

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 18082 of 2014 (I)

PETITIONER :

**A.V.FRANCIS @ FRANCIS ALUKKA, AGED 58 YEARS,
S/O LATE A.J. VARGHESE, ALUKKA HOUSE, KOTTALI P.O.,
KOZHIKODE DISTRICT, KERALA.**

BY ADV. SRI.P.A.AUGUSTIAN

RESPONDENTS :

- 1. ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT,
KANOOR CASTLE, MULLASSERY CANAL WEST ROAD,
COCHIN-682011.**
- 2. THE DIRECTOR OF ENFORCEMENT,
ENFORCEMENT DIRECTORATE, 6TH FLOOR,
LOK NAYAK BHAVAN KHAN MARKET, NEW DELHI-110 003.**
- 3. THE GOVERNOR, RESERVE BANK OF INDIA,
16TH FLOOR CENTRAL OFFICE BUILDING
SHAHID BHAGAT SINGH MARG MUMBAI-400 001.**

**R1 & R2 BY ADV. SRI.P.PARAMESWARAN NAIR, ASG OF INDIA
BY ADV. SRI.N.NAGARESH, ASG**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-02-2015 THE COURT ON 09-02-2015 DELIVERED THE
FOLLOWING:**

bp

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APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE ADJUDICATION ORDER (ORIGINAL) NO.AD(BG)/
65/KCZO/2014/1527 DATED 26.5.2014.**

EXHIBIT P2: TRUE COPY OF THE SCN DATED 21.12.09.

EXHIBIT P3: TRUE COPY OF THE REPLY TO SCN DATED 22.1.2010.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.18082 of 2014**  
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Dated this the 9th day of February, 2015

J U D G M E N T

This writ petition is filed against an order passed under the Foreign Exchange Management Act, 1999 (for short, "FEMA") by the Joint Director, Directorate of Enforcement. The above order is an appealable order before the appellate authority under Section 17 of FEMA.

2. The learned counsel appearing for the petitioner submits that petitioner has approached this court challenging the decision-making process of the adjudicatory authority and, therefore, this writ petition is maintainable. Thus, this court allowed the parties to address arguments on merits of the dispute.

3. Section 3 of FEMA prohibits any payment into a credit of a resident outside India except with general or special permission of the Reserve Bank of India.

4. In this matter, the penalty was imposed on the petitioner by adjudicatory authority on finding that the petitioner advanced Rs. 15 lakhs to a Non-resident Indian in relation to import of a car. The adjudicatory authority found that any payment to the credit of a Non-resident Indian is in violation of the provisions of FEMA and, therefore, a penalty of Rs.5 lakhs was imposed on the petitioner.

5. The learned counsel appearing for the petitioner submits that the restriction is only to make payment to a person residing outside India and that restriction would not apply to any person in India, even though he may have the status of a non-resident Indian.

6. Admittedly, the payment was made in India towards customs duty payable by the non-resident Indian while importing the car. The adjudicatory authority

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with reference to notification No.16/2000, dated 03/05/2000 held that only certain payments are allowed to be made in favour of a resident outside India during his stay in India and not one that was paid by the petitioner to the importer of the car, who is a Non-resident Indian.

7. The payment now effected is not one referable as permitted under notification No.16/2000, dated 03/05/2000. The notification No.FEMA/17/RB-2000, dated 03/05/2000 relied by the learned counsel for the petitioner has no application in this matter, as the same deals with the payment in Indian rupees to residents of Nepal and Bhutan. The adjudicatory authority passed the order after adverting to the relevant provisions. I do not find any infirmity with the order passed by the adjudicatory authority in regard to the decision making process. If the petitioner has any grievance against the decision of the adjudicatory authority, he is at liberty to approach the appellate authority. In the matter of

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delay in filing the appeal, the period involved before this court i.e., from 14/07/2014 to 09/02/15, shall be excluded for the purpose of limitation. Accordingly, this writ petition is dismissed. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ms