(1987) 02 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 177 of 1986 treated as Second Appeal from Order No. 21 of 1986

Chanan Singh APPELLANT

Vs

The Deputy Director Of Enforcement and Another RESPONDENT

Date of Decision : 05-02-1987

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 14, 8

Citation : (1987) 14 ECC 117

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gupta, J.—This appeal is directed against the order of the Foreign Exchange Regulation Appellate Board, dated November 29, 1985, whereby the total penalty imposed upon the appellant by the Adjudicating Officer, was reduced from Rs. 25,000 to Rs. 5,000 only, i.e., the penalty on the charge in SCN-I was reduced from Rs. 20,000 to Rs. 4,000 and the penalty on the charge in SCN-II was reduced from Rs. 5,000 to Rs. 1,000,

2. On August 17, 1981, two memoranda of charges were issued to the appellant. In the first memorandum, the allegation was that during the period 1978-79, he being a person in or resident in India transferred ? 2,736.52 to a person other than an authorised dealer without any permission of the Reserve Bank of India and thereby contravened the provisions of Section 8(1) of the Foreign Exchange Regulation Act, 1973 (hereinafter called the Act). In the second memorandum, the allegations were that despite his arrival in India in 1972 he continued to maintain a foreign currency account with Standard Chartered Bank, London, with a balance of ? 4,027.48 as on June 30, 1978 without any permission of the Reserve Bank of India and thereby contravened the provisions of Section 8(1) read with Section 14 of the Act. As no reply was filed on behalf of the appellant, adjudication proceedings were drawn against him by the department ex parte.

The Adjudicating Officer came to the conclusion that the two charges against the appellant were established. Accordingly, he imposed the penalty of Rs. 20,000 on the first charge and the penalty of Rs. 5,000 on the second charge. In appeal, the appellate Board reduced the said penalties to Rs. 4,000 and Rs. 1,000 respectively, in all Rs. 5,000 only.

3. On the last date of hearing, the counsel for both the parties agreed that the records were necessary for the proper disposal of the appeal. Consequently, the case was adjourned for summoning the records.

4. Since the appellant was proceeded ex parte before the Adjudicating Officer, he was allowed to place on record certain documents before the Appellate Board. In spite of that, he was unable to rebut the charges levelled against him.

5. The learned Counsel for the appellant, after a perusal of the record, was unable to raise any meaningful argument to challenge the orders of the Appellate Board. The only contention raised on behalf of the appellant is that the alleged transfer was only to his son and not to any third person. Thus, argued the learned counsel, under the circumstances, the penalty of Rs. 5,000 was excessive.

6. After hearing the learned Counsel for the parties, I find force in this contention. The alleged violation is of a tecnical nature. The appellant transferred the amount admittedly to his son and not to any third person in London. Under the circumstances, ends of justice would be met if the penalty on the first charge is reduced from Rs. 4,000 to Rs. 2,000 and on the second charge, from Rs. 1,000 to Rs. 500.

7. Consequently, this appeal is allowed partly.

