(2007) 09 BOM CK 0157

In the Bombay High Court

Case No : Fera Appeal No. 53 of 2007

Union of India (UOI) APPELLANT

Vs

Ashok Arya RESPONDENT

Date of Decision : 29-09-2007

Acts Referred:

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

Citation : (2008) 86 SCL 205

Hon'ble Judges : J.P. Devadhar, J;F.I. Rebello, J

Bench : Division Bench

Advocate : Y.S. Bhate, for the Appellant;

Final Decision : Dismissed

Judgement

1. The question raised in this appeal is, when the respondent had confessed to have violated the provisions of Foreign Exchange Regulation Act, 1973 (''FERA'' for short) whether the Tribunal was justified in setting aside the penalty levied by the Adjudication Officer?

2. In this case the premises of the respondent who is the proprietor of M/s. Arabian Maritime Agency was searched on 20-2-1981 wherein incriminating documents were seized. In his statement the respondent had explained the various entries made on the documents which according to FERA authorities constituted violation of FERA.

3. Accordingly, show-cause notices were issued and thereafter adjudication order was passed holding the respondent to be guilty of contravening the provisions of Section 9(1)(a) of FERA and penalty totalling to Rs. 13,50,000 was levied inter alia on the ground that the respondent had made payments to residents outside India without any general or special permission from RBI and that no steps have been taken to receive the said amount in India.

4. On appeal filed by the respondent, the Appellate Tribunal for Foreign Exchange set aside the adjudication order. Hence this appeal.

5. The Tribunal in its order recorded that the respondent was engaged in the indenting business as agent for import of brass and copper scrap and in such business the method of accounting followed by the respondent is the normal method of accounting and the said accounts are regularly offered for inspection to the RBI. Relying upon a decision of the Madras High Court in the case of New India Meritime Agencies (P.) Ltd. v. Director [1987] 2 ECC 128, the Tribunal held that the method followed by the respondent is the universally accepted method in conducting indenting business of cargo wherein the written transactions are adjusted when debit/credit balance is taken.

6. The Tribunal has recorded a finding of fact that neither in his statement the respondent has confessed to have violated the provisions of FERA nor on the basis of the seized documents can it be inferred that the respondent had made any payment to a foreigner or received any amount from a foreigner in contravention of FERA. The Tribunal has held that the respondent has merely explained the entries made on the seized documents and that the entries merely depicted the running account maintained by the respondent as agent of the foreigners relating to collection and expenditure in the form of credit and debit entries and from the said entries it cannot be inferred that the respondent had advanced amounts to foreigners in contravention of FERA.

7. Nothing is brought to our notice that the system of accounting followed by the respondent is not the universally accepted system in such business and it is not disputed that such system of accounting is regularly inspected by RBI. Moreover, apart from the entries in the seized documents there is nothing on record to show that the respondent had advanced or received amounts from foreigners in contravention of FERA.

8. In these circumstances, the finding recorded by the Tribunal being finding of fact, in our opinion, no question of law arises from the order of the Tribunal.

Accordingly, we do not find any merit in the appeal and the same is hereby dismissed.