

(1995) 11 MAD CK 0083

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 56 of 1983

T.K. Govindaraju Pillai

APPELLANT

Vs

Foreign Exchange Appellate Board

RESPONDENT

Date of Decision : 02-11-1995

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 23, 5, 52, 54, 9

Citation : (1996) 81 ELT 478

Hon'ble Judges : Kanakaraj, J;Janarthanam, J

Bench : Division Bench

Advocate : Shri P.L. Narayanan, for the Appellant; Shri C.S. Sundaram, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Kanakraj, J.—This is an appeal u/s 54 of the Foreign Exchange Regulation Act, 1973 (hereinafter called "the Act") against the order of the Foreign Exchange Appellate Board in Appeal No. 365 of 1978. In and by the said order, the Appellate Court rejected an appeal filed by the appellant herein stating that the appeal was time-barred. A few facts may be stated for understanding the correctness of the order and the scope of the arguments of learned counsel for appellants.

2. The action was initiated against the appellant u/s 5(1)(aa) and 5(1)(c) of the Act as it stood prior to the amendment introduced on 19-9-1973. The corresponding provisions are Sections 9(1)(b) and 9(1)(d) of the Amended Act and it is stated that the said provisions are in pari materia. The show cause notice under the unamended Act was issued on 22-1-1993 prior to the amendment. Under the unamended Act an aggrieved person has a right of filing an appeal against the original order even though filed after a period of 45 days, provided he can satisfy the Appellate Board that he had sufficient cause to condone the delay. The period of delay that could be condoned was unlimited prior to the amendment on 19-9-1973. After 19-9-1973 the period of delay that could be condoned by the Appellate Board is restricted to another 45 days.

3. In the particular case, the order-in-original, was passed on 9-2-1976 and the appeal was filed with a delay of about 742 days. Consequently, in and by the impugned order the Appellate Board has taken the view that the provisions of amended Section 52(2) alone will apply and therefore, the Appellate Board is prevented from excusing any delay beyond a delay of 45 days. As we have already noticed under the unamended provision namely, Section 23(E)(2) of the Act, any amount of delay could be excused provided sufficient cause is shown. The argument of learned counsel for the appellant is that the appellant has a vested right to invoke the provisions of old Act namely, Section 23(E)(2) of the Act which enables him to file an application for condonation of the delay without any restriction as imposed by the present Section 52(2) of the Act. The question need not detain us any further because there is a direct judgment of this Court reported in *State of Tamil Nadu v. Hindustan Motors Ltd.* 95 STC 533 which arose under the Tamil Nadu General Sales Tax Act under identical circumstances. The very question of vested right was pleaded before the Division Bench of this Court and this Court has rejected the same on the ground that the law relating to condonation of delay in filing the application or appeal relates only to procedure and therefore, the law as on the date when the order was passed, alone should be taken into consideration and not the law as prevailed when the action was initiated by the issue of a show cause notice. We are in respectful agreement with the judgment of the Division Bench above quoted and consequently the order of the Appellate Board has to be upheld and is accordingly upheld. This appeal, therefore, fails and is dismissed. There will however, be no order as to costs.