(2009) 10 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1147 of 2001 With C.M.W.P. No. 53456 of 2000

Ratan Chand Deep Chand Registered Partnership Through Its Partner and another — APPELLANT

Vs

Reserve Bank of India, Exchange Control Department Kanpur, Through General Manager And Another — RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 18

Citation : (2009) 10 AHC CK 0003

Hon'ble Judges : Amitava Lala, J and Ashok Srivastava, J

Final Decision : Dismissed

Judgement

Amitava Lala, J.

Composite hearing has been made in respect of both the writ petitions connected with each other challenging the orders dated 11th October, 2000 and 9th September, 2000 passed by Reserve Bank of India refusing to extend the time for realization of export proceeds by the petitioner. Therefore, the same are decided by this common judgement having binding effect in both the writ petitions.

Firstly, the petitioner contended that goods were lost in transit, therefore, the export is not completed. Hence the Foreign Exchange Regulating Authority has no jurisdiction to interfere with the matter in question at all. Learned counsel appearing for the respondent, Reserve Bank of India has contended that as per Section 18 of the Foreign Exchange Regulation Act, 1973, the Central Government may, by notification in the Official Gazette, prohibit the taking or sending out by land, sea or air (hereinafter in this section referred to as export) of all goods or of any goods or class of goods specified in the notification, from India directly or indirectly to any place so specified unless the exporter furnishes to the prescribed authority a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars etc. According to us the export is corelated with import. Therefore, when the question of taking or sending out is incorporated, "to satisfy the test of export," it cannot be said that no export was made as alleged above. Being assuming the export cannot be considered to be completed by "taking or sending out" but as soon as it will reach the destination of the importing authority it has to be considered after the completion of the export. Apart from that, the petitioner himself has stated that the goods were exported and the U.S. Customs informed the petitioner that the goods have been released to the carrier. Under such circumstances the question which has been raised by the petitioner cannot be substantiated before us. So for as refusal of extension is concerned it is squarely covered within Section 18 of the Foreign Exchange Regulation Act, 1973. Therefore, we have to see, whether the authority concerned has proceeded arbitrarily or wrongfully against the petitioner, to interfere with the orders which has been passed by the authority, we have to see if it is within the four corners of such provision? Learned counsel appearing for the respondentBank has relied upon paragraph 10 of the judgement of three Hon''ble judges of Supreme Court reported in Narayan Govind Gavate and others Vs. State of Maharashtra and others (1977) 1 SCC 133. Paragraph 10 is referred hereinafter:

10. "It is true that, in such cases, the formation of an opinion is a subjective matter, as held by this Court repeatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than courts could ordinarily on such matters. Nevertheless, that opinion has to be based upon some relevant materials in order to pass the test which courts do impose. That test basically is: Was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meagre, on which it could reasonably base its opinion, the courts should not and will not interfere. There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts, or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, to what was legally imperative for it to consider."

He further submitted, on the basis of the judgement reported in People''s Union for Civil Liberties and another Vs. Union of India and others 2004 (2) SCC 476, paragraph 67 which is referred hereinafter:

67. "Once provisions of Section 18 of the Act and the order framed thereunder

are held to be intra vires, the only question which arises for consideration is as to whether exercise of such powers should be held to be invalid by this Court. The jurisdiction of this Court in such matters is very limited. The Court will not normally exercise its power of judicial review in such matters unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonesty or corrupt practice. The order can be set aside if it is held to be beyond the limits for which the power has been conferred upon the authorities by the legislature or is based on ground extraneous to the legislation and if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction required thereunder."

In these cases, we do not find any such thing has been done. On the other hand whatever offer has been made, that has been made in 1996 while the writ petitions were filed in 2001 and we are sitting here to adjudicate the matter in the year 2009. Therefore, we cannot interfere with the matters at all and as such both the writ petitions are liable to be dismissed and are accordingly dismissed, however,without imposing any cost. Incidentally, a fact raised before this court that a final order has been passed by the National Consumer Redressal Forum and the money has been realized by the Banker of the petitioner on the basis of the bill purchaser. Against these background if any question of right is available for the petitioner, it is open for him to take steps in accordance with law.

