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(2009) 12 DEL CK 0268

In the Delhi High Court

Case No : Writ Petition (C) 13936 of 2009

V. Bhaskaran APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0268

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Sudhir Nandrajog, Gagan Gupta and K.V. Dhanapal, for the Appellant; Rajdipa Behura, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The petitioner, Mr. V. Bhaskaran, has impugned the order dated 26th October, 2009 passed by the Appellate Tribunal for Foreign Exchange dismissing his application for waiver/dispensation of the penalty amount of Rs. 17 lacs imposed by the adjudicating authority for violation of provisions of Foreign Exchange Regulation Act, 1973.

2. At the very outset, it may be stated that the petitioner has not pleaded financial stringency and has not filed any document to show his financial position. The argument raised by the petitioner is that the impugned adjudication order imposing penalty is prima facie and ex facie bad in law. It is submitted that the petitioner is a brother of one Mr. V.N. Sudhagaran proprietor of Super Duper T.V. and the only role assigned to the petitioner is that the petitioner was authorized to operate bank account of Mr. V.N. Sudhagaran. It is submitted that the petitioner did not operate the bank account of Mr. V.N. Sudhagaran.

3. Learned Counsel for the respondent-Enforcement Directorate in this connection has drawn my attention to paragraphs 141 and 142 of the adjudication order dated 14th May, 2009. The said paragraphs read as under:

141. The aforesaid submission adduced by Shri V.N. Sudhagaran @ Vive

Sudhagaran is substantiated by following documentary evidences despite the stand of Shri V. Bhaskaran that he was not at all involved in the activities of M/s Super Duper TV and that he had not placed any orders for the subject goods or paid any money for the same to Shri Ramachandran or any one else.

(a) Letter dated 11.2.1999 of Indian Bank, Abhiramapuram Branch, Chennai. Along with the said letter, the bank had forwarded copy of letter dated 12.12.1994 of Shri V.N. Sudhagaran, proprietor of M/s Super Duper TV addressed to the Bank by which the company had authorized Shri V. Bhaskaran also to operate bank account.

(b) As already discussed in the preceding paragraphs, certain documents were seized from the business premises of M/s J Jay TV Pvt. Ltd. on 21.9.1995. Out of those documents, page 24 in File marked "I" was letter dated 01.4.1995 addressed to Mr. K. Ramachandran duly signed by Shri V. Bhaskaran stating that the items mentioned therein are urgently required by them and that he (Bhaskaran) had already discussed with "Chinnamma" and as per her instructions the letter was being faxed to him (Ramachandran) to enable Ramachandran to bring the goods along with him when he reaches on Tuesday. During the course of the investigations, the notices admitted that "Chinnamma" is none other than Smt. Sasikala.

(c) Another document seized from the presmises of M/s J Jay TV Pvt. Ltd. on 21.9.1995 was invoice bearing No. TYE/1004/95 dated 05.4.1995 of M/s Tai Yeng Electroniks, Singapore "for Account and risk of M/s Super Duper TV, Chennai for Singapore 44040.00. The items mentioned in the said invoice exactly tallied with the items mentioned in letter dated 01.4.1995 of Shri Bhaskaran to Mr. Ramachandran, cited at (b) above.

(d) Bill of Entry No. 19882 dated 10.4.1995 received from the Customs department pertained to the import and clearance of the consignment containing the goods as per the above invoice after payment of customs duty of Rs. 7,67,403/-. The assessed value of the consignment was Rs. 10,08,467.67.

(e) As revealed from the import documents, the Bill of Entry (No. 19882 dated 10.4.1995) was filed with the Customs on 10.4.1995 and duty was paid on 17.4.1995 and consignments cleared. However, the notarized document showing the goods given as gift to Shri V.N. Sudhagaran was executed on 29.7.1996 i.e. after about 15 months from the date of arrival of the cargo in India and clearance of the same.

142. A careful analysis of the letter dated 1.4.1995 of Shri V. Bhaskaran and invoice No. 1004 dated 5.4.1995 revealed in unambiguous terms that it was Shri V. Bhaskran who on the instructions/in consultation with Smt. Sasikala had placed the order with Mr. K. Ramachandran of M/s Tai Yeng Electroniks, Singapore for supply of the said electronic goods i.e. Betacam S.P. Recorder and accessories and the said Ramachandran had sent the goods to M/s Super Duper TV vide invoice dated 5.4.1995. The consignment was duly cleared from the

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customs vide Bill of Entry No. 19882 dated 10.4.1995 on payment of the customs duty. It is quite strange that when the goods were cleared after payment of custom duty on 17.4.1995, the "gift deed" was created and signed by Shri S. Manickam of Singapore on 29th July, 1996 i.e. after the lapse of pretty long time of about 15 months. The Bill of Entry concerned with the import and the invoice did not mention anything about the import consignment as "gift". In fact, when the records of the case have been examined in its totality, it could be seen that the gift deed was created only after the Directorate commenced investigation in the matter. The letter dated 1.4.1995 of Shri V. Bhaskaran to Mr. K. Ramachandran containing the list of goods required by him and the fat that the same goods were covered in the invoice dated 5.4.1995, it can be concluded that the said letter is an order placed by Shri Bhaskaran for M/s Super Duper TV of which Shri Sudhagaran was the proprietor. The involvements of Shri Bhaskaran as well as Shri Sudhagaran in the subject import have been clearly proved from these self-explanatory documents. In the circumstances, it could be well concluded that the document was created for showing the import as "gift" which otherwise was a purchase of the electronic goods as per the invoice No. 1004 dated 5.4.1995 of M/s Tai Yeng Electroniks by paying the invoice price to wit. Singapore 44040.00 against the purchase order dated 01.4.1995 placed by Shri V. Bhaskaran.

4. It is, therefore, incorrect to state that the case against the petitioner is because he is a joint account holder. The adjudication order refers to other evidence and material against the petitioner. In view of the defence taken by the petitioner, he was confronted with the said evidence during the adjudication proceedings. In view of the aforesaid findings recorded in the adjudication order, I do not think the impugned order dated 26th October, 2009 dismissing the application for waiver of pre-deposit requires interference. It is clarified that the observations made in this order are for the disposal of the present writ petition and will not influence the Appellate Tribunal when the appeal of the petitioner is heard on merits.

The writ petition is dismissed.

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