
(1986) 07 MAD CK 0027
In the Madras High Court
Case No : C.M.A. No. 164 of 1981

Director of Enforcement

APPELLANT

Vs

K.N. Rajannam

RESPONDENT

Date of Decision : 09-07-1986

Acts Referred:

Citation : (1987) 13 ECC 314

Hon'ble Judges : T. Sathiadev, J;G. Maheswaran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G. Maheswaran, J.—This appeal is preferred by the Director of Enforcement against the order of the Foreign Exchange Regulation

Appellate Board in FE. RAB/1094/76, dated 29-12-1978.

2. Shorn of unnecessary details, the short facts are: The respondent herein and the other appellants before Board are the partners of M/s.

Chikkanna Silk House. They have exported goods of the value of Rs. 1,75,480 against GRI form No. 307153 dated 17th December, 1963. The

charge against them is that they have refrained from taking action with intent to secure the payment for the goods valued at Rs. 1,75,480 exported

with the result that the value of the goods remained unrealised. The respondent herein was therefore guilty of contravention of the provisions u/s

12(2) read with Section 23C of the Foreign Exchange Regulation Act, 1947.

3. The defence was that though the firm M/s. Chikkanna Silk House, represented by the respondent and others, have written to the foreign buyers

to realise the amount, they have not cared to reply because of the slump in the market. The fact that the appellants before the Board have exported

goods of the value of Rs. 1,75,480 has been admitted by the appellants in their reply to the letter dated 24th April, 1965, issued by the Director of

Enforcement. The fact that the amount was not realised is also not disputed. In these circumstances, the Additional Director held that the appellants

were guilty of contravention of Section 12(2) read with Section 23C of the Act, and imposed a penalty of Rs. 12,000 on each of the appellants.

But, the Foreign Exchange Regulation Appellate Board confirmed the finding that the respondent, Rajannam, is guilty of contravention of the

provision of Section 12(2) read with Section 23C of the Act, but reduced the penalty from Rs. 12,000 to Rs. 5,000. In doing so the Appellate

Board gave two reasons: (1) The contravention committed by the firm pertains only to one consignment and, therefore, there was only one

contravention; (2) No Foreign exchange element involved in the said contravention. The Appellate Board, in those circumstances, observed, ""the

maximum penalty of Rs. 5,000 can only be imposed on Shri K.N. Rajannam and in this view of the matter, the penalty is reduced to Rs. 5,000 as

against Rs. 12,000. The appellant challenges the grounds on which penalty is reduced.

4. It has not been shown that the contravention is in connection with number of consignments. But, we do not agree with the observation: ""No

foreign exchange element involved in the said contravention is also known."" The Board was manifestly wrong in saying that the penalty of Rs.

12,000 could not be levied. Section 23 of the Foreign Exchange Regulation Act, 1947, say that if any person contravenes the provisions of

Sections 4, 5, 9, 10, Sub-section 2 of Section 12, 17, Section 18A or Section 18B or of any rule, direction or order made thereunder, he shall be

liable to such penalty, not exceeding three times, the value of the foreign exchange in respect of which the contravention has taken place or five

thousand rupees whichever is more, as may be adjudged by the Director of Enforcement in the manner hereafter provided. The contravention here

is in respect of the goods valued at Rs. 1,75,480. It cannot therefore be said that a penalty of Rs. 5,000 only can be imposed. Except pointing out

this position of law, we do not propose to interfere either with the finding that the respondent is guilty of contravention of provision u/s 12(2) read

with Section 23C of the Act or with the quantum of penalty imposed. The appeal fails and is dismissed with costs.