(1984) 04 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal Order No. 44 of 1983

Shri Gurbachan Singh Pardesi — APPELLANT

Vs

Foreign Exchange Regulation Appellate Board and Another — RESPONDENT

Date of Decision : 05-04-1984

Acts Referred:
Foreign Exchange Regulation Act, 1973 — Section 4, 54, 9

Citation : (1984) 2 ECC 222

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This appeal has been filed u/s 54 of the Foreign Exchange Regulation Act, 1973 (hereinafter called "the Act"), against the orderof the Appellate Board dated 20th April, 1983, whereby the order of the Additional Director of Enforcement (Adjudicating Officer) dated 11th May, 1982, was affirmed. Without going into the merits of the case and the detailed facts, it is admitted on both sides that earlier an order dated 21st November, 1975, was passed by the Deputy Director, whereby the appellant, Shri G.S. Pardesi, was found to have contravened the provisions of Section 4(1) of the old Act and thus a penalty of Rs. 5,000 was imposed upon him. Admittedly, the said order was set aside in appeal by the Appellate Board vide its order 20th June, 1976. On the basis of the said order, it was contended on behalf of the appellant before the Adjudicating Officer that since the appellant had already been prosecuted, therefore, fresh proceedings could not be taken against him on the basis of the same transaction. In para 10 of the order of the Additional Director, it is noticed that this contention was raised on behalf of the appellant, but he came to the conclusion that in the circumstances there was no delay on the part of the department and there was also no limitation with regard to taking proceedings under the Foreign Exchange Regulation Act. The other objections raised on behalf of the appellant were also negatived. As a result thereof, the total penalty of Rs.

29,500 was imposed on the appellant for contravening the provisions of the Act on three counts. Dissatisfied with the same, an appeal was filed before the Appellate Board. It is unfortunate that in the order of the Appellate Board, this contention of the appellant that he had already been prosecuted earlier in the year 1975, has not been noticed at all. It has been stated at the Bar that after the order was passed on 20th April, 1983, a review application was filed as to contend that this contention was not noticed by the Appellate Board. However, it was rejected by the Board on the ground that it was no more seized of the matter. Dissatisfied with the same, the appellant has filed this second appeal in this Court.

2. The learned Counsel for the appellant raised many contentions. Since this contention goes to the root of the case, the respondent was called upon to justify the impugned orders. In view of the orders already passed by the department imposing the penalty, vide order dated 21st November, 1975, which order was subsequently set aside in appeal oh 20th June, 1976. The learned Counsel for the respondents argued that even if it be so assumed that as regards the notice dated 16th January, 1982, it may be defective but as regards the second notice dated 1st March, 1982, it could not be said that the earlier order had anything to do with the same. According to the learned Counsel, the appellant contravened the provisions of Section 9(1)(b) and Section 9(1)(c) of the Act in the year 1980, and therefore, he was liable for the penalty under the Act and thus the fresh show cause notice dated 1st March, 1982, could be issued against the appellant. I am afraid, the authorities below have not discussed this aspect at all. As observed earlier, the Appellate Board did not go into this matter whereas the Additional Director (Enforcement) disposed of this objection in para 10 thereof simply on the ground that there was no limitation with regard to proceedings under the Foreign Exchange Regulation Act. Thus it is evident that the authorities below did not apply their mind to the various contentions raised on behalf of the appellant and passed the order mechanically. Consequently, the appeal succeeds. Both the orders are set aside and the case is remanded to the Adjudicating Officer, that is, the Additional Director (Enforcement), for fresh decision in accordance with law. The appellant will be entitled to the refund of the penalty paid by him. It may be made clear that the other pleas taken by the appellant have not been taken into consideration while deciding this appeal. The appellant will be entitled to take all those pleas afresh before the authorities below.