

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Criminal Appeal No. 491/2007 & Crl.M.A.9585/2007

% Date of decision: 11.05.2009

M/S VEEKAY LEATHER INDUSTRY ...APPELLANT

Through: Mr.Shashank Deo Sudhi, Advocate

Versus

DIRECTOR OF ENFORCEMENT DIRECTORATE & ANR.

...RESPONDENTS

Through: Ms.Rajdipa Behura, Advocate

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

MOOL CHAND GARG, J. (ORAL)

1. This order shall dispose of the second appeal filed under Section 54 of the Foreign Exchange Regulation Act, 1973 by the appellant aggrieved from the order dated 20th June, 1980 passed by the Assistant Director, Enforcement Directorate, Agra, whereby a penalty was imposed upon the petitioner on account of not taking adequate steps to recover the money from a foreign buyer. The Assistant Director imposed a penalty of Rs. 90,000/- which was reduced to Rs.60,000/- by the first Appellate Authority, that is, the Appellant Tribunal for Foreign Exchange, New Delhi vide its order dated 4th June, 2007. This is the order which is the subject matter of the present appeal.

2. According to the appellant, this appeal raises the following questions of law:-

(i) What is the scope and ambit of the phrase '*reasonable steps*' as appearing under Section 18(3) of the FERA?

(ii) Whether the FERA Appellate Board committed an error in law in holding that steps taken by the appellant were not reasonable considering the fact that the appellant while remaining consistently in touch with the State Bank of India, Kanpur, Reserve Bank of India and Indian High Commission, London took steps on the advice rendered by them?

(iii) Whether the FERA Appellate Board committed an error in law in holding that no liquidation report was filed by the appellants when the fact remains that the report of the JKR Credit Management Bureau, London clearly stipulates that the buyer company was struck off the Registrar of Companies on 03.01.1989 and was dissolved by notice in London Gazzette on 24.01.1989?

3. Various grounds have been taken by the appellant before this Court in assailing the order of the Appellate Tribunal. It is submitted that since the name of the buyer company was struck off from the register of the Registrar of Companies on 3.1.1989 as per the notice in London Gazette on 24.01.1989 and which fact was reported to the appellant by an agency under the name and style of M/s JKR

Credit Management Bureau, London, which is the agency recommended by the Indian High Commission, London, the appellant was not at fault. Moreso, because the L/C opened by the buyer expired after the goods were consigned by Air and the documents for collection were routed through the State Bank of India, who on their part sent a bill to the Foreign Bank i.e. M/s Barclays Bank, London, but no payment was received by the State Bank of India despite writing various letters to the Foreign Bank for the reason that there was delay in sending the payment and also about the fate of the goods received by the foreign buyer.

4. I have heard the submissions from both the sides. All the grounds taken before me have been dealt with by the Appellate Authority in its order dated 4.6.2007 while deciding Appeal No. 669/1990. It would be appropriate to take note of the following paragraphs of the aforesaid judgment:-

4. As against it, Shri A.C. Singh vehemently argued against the contentions raised by the appellant stating that no documents relating to the liquidation of the foreign buyer company was filed by the appellant despite his assurances given to the Adjudicating Officer which is clear from the perusal of the impugned order. The appellant could not furnish the report of the official liquidator. Subsequently the RBI asked the appellant to obtain a confirmation from Indian High Commission at London in this regard that the foreign buyer was no more in business, this requirement the appellant did not comply. The authorized banker advised the appellant vide its letter dated 28.8.95 to approach RBI for extension of time but he failed to approach the RBI for extension of

time for realization of export proceeds. The appellant has not been able to keep the RBI informed of the development in his matter and did not take steps as were expected from a prudent businessmen.

5. It is also argued that the Barclays Bank, London addressed a letter to authorized dealer SBI, Kanpur indicating that the exporter had directly settled the matter of payment and export value had been accounted for to the exporter account. The relevant text of the letter dated 4.8.87 available at page 12 of the paper book as Annexure-B is quoted below:-

“Further to your letter dated 23.5.1987 we have now received a reply from the drawee’s bankers on this matter, who state : “we are unable to trace this item in our own records and therefore applied to Capital Shoes for information. We are advised that the goods relating to this collection were found to be faulty when received and it was arranged between the two parties that they would be sold at the best price. According to Capital Shoes this was done and the value accounted for to Veekay Leather Industries”.

From above discussion it becomes amply clear that the matter has been settled by the parties on their own and the impugned order was liable to be confirmed.

6. I have heard the rival submission of both the parties and gone through the record and the law on the point. The appellant has relied on the letter of JKR Credit Management Bureau dated 18.6.90 which is page 28 of the paper book to prove that the foreign buyer company went into liquidation for which the appellant could not

realize the outstanding dues. The letter hardly helps the appellant which does not speak of liquidation of the foreign buyer but mentions of non-traceability of the foreign buyer where last accounts of the foreign company were available for year 1985-86 which did not file accounts for the year 1987 and thereafter. The overseas company could not enter into trading which would have amounted to fraud.

7. Under Section 18(2) and 18(3) of the FERA Act, 1973, an exporter is under an obligation to make reasonable efforts to realize the outstanding export proceeds within the prescribed period and in prescribed manner failing which the presumption is raised against the exporter under Section 18(3) which is rebuttable. Section 18(2) provides as under:-

Section 18(2): Where any export of goods....has been made, no person shall, except with the permission of Reserve Bank, do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing-

(A) In a case falling under sub-clause (i) and sub-clause (ii) of clause (a) of sub-section (1)-

(a) The payment for the goods-

(i) is made otherwise than in the prescribed manner, or

(ii) is delayed beyond the period prescribed, under clause (a) of sub-section (1).....

Under Section 18(3) of the FERA Act a presumption arises where the exporter does not receive the payment for exports within the prescribed period where it shall be presumed that contravention of the provisions of sub-section (3) has taken place unless it is proved by the

appellant that he has taken all reasonable steps to recover the payments of the exports. Thus the presumption is rebuttable. But in the present case the appellants have not been able to prove any sincere efforts on their part for making repatriation of export proceeds to rebut this presumption.

8. The appellant did not file the report of liquidation despite directions of RBI nor got its confirmation from the High Commission of London. He failed to approach RBI for advice or extension of time. In view of the aforesaid discussion it becomes amply clear that the appellant failed to take reasonable steps to realize the outstanding export dues rather it settled the matter directly with the overseas buyer without permission of RBI which resulted in the loss of foreign exchange equivalent to Rs.67,200/- to the country. Having considered the facts, evidence and circumstances of the case, I come to the conclusion that the appellant has rightly been held guilty by the Adjudicating Officer. However, having considered the amount of outstanding dues against the company, I am of the view that the amount of penalty should be reduced from Rs.90,000/- to Rs.60,000/- to achieve the ends of justice.

9. For the reasons mentioned above, the appeal is partly allowed. The amount of penalty is reduced from Rs.90,000/- to Rs. 60,000/- where the appellant is directed to deposit the said amount of penalty within 15 days from the date of receipt of this order failing which the respondent may recover the same in accordance with the law.

5. A perusal of this order goes to show that all the submissions made on behalf of the appellant have been dealt with by the

Appellate Authority and it shows that,

- (i) No documents relating to liquidation of foreign buyer company has been filed by the appellant despite his assurance given to the Adjudicating Officer.
- (ii) When RBI asked the appellant to obtain the confirmation from Indian High Commission to the effect that foreign buyer was no more in business, this requirement was also not complied with by the appellant.
- (iii) Even the requirement of the authorized banker to approach RBI for extension of time was not comply with by the appellant so as to take time for realization of export proceeds.
- (iv) Regarding correspondence between SBI and Barclays Bank the Appellate Board has quoted the relevant text of the letter dated 4.8.1987 which is available at page 12 of the paper book as Annexure B (supra) also goes to show that the payments were made not by the foreign buyer because the goods were found to be faulty and further it also became clear that the matter was settled amicably by the appellant with the foreign buyer.

6. In these circumstances, the Appellate Authority has rightly

held the appellant guilty of the provisions contained under Sections 18(2) and 18(3) of the Foreign Exchange Regulation Act, 1973 and has rightly punished the appellant though by reducing the amount of penalty. No infirmity is found.

7. The appeal is accordingly dismissed. Application also stands dismissed.

May 11, 2009
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MOOL CHAND GARG, J.