

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

C.M.A.No.1731 of 2003
and CMP.11012 of 2003

Union of India rep. by the
Director of Enforcement,
Enforcement Directorate,
6th floor, Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.

... Appellant

Vs

Shri Ananda Natarajan

... Respondent

Prayer:- Civil Miscellaneous Appeal is filed under Section 54 of the Foreign Exchange Regulation Act 1973 r/w Section 49 of the Foreign Exchange Management Act, against the order dated 4.4.2003 made in Revision Petition No.36 of 2001 by the Appellate Tribunal for Foreign Exchange.

For Appellant : Mr.M.Dhandapani
For Respondent : Mr.M.Abdul Nazeer

JUDGMENT

(Judgment was delivered by K.B.K.VASUKI, J.)

This Civil Miscellaneous Appeal is filed by Union of India, represented by Director of Enforcement against the order made in RP.No.36/2001 passed by the Appellate Tribunal for Foreign Exchange, New Delhi.

2.The respondent herein was issued with a show cause notice by way of memorandum dated 31.12.1999 by the Adjudicating Authority i.e., Assistant Director, Enforcement Directorate, Chennai for his being found in possession of foreign exchange valued at Rs.69,064/- without the previous, general or special permission of the Reserve Bank of India in contravention of the provisions of Section 8(1) of the Foreign Exchange Regulation Act 1973. The case was adjudicated upon by the Assistant Director in the office of the Deputy Director

of Enforcement vide order dated 12.5.2000, thereby acquitting the respondent herein of the above charges and ordering release of the seized foreign currencies from his brief case and residence to him. It is ordered so, on the ground that as the value of the seized foreign currencies is less than US \$ 2000, the charge does not attract section 14 and the Enforcement has also failed to prove unauthorised acquisition of foreign exchange by the respondent herein.

3.Questioning the legality, propriety and validity of the order of the Assistant Director, Revision Petition No.36/2001 was filed by the Director of Enforcement before the Appellate Tribunal for Foreign Exchange, New Delhi. The Tribunal after examining the records, found that the charge against the respondent herein was not proved by the prosecution and agreed with the findings of the Adjudicating Authority and accordingly dismissed the Revision. Hence, this Civil Miscellaneous Appeal before this court by the Director of Enforcement.

4.The substantial question of law that arises for consideration in this appeal is as follows:

"Whether the Hon'ble Appellate Tribunal for Foreign Exchange is right in dismissing the Revision Petition without appreciating the materials available on record and without any consideration of provisions of FERA, 1973 and application of Section 71(3) r/w Section 8(1) of FERA, 1973."

5.Heard the rival submissions made on both sides and perused the materials placed before this Court.

6.Before going into the merits of the case the legal objection to be first considered herein is against the locus standi of the Director of Enforcement to maintain the present appeal before this Court. It is contended herein that as the Director of Enforcement is not the aggrieved party, the officer is not authorised to file the present appeal. It is contended so by relying on the decision of the Hon'ble Supreme Court reported in (2007) 3 SCC (Cri) 531 (Mohtesham Mohd. Ismail v. Spl. Director, Enforcement Directorate and another). The Apex Court has in the aforesaid decision, from para 13 onwards dealt with the powers of the Central Government to appoint officers for the purpose of enforcing the provisions of the Act and exercise of such powers by issuing due notification, delegating specific functions under the Act upon the specific officers. While doing so, the Apex Court has in para 17 of its order referred to the earlier judgment of our High court reported in AIR 1981 Mad 80 (Director of Enforcement v. Rama Arangannal), wherein, this Court has observed that "the Explanation to Section 54 of the Foreign Exchange Regulation Act, 1973, treats only the Central Government as an aggrieved party for the purpose of filing an appeal to the High court in respect of orders passed by the Foreign Exchange Regulation Appellate Board under that section and only the Central Government

can file and prosecute an appeal against the order of the Appellate Board and not any other authority and therefore, the Director of Enforcement cannot be said to be aggrieved by the order of the Appellate Board merely because its order of adjudication has been set aside by the Appellate Board". The same was followed by the Punjab and Haryana High Court in the decision reported in (1985) 6 ECC 55 (Director of Enforcement v. Lal Chand). The Apex Court by applying the views of the Madras and Punjab and Haryana High Courts, observed that the Adjudicating Authority, in the absence of any power conferred upon it by the Central Government, could not prefer any appeal against the order passed by the Appellate Board.

7. In the case in hand, admittedly no notification for appointing the Director of Enforcement as the competent authority for enforcing the provisions of the Act and delegating specific functions under the Act to him, was produced before us. Though the learned standing counsel for the appellant undertook to produce one such notification, he failed to do so. That shows, no notification was issued by the Central Government. Thus, in the absence of any notification passed by the Central Government for specifically empowering the Director of Enforcement to enforce the provisions of the Act and delegating him with specific functions under the Act, the appellant herein i.e., Director of Enforcement cannot be treated as aggrieved party and has no locus standi to file this appeal and the Civil Miscellaneous Appeal is hence liable to be dismissed on the ground of maintainability and the substantial question of law is accordingly answered against the appellant.

8. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (LA)

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

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To

1.The Appellate Tribunal for Foreign Exchange, New Delhi.

2.The Director office of the Deputy Enforcement,
Chennai.

+2 cc to Mr.M.Abdul Nazeer, Advocate sr.38628/15

+1 cc to Mr.M.Dhandapani, Advocate sr.37802/15

CMA.No.1731 of 2003

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aa17/08/2015