant herein. In the said writ petition the appellant had challenged legality of the order dated 10th August, 2006 passed by the Appellate Tribunal for Foreign Exchange directing him to deposit 10% of the penalty amount within 45 days from the date

of the order.

5. According to the appellant the appointment of the Adjudication Officer, who was appointed by Notification dated 28th August, 2003, is illegal and void. In support of the said contention counsel appearing for the appellant has drawn our attention to the provisions of Section 49(3) & (4) of the Foreign Exchange Management Act, 1999 and also to the provisions of Foreign Exchange Regulation Act, 1973. A similar argument, raised before the learned Single Judge, was rejected, after giving reasons which are corded in paragraphs 13 to 19 of the impugned order.

6. We have considered the said findings recorded by the learned Single Judge. The contention that is raised is that Mr. Harsh Bardhan was appointed as the Adjudicating Officer by Notification dated 28th August, 2003, in exercise of the powers conferred u/s 50 of the Foreign Exchange Regulation Act, 1973 i.e., the repealed Act. It is brought to our notice by the counsel appearing for the appellant that the Foreign Exchange Regulation Act, 1973 was repealed on 31st May, 2000. However, the new Act, namely, Foreign Exchange Management Act, 1999 incorporates Sections 49(3), (4) & 5(a) which read as under.

49.(3) Notwithstanding anything contained in any other law for the time being in force, no Court shall take cognizance of an offence under the repealed Act and no adjudicating" officer shall take notice of any contravention u/s 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.

(4) Subject to the provisions of Sub-section (8) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not, been repealed.

(5) Notwithstanding such repeal-

(a), anything done or any such action taken or purported to have been done or taken including any rule, notification, inspection order or notice made or issued or any appointment, confirmation or decoration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have, been done or taken under the corresponding provisions of this Act.

7. Section 49(3) provides that no cognizance of an offence under the repealed Act would be taken and that no Adjudicating Officer would take notice of any contravention u/s 51 of the repealed Act after the expiry of a period of two years from the date of commencement of the Foreign Exchange Management Act, 1999. Section 49(4) categorically stipulates that an offence committed under the repealed Act would continue to be governed by the provisions of the repealed Act as if that Act had not been repealed. Further, Section 49(5)(a) clearly provides that any notification issued or any appointment made under the repealed Act,

shall be deemed to be have been done under the corresponding provisions of the new Act, so far as the same is not inconsistent with the provisions of the new Act.

8. In the present case, a show cause notice was issued on 18th August, 2000 to the petitioner. The learned Single Judge has held that the show cause notice having been issued to the petitioner on 18th August, 2000, the same would be within a period of two years from 31st May, 2000, and, therefore, it was held that the appellant petitioner cannot contend that cognizance of the offence has been taken under the repealed Foreign Exchange Regulation Act, 1973. If an offence is committed under the repealed Act, the same would continue to be governed by the provisions of the repealed Act as provided for u/s 49(3) and (4) of the Foreign Exchange Management Act, 1999. In that view of the matter, the findings and conclusions arrived at by the learned Single Judge cannot be said to be in any manner illegal or void.

9. It was next contended that by the learned Counsel appearing for the appellant that the finding recorded by the learned Single Judge regarding the financial condition of the appellant is perverse. We are, however, unable to accept the said contention also in view of the findings recorded by the learned Single Judge in paragraphs 11 and 12 of the impugned judgment and order. The learned Single Judge has categorically held that the appellant placed on record no document to prove their financial status to the effect that even 10% of the penalty amount directed to be deposited by the respondent will be an onerous condition and will cause such undue hardship that the right of appeal would be rendered illusory. The aforesaid findings are arrived at by the learned Single Judge after considering the records of the case and are in the nature of findings of facts.

10. On consideration of the records we agree with the findings recorded by the learned Single Judge that the appellant failed to file any reply before the Adjudicating Officer. Only a written submission was filed by the Chartered Accountant of the appellant stating that the appellants were new to the export business and due to the aforesaid fact, the overseas buyers were able to play with them and did not pay for the goods. The aforesaid stand taken by the appellant does not prima facie appear to us to be a reasonable stand.

11. We agree with the findings recorded by the learned Single Judge which dismissing the writ petition filed by the appellant herein. We find no infirmity in the said order. Consequently, the appeal and the application for interim relief are dismissed.