
(1996) 02 MAD CK 0076
In the Madras High Court
Case No : A.A.O. No. 287 of 1987

R.A. Abdul Rahim

APPELLANT

Vs

Deputy Director of Enforcement and another

RESPONDENT

Date of Decision : 12-02-1996

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 9(1)

Citation : (1996) 87 CompCas 234 : (1997) 57 ECC 121 : (1996) 2 LW(Cri) 479

Hon'ble Judges : P. Sathasivam, J; Abdul Hadi, J

Bench : Division Bench

Advocate : N.S.M. Mohamed Jafarullah, for the Appellant; S. Veeraraghavan, for the Respondent

Judgement

Abdul Hadi, J.—Against the order of the Foreign Exchange Regulation Appellate Board, confirming the order of the first authority, levying

penalty of Rs. 10,000 on the appellant for contravention of section 9(1)(a) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to

as "the Act"), this appeal has been filed by the appellant u/s 54 of the Act.

2. One Abdul Hameed, who is a chartered accountant in Singapore and a person resident outside India, has brought certain goods from Singapore

to India, paid customs duty therefore and handed over the goods to the appellant for being sold and the appellant after selling the said goods has

deposited the sale proceeds in the savings bank account in India Bank, Mylapore, held by the said Abdul Hameed in the joint names of himself, his

wife and son, the latter two being resident in India. The said sale proceeds deposited are Rs. 56,000 deposited on August 24, 1982, and Rs.

35,000 deposited on August 26, 1982.

3. On the above facts, both the authorities below have found that the appellant

has contravened section 9(1)(a) of the Act and has concurrently levied the abovesaid penalty of Rs. 10,000.

4. All that learned counsel for the appellant submits is that the abovesaid savings bank account is a joint account not only in the name of Abdul

Hameed, but also in the name of his wife and son, who are admittedly residents in India, and that the department has not established that the

abovesaid bank account was that of a non-resident in India. He also sought to rely on paragraph 9 of Chapter 27 of the Exchange Control

Manual. But, both the authorities below have come to the conclusion that the said paragraph 9 of Chapter 27 has no bearing. We are also unable

to see any connection between this case and the said Chapter 27. Whether the abovesaid bank account is a non-resident account or otherwise, the

contravention u/s 9(1)(a) would be attracted since in view of the abovesaid deposit, it could be construed that the payment has been made to the

abovesaid Abdul Hameed. That is so because, it is not the case of the appellant that Abdul Hameed cannot withdraw to himself the entire sum

deposited. When that is so, the deposit of the abovesaid sum of Rs. 91,000, in all, could be construed as payment to Abdul Hameed himself alone.

Therefore, the contravention u/s 9(1)(a) is certainly established.

5. No doubt, learned counsel for the appellant also argues that this is only a technical violation, since, according to him, there is no loss of foreign

exchange to the country. But, learned counsel for the respondent rightly points out that instead of bringing the goods from Singapore (no doubt

after paying the customs duty), selling them here and realising the sale proceeds if he had sent the monetary value of the said goods from Singapore

to India through regular accepted channels, the country would have earned foreign exchange. Therefore, it cannot be said that this is a technical

violation. But on the ground that it is a technical violation, learned counsel for the appellant pleaded for reduction of penalty. But, we see no

justification for doing so, in view of the reason stated supra.

6. Accordingly, the civil miscellaneous appeal is dismissed. However, in the circumstances of the case, there will be no order as to costs.