

(1999) 06 KAR CK 0044

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 377 of 1998

M/s. Worldwide Traders, Bangalore

APPELLANT

Vs

Foreign Exchange Regulation Appellate Board, Chennai and
Another

RESPONDENT

Date of Decision : 18-06-1999

Acts Referred:

Foreign Exchange Regulation Act, 1973 (FERA) — Section 18 (2), 52, 54

Citation : (2001) 104 CompCas 245 : (1999) ILR (Kar) 3032 : (1999) 6 KarLJ 512

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri Yovini Rajesh Rohra, for the Appellant; Sri Ashok Haranahalli, Senior Central Government Standing Counsel, for the Respondent

Judgement

1. The brief facts leading to this appeal and which are not in dispute are, that the appellant is a registered firm carrying on business in export of readymade garments to various countries out of India. During the course of transactions, the appellant exported readymade garments to certain foreign companies like M/s. Annick Mesh and Stitches, West Germany; M/s. J.P.G. Seige, Paris; M/s. Paradox Sports, Canada and M/s. P and C Factoring, Netherlands. These companies in spite of various reminders sent by the appellant, failed to make payments to the appellant for the goods received by them. Hence, the books of accounts of the appellant showed certain amounts as outstanding from these companies. The appellant sought permission of the Reserve Bank of India to waive the receipt of the said amounts from the foreign buyers as non-recoverable amounts, having taken steps to recover the same and that two foreign buyers and gone into liquidation. After issuing show-cause notice dated 15-4-1988 the Directorate of Enforcement at Chennai initiated proceedings against the appellant not accepting the written explanation dated 6-10-1988. In that proceedings, the appellant was directed to pay a sum of Rs. 1,51,000/-. The appeal preferred by the appellant to the Foreign Exchange Regulation Appellate Court in Appeal No. FERB 524 of 1989

came to be dismissed confirming the order passed by the Enforcement Authority. Hence, the appeal.

2. Heard.

3. Sri Rajesh Chandra Kumar, learned Counsel for the appellant submitted that notwithstanding the fact the appellant had taken prompt steps to recover the amount, it could not recover the same as the buyer companies were liquidated without the knowledge of the appellant. Though every step was taken, legal action could not be proceeded as the whereabouts of the buyers companies were not known. There is no mens rea to cheat the Government. Reasonable steps as appearing u/s 18(2) should be given a liberal construction taking into consideration the bona fide acts of the appellant which was not doubted by the authorities. Subsequently, the appellant had recovered Rs. 31,000/- vide letter dated 27-9-1992 and remitted the same. This section is not intended to penalise the exporters. In this case, as two companies were not existing, legal action could not be initiated. The amount unrealised is very meagre compared to the business transactions of the appellant. Therefore, he submitted the appeal may be allowed.

4. Repelling these arguments very strongly, Sri Ashok Haranahalli, the learned Senior Central Government Standing Counsel submitted that any delay in realising the amount beyond the prescribed period is an offence u/s 18(2). Goods viz., readymade garments were exported by the appellant on 25-2-1983. The appellant had sent only telex message and letters in between 8-6-1983 and 11-2-1984. The respondent initiated proceedings by the end of 1986. Only thereafter, on 15-2-1986 the appellant wrote to the Counsellor, that means from 15-2-1984 till 15-2-1986, nothing was done by the appellant. They should have informed the RBI after the declared period. They failed to take legal proceedings to recover the amount. Therefore, the claim that they could not take any action as the buyer company was liquidated is only a ruse to escape their liability. Further, his submission that taking into consideration the object of the Act and the purpose for which the enactment was made proves that mens rea is not necessary. He also argued that the appeal itself is not maintainable as it does not satisfy the requirement of Section 54 of the Foreign Exchange Regulation Act, 1973, (hereinafter referred as "the Act"). In support of this argument, he relied on a decision in Oriental Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay, . Therefore, he argued that the appeal is liable to be dismissed.

5. The first question that arises for consideration is as to whether the appellant satisfies the requirement of Section 54, for this Court to entertain this appeal. According to Section 54 an appeal shall lie to the High Court only on question of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of Section 52. Therefore, it is incumbent on the appellant to make out that a substantial question of law is involved in this appeal. It is well-settled law that whether in particular circumstances which are based on factual appraisalment of evidence, a penalty is called for or not is essentially a question

of fact and no legal implications are involved. It is also not the case that the authorities did not apply their mind to the various contentions raised on behalf of the appellant and passed orders levying penalty and confirming in appeal with penalty, mechanically. It is also clear that when no question of law arises from the findings of the appellant Court, the Court is incompetent to decide the case. In a case of concurrent findings, that the appellant had failed to realise the export value of the goods there is no question of law for interference in an appeal before the High Court. An inference drawn from the facts would be a question of fact if the point for determination is one of pure fact. But if such a point is mixed question of law and fact, inference from facts would be a question of law. A finding of fact without evidence to support it or if based on relevant and irrelevant matters is not unassailable. A legal inference from a proved fact is a question of law, but unless a legal inference is drawn from a proved fact, a finding of fact cannot be turned into a question of law by asking whether there is any evidence. It is also settled law that High Court cannot enter into the sufficiency or insufficiency of evidence considered by the Tribunal, but it may interfere with the findings of the Tribunal if it appears that the Tribunal has misunderstood the statutory language or that it has made a finding which was either not supported by evidence or inconsistent with the evidence, or contrary to it. A finding of fact which is not supported by any evidence or is unreasonable and perverse may be open to challenge on the ground that it is not supported by any material. If there is a question of fact, it is for the Tribunal to reach a final finding on such question. But, where the Appellate Tribunal had misdirected itself in its approach, overlooked salient features in evidence, misread evidence, or proceeded to interpret a provision of law wrongly and, therefore, reached an erroneous conclusion, the finding of fact reached by the Tribunal cannot be binding on the High Court and the High Court would have jurisdiction to brush aside the finding as held by their Lordships of the Hon'ble Supreme Court in Oriental Investment Company Limited's case, *supra*. In this appeal I find no question of law involved for this Court to entertain this appeal.

6. The only ground urged is that the appellant had sent telex message and also letters but the buyer companies failed to pay the amount. As rightly pointed out by the learned Counsel for the respondents the appellant had sent telex message and letters only between 8-6-1983 and 11-2-1984. Thereafter, the appellant wrote letters to the Counsellor on 15-2-1986 i.e. subsequent to the initiation of the proceedings in question. In the meanwhile, the buyer company was liquidated. Had the appellant taken prompt steps, the amount could have been recovered. Thus, it is clear the appellant has failed to take all reasonable steps to recover the payment of the goods. Therefore, the appellant shall be presumed to have contravened the provisions of sub-section (2) of Section 18 of the Act. There is no prescribed period for initiating the proceedings. The bona fides of the exporters who commit default in recovering payment will have to be considered within the scope of the Act. The avowed object of the provision is to ensure that the nation does not lose foreign exchange which is very much essential for the

economic survival of the nation. The exporter cannot be allowed to syphon away a part of the foreign exchange or to deprive the nation of the foreign exchange earned by the exports. The Act was enacted in the interest of national economy. A deliberate large scale contravention of its provisions would affect the interest of every man, woman and child in the country. Such an Act should be construed so as to make it workable; it should, however, receive a fair construction, doing no violence to the language employed by the legislature. The rule of interpretation that where two constructions are possible, the one in favour of the subject should be accepted, is not applicable insofar as this Act is concerned. Under those circumstances, and in view of the materials available on record, it cannot be said that the appellant has taken reasonable steps to recover the amount within the declared time. The Appellate Authority has rightly, come to the conclusion that the appellant has not taken reasonable steps and rightly rejected the appeal.

7. The learned Counsel for the appellant drew my attention to the letter dated 27-7-1992 from which it is clear that the amount which was due from M/s. P and C Factoring has been realised by the appellant and the balance amount of Rs. 17,000/- was waived by the Reserve Bank of India in their letter dated 30-12-1987 and the GR Form had been closed by the banks. Under those circumstances, the argument of the learned Counsel for the appellant that the question of non-realization of the same is confirmed by the respondent 1 is illegal and opposed to the documentary evidence produced by the appellant. Therefore, the argument of the appellant that it is entitled for deduction of this amount out of the amount of penalty imposed on the appellants, deserves to be accepted.

8. The further argument of the learned Counsel for the appellant that the amount not recovered is a very paltry sum compared to the business transaction of the appellant and therefore, it can be waived is liable to be rejected taking into consideration the object of the Act as mentioned above.

9. For the foregoing reasons, this appeal is dismissed subject to the deductions indicated above.