(2015) 03 DEL CK 0333

In the Delhi High Court

Case No : Criminal Appeal 810 of 2011

Enforcement Directorate — APPELLANT

Vs

Subhash Chandra Tuli — RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Foreign Exchange Management Act, 1999 — Section 49, 49(3)
Foreign Exchange Regulation Act, 1973 — Section 8(1), 8(2), 9(1) (d)

Citation : (2015) 03 DEL CK 0333

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Rakesh Kumar, Standing Counsel, for the Appellant; Rajeev Awasthi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—By this appeal, appellant has challenged the order dated 21st January, 2011 passed by the Appellate Tribunal for Foreign Exchange, New Delhi whereby Revision Petition of the appellant has been dismissed on the ground that same had not been filed by competent person. The Tribunal has taken this view by following the order dated 4th August, 2009 passed by a learned Single Judge of this court in Criminal Appeal No. 806/2007 titled M.I. Enterprises (I) P. Ltd. and Ors. vs. Directorate of Enforcement. Learned Single Judge has held that Deputy Legal Advisor was not competent to file revision on behalf of the appellant prior to 23rd February, 2009. The Directorate of Enforcement initiated proceedings against the respondent for contravening the Sections 8(1), 8(2) and 9(1) (d) of the Foreign Exchange Regulation Act, 1973 (FERA) (since repealed). It was alleged that respondent had dealt in foreign exchange currency without permission of the Reserve Bank of India. Proceedings were initiated before the Adjudicating Authority. Show cause notice was issued to the respondent. Evidence was led by the parties before Adjudicating Authority. Vide a reasoned order dated 31st March, 2004 Adjudicating Authority held that no case was made out against the respondent for having committed any offence under Sections

8(1), 8(2) and 9(1) (d) of FERA, consequently, dropped the proceedings. Adjudicating Officer held as under:-

"From the perusal of Sec.49 of FEMA, 1999, it is seen that in terms of Sub Sec. (3), no Adjudicating Officer shall take notice of any contravention under Sec.51 of the repealed Act after the expiry of 2 years from the commencement of FEMA, 1999. FEMA, 1999 has come into effect from 01.6.2000. These proceedings are under the repealed Act. No adjudicating officer has dealt with this case so far. The adjudication process has not even started. Adjudication proceedings can be held only after the adjudicating officer after considering the replies to the SCN is of the opinion such proceedings can be held as will be clear from Rule 3(3) of the Adjudication proceedings and Appeal Rules, 1974. Here in this case the adjudication process has not started within the 2 year period from 01.6.2000. Hence I am of the view that adjudication proceedings are time barred at this stage in terms of Sec.49(3) of FEMA, 1999. It has also been noticed that sub sec. (4) of sec.49 of FEMA, 1999 to the provisions of the sub sec.(3). Hence the time bar position is quite clear."

2. Appellant preferred a Revision Petition bearing number 123/2005 before the Appellate Tribunal for Foreign Exchange, New Delhi, which has been dismissed by the order impugned in this appeal. Revision Petition was preferred by the Dy. Legal Advisor for and on behalf of the appellant.

3. Aggrieved by the order passed by the Appellate Tribunal, appellant has preferred this appeal.

4. Learned counsel for the appellant has vehemently contended that Dy. Legal Advisor was authorised by the Government of India vide order dated 23.02.2009 to prefer the revision petitions against the order of Adjudicating Officer. This order was passed by the Central Government during the pendency of Revision Petition. Thus, it cannot be said that revision was not preferred by a competent person duly authorised in this regard.

5. In M.I. Enterprises (supra), Revision Petition was filed by the Dy. Legal Advisor much prior to 23rd February, 2009. Same authorisation letter dated 23rd February, 2009 which is involved in this petition, was relied upon to say that Revision Petition was preferred by a duly authorised person. Learned Single Judge of this Court has held that revision preferred by the Dy. Legal Advisor prior to 23rd February, 2009 was not maintainable as he had no authorization in his favour at the time of filing of the revision petition. It was held that Appellate Tribunal could not have entertained the Revision Petition.

6. In Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate and Another, (2008) CLT 113 : (2007) 12 JT 41 : (2007) 11 SCALE 741 : (2007) 8 SCC 254 : (2007) 79 SCL 611 : (2007) 10 SCR 804 : (2009) 13 STR 433 : (2007) AIRSCW 6348 : (2007) 7 Supreme 389 , Supreme Court held thus: "for the purpose of exercising the functions by the Central Government, the officer concerned must be specifically authorized. Only when an officer is so specifically

authorized, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle an officer to discharge all or any of the functions of the Central Government". Learned Single Judge, in M.I. Enterprise (supra), has placed reliance on the judgment of Supreme Court. In M.I. Enterprise (supra) also revision was filed through the Dy. Legal Advisor prior to 23rd February, 2009 and was held as not maintainable.

7. Special Leave Petition filed by the appellant against M/s. M.I. Enterprises (supra) has been dismissed vide order dated 17th August, 2012.

8. In this case also, revision was filed much prior to 23rd February, 2009. As on that date Dy. Legal Advisor was not authorised by the Central Government to initiate such proceedings. Accordingly, I am of the view that Appellate Tribunal has not committed any illegality in dismissing the Revision Petition. Appeal is dismissed.