

(1980) 03 CAL CK 0020

In the Calcutta High Court

Case No : Foreign Exchange Appeal No. 1 of 1975

Union of India (UOI)

APPELLANT

Vs

Linotype and Machinery Co. Ltd.

RESPONDENT

Date of Decision : 10-03-1980

Acts Referred:

Constitution of India, 1950 — Article 133(1)

Foreign Exchange Regulation Act, 1947 — Section 9

Citation : AIR 1981 Cal 103

Hon'ble Judges : A.N. Sen, C.J.;S.C. Ghose, J

Bench : Division Bench

Advocate : Banerjee, for the Appellant;

Final Decision : Dismissed

Judgement

A.N. Sen, C.J.—This is an application for grant of certificate under Article 133(1) of the Constitution to enable the appellant to prefer an appeal to the Supreme Court against the judgment passed by the Division Bench on the lift of Apr., 1976 and 12th April, 1976.

2. The facts of the case and the arguments which were advanced before the Court have been fully set out in the judgment of the Division Bench.

3. The Director of Enforcement held that the respondent company was guilty of contravening the provisions of Section 4(1) of the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the said Act) read with Central Government Notification No. FI (67)-EC/57, dated 25th Sep., 1956 and imposed on the respondent company a penalty of Rs. 50,000/- and the Director by his order further directed the company to repatriate the foreign exchange which formed the subject-matter of the proceedings before the Director through authorised channels. Against the order of Director of Enforcement, the respondent company preferred an appeal to the Appellate Board. The Appellate Board for reasons recorded in its order dated 25th Nov., 1977 set aside the order of the Director of

Enforcement and further ordered and directed refund of the penalty amount, if already realised. It may be noted that the Appellate Board in its order held in paras 8, 9 and 10 as follows:

"8. The further question, however, arises as to whether in fact there has been any lending of money or a failure to offer foreign exchange for sale. These charges necessarily postulate that the branch is the owner of the foreign exchange or holds it. In this connection, it is necessary to consider the meaning of the term "lending". As observed by the Supreme Court in *Ram Rattan Gupta Vs. Director of Enforcement, Foreign Exchange Regulation and Another*, . It means in the ordinary parlance to deliver to another a thing for use on condition that the thing lent shall be returned with or without compensation for the use made of it by the person to whom it was lent. The subject of lending may also be money (at p. 496)."

9. This necessarily postulates that the lender must have been entitled to the money or to dispose of it before he can lend it. While a branch can be regarded for the purposes of exchange control as an entity distinct from its head office it can still lend the money only if it has control of it or is in a position to acquire the control by its own volition.

10. In the present case, the system of allowing discounts was given up for reasons which the U. K. Company considered to be good, namely, the practice of the customs authorities. Once they ceased to allow the discounts, the branch could not be said to become entitled to the money represented by the discount so as to allow the head office the use of the discounts so as to make it a loan neither could they in such a circumstance be said to own or hold the foreign exchange represented by the discounts so as to be in a position to offer it for sale."

4. In other words, the Appellate Board found that in the facts and circumstances of this case, there had really been no "lending" and in consequence thereof there was no question of any violation of the provisions of the Act complained of.

5. As against the said order and judgment of the Appellate Board, Union of India preferred an appeal u/s 54 of the Foreign Exchange Regulation Act, 1973 (being Foreign Exchange Appeal No. 1 of 1975).

6. A preliminary objection was taken to the maintainability of the appeal on the ground that the instant appeal involved no question of law, as the findings of the Appellate Board were really findings on questions of fact and not on any question of law.

7. It appears from the judgment of the Division Bench that the Division Bench did not accept this contention and the Division Bench was of the opinion that whether or not there had been any lending in the instant case would depend on the construction of correspondence between the parties and other documents and records. The Division Bench, however, on a construction of the said

document was of the opinion that in the facts and circumstances of this case the view expressed by the Appellate Board that no money was lent by the Indian branch of the English Company was correct. So far as this question is concerned, in our opinion, it cannot be said that any substantial question of law at all arises.

8. The Division Bench, however, proceeded to hold that though in the facts and circumstances of this case it cannot be said that there was any lending, Section 9 of the Act might still be attracted in view of the deposits in a separate account to the credit of the Indian Branch. The Division Bench proceeded to hold that whether the provisions of Section 9 would, in the facts and circumstances of this case, apply or not, would depend, in view of the provisions contained in Section 9 itself, on the terms of the notification. The Division Bench on a construction of the notification came to the conclusion that in view of the provisions contained in the third proviso to the said notification Section 9 of the Act, in the instant case, would not be applicable as the respondent company did not have its domicile in India. While considering the notification for construing the same for a proper appreciation of the meaning and import of the words domicile in India the Division Bench referred to Cheshire's "Private International Law", Ninth Edition; Dicey's "The Conflict of Law", Ninth Edition and Graveson's "Conflict of Law", Seventh Edition. The Division Bench was of the opinion that as the respondent company was incorporated in England and had only a Branch Office in India, the respondent company cannot be said to be a company domiciled in India. In that view of the matter, the Division Bench held that Section 9, in view of the terms of the notification, could not apply to the instant case. The Division Bench had, therefore, dismissed the appeal.

9. Mr. Banerjee, learned Counsel appearing on behalf of the appellant has submitted before us that the view expressed by the Division Bench on the construction of the notification in the facts and circumstances of this case is not right. Mr. Banerjee has argued that this notification has not come up for consideration before the Supreme Court in any other case. It is the argument of Mr. Banerjee that the construction of the notification in the background of the facts and circumstances of this case raises a substantial question of law of general importance to be determined by the Supreme Court.

10. In the facts and circumstances of this case, we are unable to come to the conclusion that any substantial question of law of general importance which requires to be determined by the Supreme Court arises in the instant case. As we have earlier noticed there was in the first instance a finding of the Appellate Board that in the facts and circumstances of this case there had been; no loan, a finding with which the Division Bench agreed. We have earlier noticed that on a consideration of the notification, the Division Bench had come to the conclusion that Section 9 of the Act would also not be attracted. The question of construction of the notification may give rise to a question, of law. Principles of construction of a document are well settled and have been laid down in a number of cases. Even if, the principles have not been correctly applied in this particular

case, it cannot be said, in our opinion, that any substantial question of law of general importance which requires to be determined by the Supreme Court arises. Application of principles of law well settled does not give rise to any substantial question of law. In this proceeding this Court is not really concerned with the correctness or otherwise of the decision and/or with the merits of the same.

11. We, therefore, dismiss this application. We, however, make no order as to costs.

Ghose, J.

12. I agree.