

**(2006) 11 DEL CK 0203**

**In the Delhi High Court**

**Case No :** Criminal M.C. No. 752 and 2469 of 2004

B.S. and Co.

APPELLANT

Vs

Niranjan Subudhi and Another

RESPONDENT

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**Date of Decision :** 20-11-2006

**Acts Referred:**

Foreign Exchange (Amendment) Act, 1999 — Section 49(3), 49(4)  
Foreign Exchange Regulation Act, 1973 — Section 57

**Citation :** (2006) 135 DLT 440

**Hon'ble Judges :** A.K. Sikri, J

**Bench :** Single Bench

**Advocate :** R.K. Handoo, for the Appellant; Sumita Kapil, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

A.K. Sikri, J.—Enforcement Directorate, through the Enforcement Officer, has filed complaint u/s 57 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as "FERA") and in terms of Sub-sections (3) and (4) of Section 49 of the Foreign Exchange (Amendment) Act, 1999, against the petitioner herein. The allegation is that vide adjudication order dated 31.8.1989 passed by the Special Director, Enforcement Directorate, New Delhi, penalty of Rs. 1,08,000/- was imposed upon the petitioner (accused in the said complaint), but in spite of the direction to pay/deposit the said penalty, the petitioner has not deposited the same within the stipulated period and till the filing of the complaint, i.e. until April 2002.

2. Section 57 of the FERA deals with prosecution of such persons who do not deposit the penalty after the adjudication orders and the same reads as under :

57. Penalty for contravention of order made by adjudicating officer, Appellate Board and High Court - If any person fails to pay the penalty imposed by the adjudicating officer or the Appellate Board or the High Court or fails to comply with any of his or its directions or orders, he shall, upon conviction by a Court,

be punishable with imprisonment for a term which may extend to two years or with fine or with both.

3. On receiving the summoning orders passed against the petitioner, he filed application for discharge on the ground that in an appeal filed against the adjudication order, the Appellate Tribunal has passed the order granting stay of the penalty passed by the adjudicating authority and, Therefore, in view of the stay, the petitioner could not be called upon to deposit any penalty and consequently complaint could not have been filed treating it as a default. This application has been dismissed vide impugned order dated 25.11.2003 passed by the learned ACMM and in these circumstances the present petition is preferred u/s 482 Cr.P.C. for quashing of the impugned order and dismissal of the complaint. Before advertng to the issue raised, let me first take note of the background facts.

4. Adjudication order imposing the penalty of Rs. 1,08,000/- is dated 31.8.1989. According to the petitioner, it was received by the petitioner on 11.9.1989 and he preferred an appeal before the Appellate Authority, i.e. FERA Tribunal, on 27.10.1989, which was registered as Appeal No. 419/1989. It is stated that at that time the Appellate Tribunal was not functioning regularly and, Therefore, the appeal filed by the petitioner could not come up for hearing for quite some time. However, it came up for hearing in the year 1993. When the learned Tribunal passed an order that the petitioner may make some pre-deposit of the penalty, pursuant thereto the petitioner deposited a sum of Rs. 44,000/- on 8.2.1994 by means of cheques. The said appeal is still pending. Almost 9 years thereafter the petitioner received notice dated May 2002 from the Collector seeking deposit of the penalty vide adjudication order dated 31.8.1989. The petitioner submitted his reply dated 14.5.2002 stating that he had already deposited the amount as far back as on 8.2.1994 and there was a stay against the impugned adjudication order. However, even before this reply, the respondent filed complaint in question u/s 57 of FERA against the petitioner on 16.4.2002 and the learned ACMM took cognizance of the offence and issued summoning orders. After receiving the notice, petitioner against approached FERA Tribunal bringing to its notice the prosecution launched against him by the Enforcement Directorate in spite of pendency of the appeal and the Tribunal passed orders dated 29.5.2002 staying the adjudication order till the disposal of the appeal.

5. The learned ACMM has dismissed the application of discharge filed by the petitioner on the ground that though the adjudication order was passed on 31.8.1989, which was duly served on 17.1.2002, the petitioner did not deposit the penalty within the stipulated period because of which the complaint was filed on 16.4.2002. As far as order staying the deposit of penalty is concerned, this was passed much later on 29.5.2002, which will be of no help to the petitioner inasmuch as on the date of filing of the complaint cause of action had arisen for filing the said complaint. It is also observed that the stay order passed by the Appellate Tribunal is the interim order which is valid till the pendency of the

appeal and the same is yet to be decided, Therefore, the order staying deposit of the penalty has not attained finality.

6. In the reply filed by the respondent though it is accepted that the petitioner had filed appeal in the year 1989, which came up for hearing in the year 1993, it is explained that this appeal along with other connected appeals (49 in number) were taken together as bunch matters and after hearing the dispensation applications, the Appellate Board was pleased to direct the petitioners therein to make a pre-deposit of Rs. 44,000/- till the pendency of the appeals. This condition of pre-deposit was for the purpose of hearing the appeals on merits, but no stay was granted. It is also submitted that the petitioner has not annexed the copy of the order dated 24.11.1993 to show that the balance payment of the penalty was stayed and in the absence of any stay, it was incumbent upon the petitioner to avoid the prosecution. It is sought to be argued that in these circumstances, the complaint was rightly filed in April 2002 and the stay granted subsequently on 29.5.2002 would be of no consequence, as rightly held by the learned ACMM. I may state that arguments were advanced by both the counsel in support of their respective propositions and on the effect of the stay order dated 16.5.2002.

7. It is not necessary to go into all those arguments and the judgment cited by both the parties. The petitioner has not been able to place on record any such order dated 24.11.1993 and, Therefore, under what circumstances pre-deposit of Rs. 44,000/- was made could not be found out. It can only be said that the petitioner had not been able to show that the order granting stay in depositing the penalty was granted subject to deposit of Rs. 44,000/- as contended by the petitioner. Thus, filing of the complaint on 16.4.2002 cannot be said to be irregular merely because appeal was pending. However, the Appellate Authority has granted stay of the adjudication order on 29.5.2002 and, Therefore, by virtue of this stay, till the pendency of the appeal, the petitioner cannot be called upon to make deposit of the balance amount of penalty. Appeal is yet to be heard and its fate cannot be predicted today. Therefore, in these circumstances, while holding that the petitioner cannot be discharged in the said complaint at this stage, proper course of action would be to stay the proceedings in the said complaint till the disposal of the appeal. Depending upon the outcome of the appeal, parties would be at liberty to seek revival/disposal of the complaint.

8. The complainant is accordingly adjourned sine die and at the same time the Appellate Authority is directed to decide the appeal expeditiously and preferably within a period of four months from the date when this order is brought to the notice of the Appellate Authority. The parties are directed to place this order before the Appellate Authority so that the appeal is heard and decided within the time stipulated above.

9. This petition and the accompanying application are disposed of in the aforesaid terms.