(2002) 07 AHC CK 0100

In the Allahabad High Court

Case No : C.M.W.P. No. 24414 of 2002

Udai Prakash Bhartiya — APPELLANT

Vs

Deputy Director, Enforcement Directorate and Another — RESPONDENT

Date of Decision : 02-07-2002

Acts Referred:

Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 — Rule 4, 4(1), 4(3)
Foreign Exchange Management Act, 1999 — Section 13, 4

Citation : (2002) 3 AWC 2391

Hon'ble Judges : Sudhir Narain, J;M.C. Jain, J

Bench : Division Bench

Advocate : Rajiv Gupta and Dilip Kumar, for the Appellant; Vivek Mathur and Ajit Kumar Singh and A.S.C. (Government of India), for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain and M.C, Jain, JJ.—The petitioner has challenged the show cause notice dated 12th of April, 2002 Issued by the Deputy Director. Enforcement Directorate, Government of India, Kolkata, respondent No. 1 and has prayed for quashing further proceedings which may be initiated on the basis of the said notice.

2. We have heard Sri Dilip Kumar, learned counsel for the petitioner and Sri Vivek Mathur, Additional Standing Counsel appearing for the respondents.

3. The petitioner is a Group ''B'' Officer in the Department of Customs and Central Excise, Ministry of Finance, Government of India and is presently posted as Superintendent Central Excise at Headquarter, Allahabad. On 23rd October, 2000. C.B.I., Lucknow, had lodged a first information report showing the recovery of foreign exchange and illegal Indian currency from the possession of the petitioner and other custom staff members on duty. Thereafter, a show cause notice dated 12th April, 2002, was issued to the writ petitioner, which was allegedly received by him on 6th June, 2002. The said notice required the

petitioner to show cause in writing within thirty days of the receipt thereof as to why the adjudication proceedings as contemplated u/s 13 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as "the Act") be not taken against him for contravention of the provisions of Section 4 of the Act. The contention of the learned counsel for the petitioner is that this show cause notice is not in accordance with the provisions of Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (for short "the Rules"). Section 13 of the Act contemplates that the person, who contravenes any provision of the Act or contravenes any rule, regulation, notification, direction, etc. Issued under the Act shall be punished and penalty can be imposed on such person. The section itself does not provide the procedure for imposing penalty. The procedure is provided for holding enquiry under Rule 4 of the Rules. Rule 4, so far as it is relevant for the purposes of controversy involved here, is being quoted below :

"4. Holding of inquiry.--(1) For the purpose of adjudicating u/s 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the adjudicating authority shall issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under Sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him.

(3) After considering the cause, if any, shown by such person, the adjudicating authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of the person either personally or through his legal practitioner or a chartered accountant duly authorised by him.

(4) On the date fixed, the adjudicating authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place."

4. The contention of the learned counsel for the petitioner is that under Sub-rule (1) of Rule 4, the adjudicating authority should have Issued a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him. Under Sub-rule (3), if a reply/explanation is submitted by such person and after considering the cause, if any, shown by such person, if the adjudicating authority is of the opinion that inquiry should be held, he shall issue a notice fixing the date for the appearance of the person either personally or through his legal practitioner or a chartered accountant duly

authorised by him. Learned counsel for the petitioner submitted that the first notice as envisaged under Sub-rule (1) and thereafter second notice under Sub-rule (3) ought to have been given and in any case, a composite notice is not contemplated under the provisions of the Act or Rules.

5. We have perused the impugned notice. Clause (4) of the notice reads as under :

"4. You are, therefore, required to show cause in writing within 30 days from the date of receipt of this notice as to why adjudication proceedings as contemplated u/s 13 of the Foreign Exchange Management Act, 1999, should not be held against you for contravention of the provisions of Section 4 of Foreign Exchange Management Act, 1999."

6. This paragraph clearly indicates that it is a notice under Sub-rule (1) and the petitioner can submit his reply within thirty days from the date of receipt of the notice. The petitioner was required to appear either in person or through legal practitioner or a chartered accountant duly authorised by him. The notice is only indicating the fact that the petitioner can effectively submit his explanation and documents in support of his version.

7. The next contention of the petitioner is that in paragraph 2 of the notice, it has been observed that considering the cause shown by the complainant in his complaint, the authority concerned is satisfied that there is a prima facie contravention of Section 4 of Foreign Exchange Management Act, 1999, but this could be recorded only after the petitioner was given opportunity of hearing. A perusal of paragraph 2 of the notice only indicates that on the facts as disclosed in the complaint, a prima facie case was made out for giving a notice to the petitioner. If the complaint made against the petitioner itself does not prima facie disclose any offence against the petitioner, the petitioner could not have been given notice at all. The observation in paragraph 2 of the said notice does not record any finding regarding any violation of provision of Section 4 of the Act by the petitioner. The notice was issued only after the satisfaction that the contents of the complaint make out a case to issue a notice to the petitioner.

8. In view of the above, we do not find any merit in the petition. The petition is dismissed. The writ petitioner can submit his objection to the notice as stated therein.