
(2009) 08 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6980 of 2008

S.K. Mittal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 8(1), 9(1)

Citation : (2010) 97 SCL 158

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Anish Dhingra, for the Appellant; Sanjay Katyal, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—This is a petition seeking quashing of order dated 12-8-2008 passed by learned Appellate Tribunal for Foreign Exchange in Appeal Nos. 335 to 337/2003 and directing the Tribunal to hear the appeal on merit without insisting upon the pre-deposit of the penalty amount of Rs. 2 lakhs.

2. By order dated 12-8-2008 in Appeal Nos. 335 to 337/2003, the application of the appellant, Shri S.K. Mittal, was rejected and the petitioner was directed to deposit the penalty amount within seven days from the date of the receipt of the order dated 12-8-2008.

3. Learned Counsel for the petitioner has relied on a decision in titled S.K Mittal v. ATFFE [WPC No. 8355 of 2008, dated 5-5-2009] filed by the petitioner against the penalty amount of Rs. 6,41,18,065 imposed on him for contravention of Sections 8(1), 9(1)(a) and 9(1)(f)(i) of the Foreign Exchange Regulation Act, 1973. By order dated 5-5-2009, it was noticed that the petitioner has filed 178 appeals before the Appellate Tribunal for Foreign Exchange challenging the penalty orders.

4. This Court in the said writ petition considering the fact that the orders passed directing the petitioner to deposit the penalty amount and dismissing his appeal

for dispensation, had considered the assets of the wife of the petitioner and the lack of the assets of the petitioners were not considered, and considering the facts that the petitioner had already deposited Rs. 5 lakhs with the Adjudicating Officer and on petitioner showing his willingness to deposit a further amount of Rs. 12,50,000 in two equal instalments, first instalment of Rs. 2.5 lakhs payable by 30-5-2009 and the balance amount of Rs. 5 lakhs each payable on or before 31-7-2009 and 30-9-2009, granted dispensation with the deposit of the penalty amount. While granting dispensation with the deposit of penalty amount, it was held categorically that this order will apply equally to and shall govern all 178 appeals which are pending before the Appellate Tribunal by the above noted petitioner.

5. Learned Counsel for the petitioner on instructions states that the present petition also arises out of one of the appeals bearing No. 337/2003 where the application of the petitioner for dispensation with the pre-deposit was dismissed and the petitioner was directed to deposit the penalty amount. Since by order dated 5-5-2009, it has been held that the decision to dispense with pre-deposit on petitioner depositing Rs. 12.50 lakhs shall also be applicable to the appeal from which the present petition has arisen, the present petition can be disposed of in terms of the said order.

6. Learned Counsel for the petitioner states that first instalment of Rs. 3.5 lakhs was deposited on 28-5-2009 and Rs. 5 lakhs was deposited on 30-7-2009. Learned Counsel for the petitioner states that the balance amount of Rs. 4 lakhs shall be deposited by the petitioner before 30-9-2009.

7. Consequently, the writ petition is allowed and all the pending applications are disposed of. The order dated 12-8-2008 dismissing the application of the petitioner for dispensation with the pre-deposit and directing him to deposit the penalty amount is set aside. The Appellate Tribunal shall decide the appeal without insisting for pre-deposit of the entire penalty amount in terms of the order passed in WP(C) No. 8355 of 2008, dated 5-5-2009 and the order passed in the present petition. Parties are left to bear their own costs.