(2014) 03 BOM CK 0019

In the Bombay High Court

Case No : Fera Appeal No. 6 of 2012

Tulsi Ramkrishnani APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 54, 6(4), 6(5)

Citation : (2014) 127 SCL 136

Hon'ble Judges : S.J. Vazifdar, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : B. Sheshgopalan, Advocate for the Appellant; R.V. Desai and M.S. Bhardwaj, Advocate for the Respondent

Judgement

1. This is an appeal under section 54 of the Foreign Exchange Regulation Act, 1973, against the order dated 23rd April, 2010, upholding an order dated 17th June, 2008, passed by the Appellate Tribunal for Foreign Exchange which, in turn, confirmed an order dated 3rd November, 2004, passed by the respondents. For the purpose of this judgment, it is sufficient to admit the appeal on the following substantial question of law.

"Whether in the facts and circumstances of the case, the Tribunal is justified in concluding that as per Para 3 of the Memorandum FLM the Appellant is required to insist the list of authorized persons when the persons who received the foreign exchange submitted the sale memo and draft/pay order equivalent to the value of the foreign currency as per the conditions imposed by the Memorandum FLM?"

The appeal is heard finally.

2. The matter is covered in favour of the appellant in view of the judgment of the Supreme Court in the case of Tulip Star Hotels Ltd. Vs. Special Director of Enforcement, . The basis on which the authorities proceeded against the appellant is clear from the memorandum dated 29th April, 2002, issued by the Special Director. It was alleged that a full fledged money changer (FFMC) M/s.

Hotel Zam Zam had purchased foreign currency from M/s. Namaskar Forex Services Pvt. Ltd. through unauthorized persons deputed by M/s. Hotel Zam Zam for the said purpose. M/s. Namaskar Forex Services Pvt. Ltd. is also an FFMC. There is no dispute that the transaction was between M/s. Namaskar Forex Services Pvt. Ltd. and M/s. Hotel Zam Zam. The appellant is a director of M/s. Namaskar Forex Services Pvt. Ltd. The only allegation is that the persons deputed by M/s. Hotel Zam Zam were not authorized persons. The authorities contended that the purchase by M/s. Hotel Zam Zam from M/s. Namaskar Forex Services Pvt. Ltd. was in an unauthorized manner to persons who were not authorized dealers in foreign exchange in India without the previous general or special permission of the Reserve Bank of India.

3. The important point to note is that the transaction was between to FFMCs. The mere fact that they had deputed their personnel would not make any difference in view of the judgment of the Supreme Court. It is nobody''s case that they were not authorized by their respective employers. The Supreme Court, inter-alia, held:--

"16. When we extend the application of the said stipulation to the case of present nature, it can only be said that if such transaction had taken place as between the Appellants and the purchaser M/s. Hotel Zam Zam, it should have been carried on only through their respective authorized representatives. The statement of Mr. Peter Kerkar, the Appellant in SLP (C) No. 7657 of 2011, disclose that on each occasion the transaction was negotiated by the Branch Manager of the Appellant with one Ms. Pinky of M/s. Hotel Zam Zam. It is not the case of the Respondent that neither of these two persons who indulged in the transaction of money changing business were not the authorized officials of their respective establishments. If the said factum relating to the business transactions, which had taken place as between the Appellants and M/s. Hotel Zam Zam is not in controversy, we fail to see how a violation of paragraph 3 can be alleged as against the Appellants.

... ...

18. In our considered opinion that in the peculiar facts of this case and having regard to the nature of transactions which had taken place as between the Appellants and M/s. Hotel Zam Zam in the manner in which it has been narrated in the impugned order of the Original Authority as noted by the Tribunal, as well as the Division Bench of the High Court, we are convinced that there was no scope to allege a violation of paragraph 3 of the FLM or for that matter Sections 6(4) and 6(5) of FERA, 1973. Based on the interpretation of Section 6(4), 6(5) of FERA, 1973, and paragraphs 3 & 9 of the FLM, we have held that the Original Authority, the Appellate Tribunal as well as the Division Bench of the High Court failed to appreciate the issue in the proper perspective while holding the appellant guilty of the violation alleged. Therefore, none of the judgments relied upon by the respondents for the proposition that concurrent findings of facts should not be interfered with does not apply to the facts of this case."

Paragraph 9 of the FLM quoted by the Supreme Court is identical to paragraph 8 of the FLM in the present case.

In view of the judgment of the Supreme Court, the appeal is allowed. There shall, however, be no order as to costs. The appellant shall be entitled to refund of the penalty paid, if any.

