
(2009) 05 DEL CK 0354
In the Delhi High Court
Case No : Writ Petition (C) 3447 of 2008

Navnit Talwar

APPELLANT

Vs

Registrar, Appellate Tribunal for Foreign Exchange and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Citation : (2009) 05 DEL CK 0354

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Arjun, for the Appellant; Monika Garg, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—The petitioner, Mr. Navnit Talwar has impugned the order dated 18th February, 2008 passed by the Appellate Tribunal for Foreign Exchange, dismissing his application for pre-deposit of the penalty amount of Rs. 46,85,000/- as a pre condition for hearing his first appeal.

2. The aforesaid penalty of Rs. 46,85,000/- has been imposed on the petitioner as he was a Director of M/s. Reinz Talbros Limited, a company, which has gone into liquidation. As per the impugned order, the company under liquidation had repatriated foreign exchange during the period 1994-1997, but physical proof of import of the goods by producing documents was not provided.

3. The plea and stand taken by the petitioner is that Official Liquidator was appointed on 25th February, 2002. The Official Liquidator also seized the record of the company under liquidation and the relevant records were not made available to the petitioner in spite of requests including written applications. It is alleged that the Official Liquidator has filed an FIR with the police stating that the records of the company have been pilfered and several records are not available. The petitioner has not been blamed. Counsel for the petitioner states that the Official Liquidator was appointed as a Provisional Liquidator on 25th February, 2002 and the first memorandum was issued by the Directorate of Enforcement

subsequently on 28th May, 2002.

4. I need not examine the contentions raised on merits in details as the first appeal is still pending before the Appellate Tribunal for Foreign Exchange. At this stage, I am only required to examine whether the dismissal of the application for waiver of pre-deposit of Rs. 46,85,000/- as a pre-condition for entertaining/admitting the appeal is valid and justified. Counsel for the petitioner has pointed out that the company in question at one point of time was one of the leading manufacturers of spare parts and has gone into liquidation. He further states that the entire equipment was imported and the relevant details are available with the Customs Department. However, the respondents have not verified and checked the same. He has drawn my attention to the averments made in the writ petition with regard to filing of an FIR by the Official liquidator. He has also drawn my attention to the papers received from an agent from Mumbai, who had handled some of the imports. Prima facie the appeal raises issues and contentions which require examination and consideration. The contentions cannot be rejected as sham.

5. Counsel for the petitioner states that the petitioner will deposit a sum of Rs. 10 lacs with the Enforcement Directorate in two installments of Rs. 5 lacs each. The first installment will be paid by 30th June, 2009 and the second installment will be paid on or before 31st August, 2009. In addition, the petitioner is directed to file an undertaking giving details of his moveable and immovable assets owned by him from 2005 onwards. He shall also mention details of his bank account in the said undertaking. The petitioner shall not dispose of his immovable properties without permission of the Appellate Tribunal for Foreign Exchange. The aforesaid undertaking will be filed within four weeks.

6. The impugned order dated 18th February, 2008 is accordingly modified to the extent indicated above. Subject to satisfying and complying with the aforesaid conditions, the petitioner's appeal will be heard by the Tribunal in accordance with law. Observations made in this order are for the purpose of deciding the present writ petition and are tentative and prima facie. The appeal will be decided without being influenced by the above observations.

The writ petition stands disposed of.