(2011) 09 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 3565 of 2009(O&M)

Harbhajan Singh Sandhu APPELLANT

Vs

Union of India and other RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Foreign Exchange Management Act, 1999 — Section 35

Citation : (2012) 2 RCR(Civil) 137

Hon'ble Judges : Ram Chand Gupta, J

Advocate : Mr. Gaganinder Singh, Advocate, Mr. Inderesh Gael, Advocate., Advocates for appearing Parties

Judgement

Ram Chand Gupta, J.(Oral)

The present appeal has been filed under Section 35 of the Foreign Exchange Management Act, 1999 (hereinafter to be called as the `Act'') against order dated 24.12.2008 passed by appellate Tribunal for Foreign Exchange, New Delhi, vide which appeal filed by present appellant against adjudication order No.SDE(KRB)/1/2001 dated 2.8.2001 passed by Special Director, Enforcement Directorate, was dismissed.

I have heard learned counsel for the parties and have gone through the whole record carefully including the impugned order passed by learned Tribunal.

Briefly stated, adjudication No.SDE(KRB)/1/2001 dated 2.8.2001 was passed by Special Director, Enforcement Directorate imposing a penalty of `50 lacs against the present appellant for contravention of Section 18(2) read with 18(3) of the Foreign Exchange Regulation Act, 1973 (hereinafter to be referred as `the 1973 Act'') on the ground that appellant after exporting goods to the tune of US Doller 699096.78 from the year 1994 to 1996 failed to take reasonable steps for repatriation of export proceeds. Alongwith the appeal, an application was filed by the appellant for dispensation of predeposit of penalty. After hearing appellant, learned Tribunal passed order dated 22.8.2007 vide which appellant was directed to predeposit only 60% of the penalty within 60 days from the date of receipt of order. However, the said order was not complied with and the 60% penalty within 60 days was not deposited.

It is pertinent to reproduce Section 52 of the 1973 Act, which reads as under:

?52. Appeal to Appellate Board. (1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Board to be called the Foreign Exchange Regulation Appellate Board consisting of a Chairman being a person who has for at least ten years held a civil judicial post or who has been a member of the Central Legal Service (not below Grade I) for at least three years or who has been in practice as an advocate for at least ten years and such number of other members, not exceeding four to be appointed by the Central Government for hearing appeals against the orders of the adjudicating officer made under Section 51.

(2) Any person aggrieved by such order may (on payment of such fee as may be prescribed and), after depositing the sum imposed by way of penalty under Section 50 and within fortyfive days from the date on which the order is served on the person committing the contravention, prefer an appeal to the appellate Board;

Provided that the Appellate Board may entertain any appeal after expiry of said period of forty five days but not after 90 days from the date aforesaid if it is satisfied that appellant was prevented by sufficient cause from filing the appeal in time.

Provided further that where the Appellate Board is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, in is own discretion, dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit.

(3) On receipt of an appeal under subsection (2), the Appellate Board may, after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against and the decision of the Appellate Board shall, subject to the rovisions of Section 54, be final and if the sum deposited by way of penalty under subsection (2) exceeds the amount directed to be paid by the Appellate Board, the excess amount shall be refunded.

(4) The Appellate Board may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer under Section 50 read with Section 51 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceeding and make such order in the case as it thinks fit.

(5) No order of the adjudicating office made under Section 50 read with Section 51 shall be varied by the appellate Board so as to prejudicially affect any person without giving such person a reasonable opportunity for making a representation in the matter; and subject thereto, the appellate Board shall follow such

procedure, in respect of the proceedings before it, as may be prescribed.

(6) The powers and functions of the appellate Board may be exercised and discharged by Benches consisting of two members and constituted by the Chairman of the appellate Board:

Provided that if the members of the Bench differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing on such point or points and such point or points shall be decided according to the opinion of that member:

Provided further that it shall be competent for the Chairman or any other member of the Appellate Board authorised by the Chairman in this behalf to exercise the powers and discharge the functions of the Appellate Board in respect of any appeal against an order imposing a penalty of an amount not exceeding two lakhs and fifty thousand rupees.?

A bare perusal of aforementioned provision shows that appellant may file appeal against the order passed by prescribed authorities, i.e., by the adjudicatory authority after depositing the sum imposed by way of penalty under Section 52. However, proviso to the said provision gives power to appellate Board to dispense with such a deposit. The appellate Board passed order dated 22.8.2007 dispensing with 40% of penalty and appellant was directed to pre deposit the 60% of the penalty. However, as the such order was not complied with, appellate authority was having no other alternative but to pass the impugned order dismissing appeal filed by present appellant for noncompliance of predeposit order dated 22.8.2007. The impugned order was passed after giving sufficient time to appellant to deposit the amount of penalty as order was passed on 24.12.2008.

It has been contended by learned counsel for the appellant that a Civil Writ Petition bearing No.3657 of 2008 was filed by appellant before Hon''ble Delhi High Court challenging the initial order passed by the appellate Authority dated 20.8.2007 directing the appellant to deposit 60% of the penalty amount as a pre condition of the hearing of the appeal and that Hon''ble Delhi High Court vide order dated 12.5.2008 has reduced the amount of penalty to be deposited to the extent of 40% of the total penalty amount and appellant was directed to deposit the same within four weeks from the date of order. Copy of the said order has been placed on the file of this Court by learned counsel for the appellant during the course of arguments.

However, it has been contended by learned counsel for the respondentUnion of India that no amount whatsoever has been deposited by the present appellant even till today.

Hence, in view of these facts, it cannot be said that any illegality has been committed by learned appellate Tribunal while passing the impugned order dismissing the appeal filed by the present appellant for noncompliance of predeposit order dated 20.8.2007. Learned Tribunal has rightly placed reliance upon Nasiruddin v. Sita Ram Agarwal (2003) 2 SCC 577.

Hence, there is not merit in the present appeal and the same is hereby dismissed.