(2009) 05 DEL CK 0283

In the Delhi High Court

Case No : Writ Petition (C) 212 of 2009

Shri V.K. Singh APPELLANT

Vs

Special Director of Enforcement and Another RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 18(2)

Citation : (2010) 8 RCR(Civil) 395

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Naina Kejriwal, for the Appellant; Sanjay Katyal and M. Saurabh, for the Respondent

Judgement

Sanjiv Khanna, J.—The petitioner-Mr. V.K. Singh impugns order dated 22nd October, 2008 passed by Appellate Tribunal for Foreign Exchange disposing of his application for waiver of pre-deposit of penalty of Rs. 50 lacs with the direction that the petitioner should deposit 50% of the penalty amount, failing which his appeal will be dismissed.

2. The petitioner herein is a Customs House Agent and proceedings were initiated against M/s Sai International under Foreign Exchange Regulation Act, 1973 (hereinafter referred to as the Act, for short) for contravention of Section 18(2) read with other provisions including the Exchange Control Manual. The allegations are that M/s Sai International had purportedly effected exports of assignments to the extent of Rs. 2,51,80,620/- as per shipments under GR forms and export proceeds thereof were not repatriated. It is alleged that the exports in fact were fictitious and sham. The Adjudicating Officer while imposing penalty of Rs. 50 lacs on the petitioner has recorded the following findings:

38. Regarding Shri V.K. Singh, I have perused his submissions dated 3.9.2002, 11.9.2002, 5.8.2005, 16.10.2205(sic) and I do not agree with his submissions. Shri Singh stated that out of the three export consignments in the Memorandum, two relate to ICD in which one was handled by him as CHA (GR No. 767908

dated 23.10.98 and the other was handled by Smt. Venita under self clearance. The remaining one relates to Air Cargo for which there was no claim for drawback. For the only consignment handled by him the drawback amount was about Rs. 22 lakhs and it was alleged that he received a total amount of Rs. 13,80,000/-. He, however, claimed that he received Rs. 2,50,000/- for the only consignment handled by him. If Shri Singh is stating truth, then how Rs. 14,00,000 was withdrawn by him from the account with Centution Bank of M/s Sai International. I also find that in his statement dated 9.4.2001 with reference to answer to Q. No. 7, he had admitted that he remembered that the cheques were received by him from Dilip Nihalani. I also seen that Shri V.K. Singh in his statement dated 9.4.2001 had admitted that he encashed the amount of around Rs. 14 lakhs from the account of Sai International and admitted the receipt. I also find that Shri V.K. Singh was arrested by the Customs Authorities in another bogus export case and subsequently detained under COFEPOSA. The cash register of his firm did not show any receipt on account of M/s Sai International. In view of above, his subsequent contention that the signatures on the cheques showing the drawal of money is not his, does not hold good.

3. Learned Counsel for the petitioner submits that the findings recorded in paragraph 38 are entirely false and incorrect as the petitioner had not received Rs. 14 lacs. She states that in spite of repeated requests, the Adjudicating Officer did not summon the bank records and the alleged cheques and permit the petitioner to cross-examine the bank officers. She further states that as per the books of accounts of the petitioner, no payment of the said nature in cash was received.

4. I need not dilate on the merits of the matter in detail as the appeal filed by the petitioner is still pending before the Appellate Tribunal for Foreign Exchange. However, I may note that as the petitioner is a Customs House Agent and the main allegations are against M/s Sai International. It is also admitted that the petitioner was not permitted to cross-examine the bank officers and records were not produced.

5. The petitioner has filed an affidavit declaring the details of assets owned by him, which include flat Nos. 210 and 801, Kushal Towers, Khairatabad, Hyderabad and a plot. The income tax returns filed along with the affidavit disclose that the petitioner has substantial rental income as well as professional income of Rs. 6,08,500/- and Rs. 6,96,816/- respectively. In addition, the petitioner also has interest income of nearly Rs. 1,70,000/-. However the liquid assets are not sufficient to meet the pre-deposit condition imposed without the petitioner selling or disposing of his immovable assets. The first appeal of the petitioner is yet to be decided. One of the question and plea in alternative also relates to quantum of penalty.

6. In view of the aforesaid position, the petitioner is directed to deposit a sum of Rs. 6,00,000/- in two installments of Rs. 3,00,000/- each. The first installment of Rs. 3,00,000/- will be deposited by 15th June, 2009 and the second installment

of Rs. 3,00,000/- will be deposited by 15th August, 2009. The petitioner will also file an affidavit and undertaking before the Adjudicating Officer that he shall not dispose of and sell his fixed assets without permission of the Adjudicating Officer. The aforesaid affidavit and undertaking will be filed before 15th June, 2009. Subject to deposit of the aforesaid amount and filing of the affidavit and undertaking, the appeal of the petitioner will be heard in accordance with law. The impugned order dated 22nd October, 2008 is modified to the extent indicated above.

The writ petition is disposed of.

Dasti.

