
(2009) 05 DEL CK 0485

In the Delhi High Court

Case No : Petition (Civil) No's. 112 and 1651 of 2004, 8615 of 2005 and 3633, 4913, 4914 and 4916 of 2008

S.K. Mittal and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Adjudication Proceedings and Appeal Rules, 1974 — Rule 6
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, Order 43 Rule 1
Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 — Rule 10
Foreign Exchange Management Act, 1999 — Section 17(1), 18, 19, 19(2), 49
Foreign Exchange Regulation Act, 1973 — Section 51, 51(3), 52, 52(1), 52(2)
General Clauses Act, 1897 — Section 24, 6
Scheduled Districts Act, 1874 — Section 5, 5A

Citation : (2009) 161 DLT 785 : (2009) 6 ILR Delhi 327 : (2010) 8 RCR(Civil) 15

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Pawan Narang and Sharat Kapoor, for the Appellant; Rajdipa Behura, Vineet Malhotra, Deepak Anand and Chhimubhal Singh, for the Respondent

Final Decision : Allowed

Judgement

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Sanjiv Khanna, J.—A common question of law; Court fees payable by the petitioners on their appeals filed before the Appellate Tribunal for Foreign Exchange arises for consideration in the present set of writ petitions. I am not dilating upon facts of individual cases as it is not necessary for the decision of the legal question. The petitioners herein are appellants who have filed appeals before the Appellate Tribunal for Foreign Exchange. These appeals are against penalty orders passed under the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as FERA, for short) but were preferred after the repeal of the aforesaid Act by Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA, for short) with effect from 1st June, 2000. As per FERA read

with Adjudication Proceedings and Appeal Rules, 1974, the Court fees payable on an appeal depends upon the quantum of fine and is subject to maximum Court fees of Rs. 2,000/-. As per FEMA read with Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, the Court fees payable on an appeal before the Foreign Exchange Appellate Tribunal is Rs. 10,000/-. The relevant provisions of FERA, FEMA and the two Rules read as under:

FERA

52. Appeal to Appellate Board

(1) xxxx

(2) Any person aggrieved by such order may, on payment of such fee as may be prescribed and after depositing the sum imposed by way of penalty u/s 50 and within forty-five days from the date on which the order is served on the person committing the contravention, prefer an appeal to the Appellate Board:

Provided that the Appellate Board may entertain any appeal after the expiry of the said period of forty-five days, but not after ninety days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time:

Provided further that where the Appellate Board is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, in its own discretion, dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit.

The Adjudication Proceedings and Appeal Rules, 1974:

6. Form of Appeal: (1) Every appeal presented to the Appellate Board u/s 52 shall be in the form of a memorandum signed by the appellant. The memorandum shall be sent in triplicate and accompanied by the three copies of the order appealed against. On every appeal the amount of fee as given in the table below shall be paid in the form of demand draft payable in favour of the Registrar, Foreign Exchange Regulation Appellate Board, New Delhi.

Table S. No.	Amount of penalty involved	Amount of fee payable	(1)	(2)	(3)	(Rs.)
						1.
	Where the amount of penalty 750 involved is Rs. 1 lakh or less than Rs. 1 lakh.					2.
	Where the amount of penalty 1,500 involved is more than Rs. 1 lakh and up to	Rs.	5			lakhs.
	Where the amount of penalty 2,000 involved is above Rs. 5 lakh.					3.
						FEMA

Section 19. Appeal to Appellate Tribunal.

(1) Save as provided in Sub-section (2), the Central Government or any person

aggrieved by an order made by an Adjudicating Authority, other than those referred to in Sub-section (1) of Section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

The Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000:

10. Form of Appeal: Every appeal presented to the Appellate Tribunal u/s 19 of the Act shall be in the Form II signed by the applicant. The appeal shall be sent in triplicate and accompanied by three copies of the order appealed against. Every appeal shall be accompanied by a fee of rupees ten thousand in the form of cash or demand draft payable in favour of the Registrar, Appellate Tribunal for Foreign Exchange, New Delhi.

Provided that the applicant shall deposit the amount of penalty imposed by the Adjudicating Authority or the Special Director (Appeals) as the case may be, to such authority as may be notified under the first proviso to Section 19 of the Act:

Provided further that where in a particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty.

2. The legal question which arises for consideration is whether Rule 6 of the Adjudication Proceedings and Appeal Rules, 1974 framed under FERA or Rule 10 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 framed under FEMA will apply to the present appeals in cases where adjudicating orders are passed under FERA but after repeal of FERA on 1st June, 2000. The answer to this legal question depends upon interpretation of Section 49 of FEMA and Section 6 of the General Clauses Act, 1897. The said provisions read as under:

General Clause Act, 1897

6. Effect of repeal.--Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall

not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Foreign Exchange Management Act, 1999

49. Repeal and saving.--(1) The Foreign Exchange Regulation Act, 1973 is hereby repealed and the Appellate Board constituted under Sub-section (1) of Section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

(2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

(3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention u/s 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.

(4) Subject to the provisions of Sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.

(5) Notwithstanding such repeal,-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not

inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) any appeal preferred to the Appellate Board under Sub-section (2) of Section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;

(c) every appeal from any decision or order of the Appellate Board under Sub-section (3) or Sub-section (4) of Section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement:

Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

(6) Save as otherwise provided Sub-section (3), the mention of particular matters in Sub-sections (2), (4) and (5) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

3. Repeal of a statute has the effect of obliterating the earlier statute as if the Law never existed, (except to transactions passed and closed), unless the repealing statute contains some provision preserving the earlier statute. However, when Section 6 of the General Clauses Act, 1897 applies rights, privileges or liabilities acquired, accrued or incurred under the repealed Act are protected. In such cases, the existing rights, privileges or liabilities incurred are not affected, unless it is expressly or by necessary implication stipulated to the contrary. An act or event is governed by the law that was in force when the act or the event happened, unless a different intention appears. *Keshavan Madhava Menon Vs. The State of Bombay*, All provisions of the repealed Act, as per Section 6 of the General Clauses Act, 1897, continue to be in force even after the repeal, for the purpose of enforcing right, liability or obligation incurred, accrued or acquired when the repealed Act was in force. Section 6 is comprehensive and wide. It protects previous operation of the repealed Act; penalty imposed, forfeiture or punishment incurred; investigation, legal proceedings or remedy available and such investigation, legal proceedings may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed. A new legislation in view of Section 6 of the General Clauses Act, 1897 is presumed to be prospective only, unless intended to have retrospective operation. Further inquiry is made from the angle whether the new legislature destroys liabilities and rights for past transactions and acts and not whether the new legislation preserves rights and liabilities. In *State of Punjab v. Mohar Singh Pratap Singh* AIR 1955 SC 84 the Supreme Court has stated:

Whenever there is a repeal of an enactment, the consequences laid down in

Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case.

4. In *T.S. Baliah Vs. T.S. Rengachari*, again the Supreme Court has held:

The principle of this section is that unless a different intention appears in the repealing Act, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words, whenever there is a repeal of an enactment the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says a different intention appears in the repealing statute. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. Section 6 of the General Clauses Act therefore will be applicable unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new statute and the mere absence of a saving clause is by itself not material. In other words, the provisions of Section 6 of the General Clauses Act will apply to a case of repeal even if there is a simultaneous re-enactment unless a contrary intention can be gathered from the new statute.

5. The words "anything duly done or suffered there under" used in Section 6(b) of the General Clauses Act, 1897 are wide and comprehensive enough to not only take into account the things done, but also the legal consequences that flow therefrom. (Refer *Universal Imports Agency and Another Vs. The Chief Controller of Imports and Exports and Others*, .

6. It is not disputed that FERA and FEMA were/are Central Act and therefore effect and impact of Section 6 of the General Clauses Act, 1897 has to be examined.

7. Sub-section 1 of Section 49 of FEMA states that FERA stands repealed and the Appellate Board constituted u/s 52(1) of the said Act stands dissolved. Sub-section 2 provides that the person appointed as Chairman or Member of the erstwhile Appellate Board shall vacate their office and will not be entitled to claim any compensation for premature termination of his office or contract of service upon repeal of FERA on 1st June, 2000. Sub-section 3 to Section 49 incorporates a sunset clause and stipulates and begins with a non obstinate phrase overriding any other enactment and predicates that no "court" shall take notice of any contravention u/s 51 of FERA after expiry of period of two years from the date of commencement of FEMA on 1st June, 2000. Sub-section 4 to Section 49 stipulates that "all offences" subject to Sub-section 3 shall continue to be governed by the provisions of the repealed Act as if the repealed Act still continues as Law after 1st June, 2000.

8. Sub-section 5 to Section 49 of FEMA consists of three Clauses (a), (b) and (c). Clause (a) of Sub-section 5 to Section 49 enumerates that any action done or taken or purported to be done or taken including rule, notification, inspection, order or notice or any declaration made permission or authorization or exemption granted or any document or instrument executed under the repealed Act i.e. FERA, to the extent they are not inconsistent with the provisions of FEMA are deemed to be done or taken under the corresponding provisions of FEMA. The said provision has the effect of incorporating or making a general declaration that the existing rules, notifications, declarations, authorization and exemptions granted under FERA will continue to apply inspite of repeal of FERA and after enactment of FEMA as long they are not inconsistent with FEMA. It does away with the necessity and requirement to issue fresh or new authorizations, rules, notifications, exemptions general or particular, etc. all over again because FERA has been repealed with enactment of FEMA. However, this is subject to the condition that the said rules, notifications, exemptions, etc. should not be in conflict with the provisions of FEMA. Section 24 of the General Clauses Act, 1897 also preserves the continuity of subordinate legislation upon re-enactment, unless there are express words to the contrary and the subordinate legislation is not inconsistent with the law enacted. In *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, the object and purpose behind Section 24 of the General Clauses Act, 1897 has been explained as under:

However efficient the rule-making authority may be it is impossible to avoid some hiatus between the coming into force of the re-enacted statute and the simultaneous repeal of the old Act and the making of regulations. Often, the time lag would be considerable. It is conceivable that any legislature, in providing that regulations made under its statute will have effect as if enacted in the Act, could have intended by those words to say that if ever the Act is repealed and re-

enacted (as is more than likely to happen sooner or later), the regulations will have no existence for the purpose of the re-enacted statute, and thus the re-enacted statute, for some time at least, will be in many respects, a dead letter. The answer must be in the negative. Whatever the purpose be which induced the draftsmen to adopt this legislative form as regards the rules and regulations that they will have effect ?as if enacted in the Act?, it will be strange indeed if the result of the language used, be that by becoming part of the Act, they would stand repealed, when the Act is repealed. One can be certain that that could not have been the intention of the legislature. It is satisfactory that the words used do not produce that result.

The aforesaid are apposite and explain the purpose behind Section 49(5)(a) of FEMA.

9. Clause (b) of Sub-section 5 to Section 49 states that any appeal preferred before the Appellate Board u/s 52(2) of FERA shall stand transferred and will be disposed of by the Appellate Tribunal constituted u/s 18 of FEMA. Clause (c) of Sub-section 5 is not relevant and it pertains to filing of the appeals before the High Court with which we are not concerned.

10. Sub-section 6 to Section 49 is the most crucial and the cornerstone of the contentions raised. The first part of the said sub-section protects the sunset clause and the two year limitation period for commencement of proceedings. It begins and ends with the words ?save as otherwise provided in Sub-section 3?. Thus, the limitation period in the sunset clause of two years is expressly protected, inspite of the second part of Sub-section 6. Sub-section 3 to Section 49, which provides for the limitation period of two years for commencement of proceedings, overrides the second portion of Sub-section 6.

11. The second portion of Sub-section 6 of Section 49 reads as ?the mention of particular matters in Sub-sections (2), (4) and (5) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.? The second part expressly makes Section 6 of the General Clauses Act, 1897 applicable in spite of repeal of FERA by FEMA. Section 6 of the General Clauses Act, 1897 will apply in spite of Sub-sections 2, 4 and 5 of Section 49 of FEMA.

12. Combined reading of the aforesaid sub-sections and interpretation given to Sub-section 6 to Section 49 makes the intention of the legislature clear. FERA is replaced by FEMA with effect from 1st June, 2000 and the Appellate Board under FERA u/s 52 of FERA is replaced by Appellate Tribunal u/s 18 of FEMA. Rules, notifications, directions, exemptions etc. granted under FERA continue to apply to the extent they are not in conflict with the provisions of FEMA. Section 6 of the General Clauses Act, 1897, which protects rights, obligations and actions and liabilities applies inspite of repeal of FERA but subject to two year limitation period specified in Sub-section 3 of Section 49 of FEMA for initiation of proceedings. Therefore, in view of Sub-section 6 of the General Clauses Act,

1897, read with Sub-section 3 of Section 49 of FEMA proceedings for violation of the provisions of FERA can be initiated within the sunset period of two years with effect from 1st June, 2000 till 31st May, 2002 and not thereafter. But for Sub-section 3, there would be no limitation period of two years, in view of Section 6 of the General Clause Act, 1897 read with Sub-section 4 and 6 of the Section 49 of FEMA. By express stipulation effect of Section 6 of the General Clauses Act, 1897 is excluded to the extent indicated in Sub-section 3 of Section 49 of FEMA.

13. Sub-sections 3 and 4 and Clause (b) of Sub-section 5 of Section 49 are not happily worded. On one hand, Sub-section 3 refers to 'Court' and Sub-section 4 refers to 'offences' yet at the same time Sub-section 3 also refers to contravention u/s 51 of FERA. Contravention u/s 51 of FERA is not adjudicated by Courts but the adjudicating authorities under FERA. Criminal offences under FERA were tried in Courts under Sections 56 and 62 of the said Act. However, before me the respondent-Enforcement Directorate has not disputed that the adjudicating orders are covered under Sub-sections 3 and 4 to Section 49 and the sunset clause apply to them. Perhaps, the word 'offences' used in Sub-section 4 refers to violation of Section 51 of the Act as well as criminal offences and this explains the use of the word 'court' in Sub-section 3. However, I am not required to go into this aspect and give an authoritative opinion in view of the admitted position of both sides including Enforcement Directorate that the sunset clause mentioned in Sub-section 3 applies to adjudication orders passed u/s 51 of FERA.

14. Clause (b) of Sub-Section 5 of Section 49 refers to appeals preferred and pending before the Appellate Board under FERA at the time of repeal. The said clause/part does not specifically refer to appeals preferred against adjudication orders passed under FERA after repeal with effect from 1st June, 2000. A reasonable interpretation, however, would be that the Appellate Board under FERA is substituted by Appellate Tribunal as the Appellate Forum. It is not the case of the respondent-Enforcement Directorate that Section 49 of FEMA seeks to altogether take away the appellate remedy against an adjudication order and the right to appeal before the Appellate Tribunal. In fact, the case pleaded by the respondent-Enforcement Directorate is that appeals against adjudication orders passed after 1st June, 2000 or appeals filed on or after 1st June, 2000 against orders passed under FERA will lie before the Appellate Tribunal. The view I have taken finds support from a judgment of the learned single Judge of this Court in W.P. (C) 3755/2000 titled Bank of Foreign Ex. Off. Of U.S.S.R v. Union of India (UOI) Etc. though in that case the legal issue involved was different. In the said case, learned single Judge was examining the question whether an appeal against an order passed under FERA after its repeal was maintainable before the Appellate Tribunal constituted under FEMA. Learned single Judge has observed as under:

11. As far as the grievance of the petitioner is concerned, I am of the opinion that Section 49(5) and (6) provide a complete answer. The legislative intent in

directing statutory transfer of appeal pending before the Appellate Board (of the Repealed Act) to the newly constituted Board is clear. If this thought process is to be pursued further, the logic of the applicability of the General Clauses Act is inexorable. Consequently, if a proceeding is concluded after the commencement of the FEMA by any adjudicating authority in terms of pre-existing law, the appeal would lie to the newly constituted Board under FEMA. As far as the apprehension of appropriate authority under FEMA i.e. whether it should be the Special Director or the Assistant Director, I am of the opinion that there is not much merit in this again. By operation of Section 6 of the General Clauses Act, the same authority continues to be empowered, to adjudicate and render findings in the absence of any other statutory indication to the contrary. The cumulative effect of Section 49 of FEMA and Section 6 of the General Clauses Act, in my opinion, are that though FERA stands repealed, yet in respect of the investigations pending before the various authorities, the liability under the FERA, has to be enforced and adjudicated.

(Emphasis Supplied)

15. Privy Council in *Colonial Sugar Refining Company Limited v. Irving* (1905) AC 369 (A) had examined the question whether an appeal against a decision of Supreme Court in Australia would be maintainable before the Council after the Judiciary Act, 1908, which provided for appeals against orders passed by the Supreme Court in Australia before the High Court of Australia. It was held that the appeal after the enactment of the Judiciary Act, 1908 would lie before the High Court of Australia and Lord Macnaghten, who delivered the judgment of the Privy Council had said:

As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested.

16. This judgment of the Privy Council was followed by the Supreme Court in *Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others*, .

In the said case, provisions of the Sales Tax Act were amended to provide for payment of entire disputed Sales Tax instead of admitted tax at the time of filing of appeal before the prescribed authority. In the said case, the proceedings for assessment were initiated before the amendment but the order and the appeal were filed after the amendment requiring payment of the disputed tax also. The Supreme Court made referred to another judgment of the Privy Council in AIR 1927 242 (Privy Council) and several other cases and it was observed that right to appeal is not a matter of procedure but is a substantive right, which becomes vested in a party when proceedings are first initiated and is not dependent upon the date of the decision of the inferior court. Further onerous condition or stipulations on the pre-existing right to appeal have the effect of negating and putting fetters on the pre-existing rights, will not apply if they have been imposed after the proceedings were initiated. This principle of law is, however, subject to express enactment or necessary intendment to the contrary in the amendment or the repeal. Therefore, the amended statute or the repealed Act can take away the right to appeal or impose more onerous conditions and fetters on the right to appeal but there should be an express provision or by necessary implication retrospective effect is required to be given. The said legal proposition was again considered at length by the Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, The following legal propositions are enumerated in the majority judgment:

23. From the decisions cited above the following principles clearly emerge:

- (i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.
- (ii) The right of appeal is not a mere matter of procedure but is a substantive right.
- (iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.
- (iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.
- (v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

17. In the aforesaid case, the Supreme Court also examined the question of change or substitution of a Appellate forum by an enactment and whether the

aforesaid principles of substantive right to appeal would equally apply when there is a change of forum and whether change of forum by necessary implication implies destruction of right to appeal by implied intendment by way of repeal. In the said case, the civil suit was instituted on 22nd April, 1949 and the appeal against the decision of the High Court at that time was maintainable before the Federal Court. However, with the enactment of the Constitution, the Supreme Court became the Appellate Forum against decisions of the High Courts. The Supreme Court in the said circumstances examined the question whether with enactment of the Constitution, the right to appeal before the Federal Court was taken away by express or by necessary intendment by subsequent enactment. The Supreme Court observed that statutes should be interpreted if possible to respect a vested right and in the absence of anything specific to show that a statute has retrospective operation; it should not be construed as to have the effect of altering the law applicable to the claim in any litigation at the time when the litigation started. The Supreme Court noticed the surrounding circumstances when Constitution was framed and enacted and the purpose behind conferring power on the Supreme Court as the Appellate Forum. It was held that the pre-existing right to appeal before the Federal Court continues to exist under the old law, which created the right to appeal and the said vested right continues with only one change that the Federal Court is abolished and the Supreme Court is substituted as the Appellate Forum for giving effect to the right to appeal. Thus, there was only change of Appellate Forum and this did not affect the vested right to appeal. The decision of the Privy Council in the case of Colonial Sugar Refining Company Limited (*supra*) was again referred to as supporting the said principle. In the said case also, there was a change of the appellate forum.

18. The aforesaid judgment of the Supreme Court has been later on followed in *State of Bombay Vs. Supreme General Films Exchange Ltd.*, . Subsequently, in *Amba Bai and Others Vs. Gopal and Others*, , the said principles were equally made applicable to quasi judicial and executive authorities. In *Supreme General Films Exchange (Supra)* the Supreme Court observed:

11. The question was considered in reverse in *Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner, Delhi* and the principle of *Colonial Sugar Refining Co. v. Irving* was applied. Another decision in point is that of *Nagendra Nath Bose v. Mon Mohan Singh*. In that case the plaintiff instituted a suit for rent valued at Rs. 1306-15-0 and obtained a decree. In execution of that decree the defaulting tenure was sold on 20-11-1926, for Rs. 1600. On 19-12-1928, an application was made under Order 21 Rule 90 of the CPC by the petitioner who was one of the judgment-debtors for setting aside the sale. That application having been dismissed for default of his appearance, the petitioner preferred an appeal to the District Judge, Hoogly, who refused to admit the appeal on the ground that the amount recoverable in execution of the decree had not been deposited as required by the proviso to Section 174(c) of the Bengal Tenancy Act as amended by an amending Act of 1928. The contention of the petitioner was

that the amending provision, which came into force on 21-2-1929, could not affect his right of appeal from the decision on an application made on 19-12-1928, for setting aside the sale. Mitter, J., said: "We think the contention of the petitioner is well-founded and must prevail. That a right of appeal is a substantive right cannot now be seriously disputed. It is not a mere matter of procedure. Prior to the amendment of 1928 there was an appeal against an order refusing to set aside a sale (for that is the effect also where the application to set aside the sale is dismissed for default) under the provisions of Order 43 Rule 1 of the Code of Civil Procedure. That right was unhampered by any restriction of the kind now imposed by Section 174(5), proviso. The Court was bound to admit the appeal whether the appellant deposited the amount recoverable in execution of the decree or not. By requiring such deposit as a condition precedent to the admission of the appeal, a new restriction has been put on the right of appeal, the admission of which is now hedged in with a condition. There can be no doubt that the right of appeal has been affected by the new provision and in the absence of an express enactment this amendment cannot apply to proceedings pending at the date when the new amendment came into force. It is true that the appeal was filed after the Act came into force, but that circumstance is immaterial--for the date to be looked into for this purpose is the date of the original proceeding which eventually culminated in the appeal." This decision was approved by this Court both in *Hossein Kasam Dada* and *Garikapatti Veeraya*."

19. In the light of the aforesaid decisions, Section 49 of FEMA and the surrounding factors, it is apparent that Section 49 did not seek to withdraw or take away the vested right to appeal in cases where proceedings were initiated prior to repeal of FERA on 1st June, 2000. FEMA in Section 49(1) and (2) only had the effect of substitution of the Appellate Board under FERA to Appellate Tribunal under FEMA. It did not take away the vested rights to appeal or impose more onerous and stringent conditions for filing of appeals. Imposing stringent or onerous conditions has the effect of taking away vested right for which there must be an express stipulation or implied intendment, which should be apparent and clear from the enactment and the surrounding circumstances leading to the amendment/repeal. It cannot be said that the FEMA in any manner by incorporating Section 49, which specifically makes reference to Section 6 of the General Clauses Act, 1897 wanted to do away and take away the vested right to appeal or impose more stringent or harsher conditions on the right to appeal. The said reasoning will equally apply to adjudicating orders, which are passed pursuant to the sunset clause in Sub-section 3 of Section 49. The effect of the sunset clause in Sub-section 3 read with Section 6 to Section 49 is to make the provisions of General Clauses Act applicable to the repealed enactment i.e. FERA. However, in such cases proceedings should have commenced within the limitation period specified in Sub-section 3, i.e., two years and not after two years. All proceedings which are initiated under Sub-section 3 of Section 49 read with Section 6 of the General Clauses Act, 1897 the provisions of FERA will continue to apply except with one change that the Appellate Forum, Appellate Board

stands substituted with Appellate Tribunal. Change of the Forum does not affect or take away vested right to appeal and does not carries with it stringent or more onerous conditions imposed for filing an Appeal under the FEMA Rules. Reference to Section 6 of the General Clauses Act, 1897 in Sub-section 6 of Section 49 of FEMA is against the plea raised by the respondent-Enforcement Directorate that by implied intendment the provisions of FERA and the 1974 Rules framed thereunder, stand substituted by more onerous stipulation of higher Court fees as per the Rules under FEMA.

20. Sub-section 6 to Section 49 of FEMA makes specific reference to Sub-sections 2, 4 and 5 while referring to the provisions of Section 6 of the General Clauses Act but this is only by way of clarification or abundant caution. Sub-sections 2, 4 and 5 of Section 49 do not in any way effect the operation of Section 6 of the General Clauses Act, 1897 except to the extent as mentioned in Sub-section 3, i.e., limitation period of two years. Reference to Sub-section 2 in any way refers to Sub-section 1 also. Sub-section 2 to Section 49 of FEMA deals with rights of Chairman and Member of erstwhile Appellate Board. In this manner, Sub-section 6 of Section 49 of FEMA seeks to protect right to appeal inspite of dissolution of the Appellate Board and provides for rights to appeal before the Appellate Tribunal under FEMA.

21. Section 24 of the General Clauses Act, 1897 reads as under:

24. Continuation of orders, etc. issued under enactments repealed re-enacted Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form, or bye-law made or issued under the provisions so re-enacted and when any Central Act or Regulation which by a notification u/s 5 or 5-A of the Scheduled Districts Act, 1874 (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

22. Section 24 of the General Clauses Act, 1897 deals with subordinate legislation, etc. passed under the repealed Act upon re-enactment of a new statute like Section 6 of the same Act which deals with effect of repeal of a Central Act or regulation. It preserves and instills continuity to notifications, orders, schemes, rules and bye-laws made or issued under the repealed Act unless they are inconsistent with the provisions of the re-enacted statute. Section 24 of the General Clauses Act, 1897 consists of three parts. In the present case we are not concerned with the last part. The first part stipulates

that subordinate legislation mentioned therein consequent upon repeal of an Act or Regulation with re-enactment of a new Act shall continue to remain in force, if they are not inconsistent with the provisions of the re-enacted Act. Thus the subordinate legislation in the present case, the 1974 Rules framed under FERA will continue to remain in force and in operation as long as they are not inconsistent with the provisions of the new enactment, FEMA. The second part of the Section goes further and stipulates that when conditions of first part as satisfied, the subordinate legislation under the repealed Act shall be deemed to have been made or issued under the new Act unless the subordinate legislation is superseded by new subordinate legislation under the new Act. The subordinate legislation, therefore, remains in force and is deemed to be made or issued under the new legislation till new subordinate legislation is enforced. It provides continuity and ensures that the time gap in enforcement of the new enactment and framing of subordinate legislation therein does not cause confusion and inconvenience. Referring to Section 24 of the General Clauses Act, 1897 in the Chief Inspector of Mines and Anr. v. Lala Karam Chand Thapar (*supra*) it was observed

20. The true position appears to be that the rules and regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act. They continue to be rules subordinate to the Act, and though for certain purposes, including the purpose of construction, they are to be treated as if contained in the Act, their true nature as subordinate rule is not lost. Therefore, with regard to the effect of a repeal of the Act, they continue to be subject to the operation of Section 24 of the General Clauses Act.

23. There is no inconsistency between 1974 Rules under FERA and the repealed enactment i.e. FEMA or the 2000 Rules framed thereunder on the question of Court fees payable. An appeal against an adjudication order passed under FERA is filed u/s 52 and Court Fees is payable on the said appeal as per the 1974 Rules under FERA. Section 52 of FERA applies and is not a dead letter in relation to appeals against adjudication order under FERA. FEMA in view of Section 49 read with Section 6 of the General Clauses Act, 1897 substitutes the Appellate Tribunal instead of the Appellate Board as the forum of appeal u/s 52 of FERA. The appeal in view of Section 6 of the General Clauses Act, 1897 and Section 49 of FEMA is filed u/s 52 of FERA but is heard by a different appellate forum i.e. Appellate Tribunal instead of Appellate Board. Appeals against the adjudication orders passed under FERA are not filed u/s 19 of FEMA. Appeals u/s 19 of FEMA are filed against orders under FEMA including first appeals decided by the Special Directors. The 2000 Rules framed under FERA fix and prescribe Court Fees payable on appeals filed u/s 19 of FEMA and not appeals filed before the Appellate Tribunal u/s 52 of FERA read with Section 49 of FEMA. Rule 10 of 2000 Rules under FEMA by express stipulation applies to appeals filed u/s 19 of FEMA. The new Rule does not apply to appeals filed u/s 52 of FERA. The 1974 Rules framed under FERA are applicable to all appeals, even after repeal and enactment of FEMA, when an appeal is filed against an adjudication order passed

under FERA. The court fee provisions of 2000 Rules under FEMA do not apply to appeals u/s 52 of the FERA filed against adjudication orders passed under FERA. The court fee provisions of 2000 Rules under FEMA will apply to appeals filed u/s 19 of FEMA and not to appeals filed u/s 52 FERA. There is therefore no inconsistency between Rule 6 of the 1974 Rules under FERA and Rule 10 of the 2000 Rules under FEMA. Both operate independently and separately and to different category or types of appeals. Rule 6 of the 1974 Rules under FERA applies to appeals against order under FERA and Rule 10 applies to appeals against an order under FEMA. Section 24 of the General Clauses Act, 1897 therefore protects operation of Rule 6 of the 1974 Rules and the Court Fees prescribed therein. 24. Learned Counsel for the petitioners had also relied on *Lakshmi Ammal Vs. K.M. Madhavakrishnan and Others*, wherein it has been observed:

2. It is unfortunate that long years have been spent by the courts below on a combat between two parties on the question of court fee leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. Secondly, the court fee, if it seriously restricts the rights of a person to seek his remedies in courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable, of course, the benefit must go to him who says that the lesser court fee alone be paid.

25. Learned Counsel for the petitioners also drew my attention to observations in *Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others*, that:

11. ...Let it be recalled at this stage that if the Court Fees Act is a taxing statute its provisions have to be construed strictly in favour of the subject litigant (*vide State of Maharashtra v. Mishri Lal Tarachand Lodha*). In a taxing statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability [*vide Joint Commercial Tax Officer, Harbour Div. II, Madras v. Young Men's Indian Association (Regd.), Madras*]. If it is a fee, the enormity of the exaction will be more difficult to sustain. While we do not pronounce, we indicate the implication of the High Court's untenable view.

15. When dealing with a question of court fee, the perspective should be informed by the spirit of the magna carta and of equal access to justice which suggests that a heavy price tag on relief in Court should be regarded as unpalatable.

26. These decisions are not strictly applicable as they relate to interpretation of a statute imposing court fee, a taxing statute. The legal question in the present case does not relate to interpretation of an enactment imposing court fee but effect of re-enactment of a statute, change of appellate forum, Section 49 of FEMA read with Section 6 of the General Clauses Act, 1897. However the general

observations made in *Lakshmi Ammal* (supra) are relevant. Learned Counsel for the petitioners had also submitted that some appellants have filed 100-500 appeals as each transaction has been made subject matter of a separate order. They wanted to rely upon information obtained under the Right to Information Act, 2005 in support of the contention that substantial amount has been collected on account of Court fee, though expenditure incurred on the Appellate Tribunal is minimal. These contentions are not being examined for want of pleadings and as validity of Rules framed under FEMA are not under challenge.

Accordingly, the writ petitions are allowed. Petitioners will be liable to pay Court fees on the appeals filed by them as per the provisions of FERA read with the Adjudication Proceedings and Appeal Rules, 1974. No costs.