(2001) 01 CAL CK 0002

In the Calcutta High Court

Case No : C.R.R. No. 1865 of 1993

Ganapati Exports Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:
Foreign Exchange Regulation Act, 1973 — Section 52, 57, 68, 9(1)

Citation : 105 CWN 553 : (2001) 75 ECC 748 : (2001) 129 ELT 571

Hon'ble Judges : Debi Prasad Sengupta, J

Bench : Single Bench

Advocate : Anjan Mukherjee and Bishnu Pada Jana, P.N. Ghosh, for the Appellant; D.C. Thakur, for the Respondent

Judgement

Debi Prasad Sengupta, J.—This is an application for quashing of a proceeding being Case No. C/898/93 u/s 57 against the accused petitioner No. 1 and Section 57 read with Section 68 of the Foreign Exchange Regulation Act against the accused petitioner Nos. 2 and 3.

2. On 21-5-1986 the Special Director, Enforcement Directorate, Foreign Exchange Regulation Act, Government of India issued a memorandum being No. T-4/1-C/86 (SCNII) calling upon the accused petitioners to show cause as to why adjudication proceeding as contemplated in the said Act should not be initiated for violation of the provision of Section 9(1)(c) of the Foreign Exchange Regulation Act, 1973. The petitioners submitted reply to the show cause and after hearing the parties the adjudicating authority passed an order on 27-11-1990 vide Order No. SDE/R-II/19-20/90, dated 27-11-1990 passed by the Special Director, Enforcement Directorate, F.E.R.A., Govt. of India, New Delhi. The adjudicating authority imposed a penalty of Rs. 1,00,000/- (One lakh) upon the accused petitioner No. 1 and Rs. 50,000/-each upon the accused petitioner Nos. 2 and 3. Being aggrieved by the aforesaid order dated 27-11-1990 the accused petitioners preferred an appeal u/s 52 of the Act, 1973 before the Chairman, Foreign Exchange Regulation Appellate Board, New Delhi on 8-1-1991

along with an application for dispensing with the deposit of penalty which was imposed by the adjudicating authority.

3. During pendency of the appeal the Union of India represented by the Assistant Director, Enforcement Branch having office at Lindsay Street, Calcutta, lodged a complaint before the learned Chief Metropolitan Magistrate, Calcutta against the accused petitioner u/s 57 read with Section 68 of Foreign Exchange Regulation Act. On the said petition of complaint the learned Magistrate took cognizance of the offence and issued process against the petitioner No. 1 u/s 57 of the said Act and against the petitioner Nos. 2 and 3 u/s 57 read with Section 68 of the said Act.

4. The allegation made in the petition of complaint is that the petitioners did not deposit the amount of penalty as imposed by the adjudicating authority within the stipulated period of 45 days, but they preferred an appeal before the FERA Board at New Delhi and the said appeal was pending when the petition of complaint was filed.

5. Mr. Anjan Mukherjee, learned Advocate appearing on behalf of the petitioners submits that during pendency of the present revisional application there were some subsequent development in the present case. The learned Advocate draws the attention of the court to Annexure ''F'' of the supplementary affidavit filed by the petitioners. Mr. Mukherjee submits that the appeals which were filed by the accused petitioners u/s 52 of the Foreign Exchange Regulation Act, 1973, were disposed of by the Appellate Board on 30-3-1995. The Chairman, FERA Board, New Delhi by an order dated 30-3-1995 allowed the appeals only on the point of quantum of penalty. The finding of the adjudicating officer as regards the contravention of Section 9(1)(c) by the appellants/petitioners was upheld, but the penalty imposed on the first appellant, i.e., M/s. Ganapati Exports Ltd. was reduced from Rs. 1,00,000/- (One Lakh) to Rs. 50,000/- (Fifty Thousand). The fine imposed on 2nd and 3rd Appellant (petitioners No. 2 and 3) was set aside. The appellant (petitioner No. 1) was directed to pay the fine (Rs. 50,000/-) within a period of 30 days from the date of receipt of the order. Mr. Mukherjee, learned Advocate next draws the attention of the court to Annexure ''G'' to the supplementary affidavit, which are the documents showing that the petitioners have already made the payment of fine of Rs. 50,000/- within 30 day from the date of receipt of the order of the FERA Board.

6. Mr. Mukherjee submits that because of subsequent development in the present case as stated above the impugned proceeding should not be allowed to continue and same should be quashed.

7. Mr. Thakur, learned Advocate appearing for the Union of India does not dispute the payment of fine by the petitioners as directed by the Appellate Board. But, according to him such payment of fine shall not absolve the petitioners from the alleged offence committed by them. Mr. Thakur submits that the Appellate Board at the time of registration of the appeals did not grant any order of stay of

realisation of the fine as imposed by the adjudicating authority. Mr. Thakur submits that in absence of any order of stay of the Appellate Board, there is no illegality in filing the petition of complaint and the learned Magistrate also has not committed any wrong in taking cognizance of the offence on the basis of such complaint. Mr. Thakur submits that pendency of appeal before the FERA Board cannot be a bar for the criminal prosecution for non-payment of fine imposed by the adjudicating authority.

8. Mr. Mukherjee, the learned Advocate of the petitioners, in reply to the arguments advanced by Mr. Thakur, points out the paragraph No. 2 of the order dated 30-3-1995 passed by the Appellate Board, which runs as follows :-

"After hearing the charges on the dispensation application I decided to waive the pre-deposit and heard the parties on merits of the appeals. This order will dispose of these appeals on merits."

9. I have heard the learned Advocates of the respective parties. I have also perused the relevant papers and documents which are annexed to the revisional application and in the supplementary affidavit. In my considered view the impugned order of taking cognizance passed by the learned Magistrate does not suffer from any illegality. Where the petitioners have failed to pay the penalty within the specified period, offence u/s 57 of the Act, 1973 is complete and the enforcement authority was well within its jurisdiction to file the complaint u/s 57 of the Act and the learned Magistrate also committed no wrong in taking cognizance of the offence.

10. Considering the facts and circumstances of the case I dispose of the present revisional application and send back the matter to the court below. The petitioners are directed to appear before the learned Magistrate and they are given liberty to bring all subsequent events to the notice of the learned Magistrate. The learned Magistrate is also directed to take into consideration all such subsequent events and he will pass a reasoned order in accordance with law. Since this is a very old case of 1993 the learned Magistrate is directed to take up the matter and dispose of the same at an early date, preferably within a period of three months from the date of communication of the order.

11. The application is accordingly disposed of. The lower court records may be sent down to the court below immediately.