

(1986) 07 MAD CK 0041
In the Madras High Court
Case No : C.M.A. No. 162 of 1981

New India Maritime Agencies (Pvt.) Ltd.	APPELLANT
Vs	
The Assistant Director, Enforcement Directorate	RESPONDENT

Date of Decision : 15-07-1986

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 5, 9

Citation : (1987) 13 ECC 128

Hon'ble Judges : Sathiadev, J; Maheswaran, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sathiadev, J.—Appellant before the Foreign Exchange Regulation Appellate Board, Madras in Appeal No. 353 of 1978 is the appellant herein. The appellant was found guilty of contravening Section 5(1)(c) of the Foreign Exchange Regulation Act (hereinafter referred to as the "Act") under two counts, and of Section 9(1)(a), and a consolidated penalty of Rs. 250 for charges u/s 5(1)(c) and a penalty of Rs. 300 for the charge u/s 9(1)(a) was imposed by the Assistant Director, Enforcement Directorate, Madras by his order dated 25-3-1978. The contravention alleged as against appellant was with regard to a payment of Rs. 672.50 by order and on behalf of M/s. Island Shipping Co., Hongkong, towards the expenses incurred for the stay of two persons of the said company in Taj Mahal Hotel at Bombay, and in making a payment of Rs. 2,000 to one Kousalya Sambandam on behalf of M/s. Island Shipping Co., Hongkong, without the general or reserve permission of the Reserve Bank of India. The third charge u/s 5(1)(c) relates to a payment of Rs. 3,200 towards expenses to one Captain Mortinsen, who had come to India to carry out the loading operations of the ship belonging to M/s. Christian Haaland, Norway in which he was employed.

2. The appellant admitted the payments as claimed, but put forth the claim that in the nature of business carried on by it, it was handling the funds held by them for account of the owners out of freight proceeds, and the amounts were debited

to the owners" account, and all these payments are reflected in their accounts and submitted to the Reserve Bank of India from time to time, and it believed that they would be approved by it as there was no concealment of what had been done by the appellant. The original authority and the appellate authority held that the contravention had been committed as claimed, but the appellate authority reduced the penalty from Rs. 250 to Rs. 50 and from Rs. 300 to Rs. 60. It is as against this order, this appeal is preferred.

3. The substantial question in law raised is that:

In the nature of business carried on by appellant, and when it had been authorised to handle the funds of foreign ship owners out of freight proceeds collected, and the amounts disbursed having been credited to the owners" account were the authorities in order in holding that the appellant had contravened the provisions of Section 5(1)(c) and 9(1)(a) of the Act.

4. Mr. Govind Swaminathan, Learned Counsel for the appellant, would first refer to the conclusion arrived at by the appellate authority to the following effect:

It is true that the appellant was acting as the agent of the foreign companies and there was a sort of running account maintained by them relating to the collection of freight and debiting of expenditure, incurred by them in India against the account of the foreign principals and such expenditure was borne as per the instructions of the principals. This they might have been doing in open, straight forward manner and in the usual course of business. It could even be conceded that there was no other way of transacting the business.

5. Once the nature of business carried on had been found to be in the normal course of trade, and there being no withholding of information of what had been done in relation to the funds belonging to the foreign ship owners in the hands of the appellant, it has to be seen whether acting on the instructions issued by the foreign ship owners, the contraventions as alleged had occasioned?.

6. There is no dispute that when instructions are received from foreign ship owners or from shipping agents or brokers, the appellant is bound to scrupulously carry out instructions. It is not open to the appellant to state that it would not provide hotel accommodation for their personnel or that the necessary expenses incurred for shipping operations carried out by the foreign companies would not be disbursed, from and out of the funds of foreign ship owners. There was no discretion left to the appellant except to obey the instructions. Of course, in abiding by the laws of this country, it is open to it to refuse to commit contravention of any of the provisions of any Act having force within the territory of India. Appellate Tribunal has rightly understood the situation and held that there was no other way of doing this business, which means that on truthful disclosure from time to time to Reserve Bank of India, it ought to have granted approval as done in other instances and to similarly placed business enterprises. Learned Counsel for the appellant would emphasise that in such circumstances, invariably the permission is being granted, but unfortunately, in these three

instances, the same yardstick had not been applied. Evidently, realising that the appellant could not have transacted these matters otherwise, only nominal penalty had been imposed. Having conceded this point, the Tribunal was not in order in imposing even the reduced penalty. Hence, when the amounts disbursed belonged to foreign ship owners/agents, and the Tribunal having found that there was no other way of doing this business and as appellant has made timely disclosures to Reserve Bank of India, the appellant succeeds.

7. It is in this view, this appeal is allowed. No costs.