HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS SECOND APPEAL No.29 OF 2010

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JUDGMENT:

This Appeal is preferred against the order dated 10.10.2008 passed in Appeal No.502 of 2003 by the Appellate Tribunal for Foreign Exchange at New Delhi-1st respondent herein, wherein the 1st respondent rejected and dismissed the Appeal confirming the Adjudication Order No.DD/73/BZ/HYD/2003/FERA/VS,3308, dated 25.08.2003 passed by the Deputy Director, Enforcement Directorate, Government of India, Bangalore-2nd respondent herein.

2. The appellant herein, proprietor of M/s. Spicy Dresses, Hyderabad, is an exporter, engaged in the business of manufacture and export of several orders of garments during the year 1995-97. During the course of his business, the appellant exported a consignment of garments to M/s. Gulf World, Dubai in November, 1995 *vide* G.R. No.AK-310810 dated 30.11.1995 for Rs.35,60,256/-. The shipping documents were sent to the importer through their bank *i.e.,* UCO Bank, Guntur Branch to the overseas buyer. After receiving the goods at Dubai Port, the overseas buyer, who took delivery of the shipping documents, did not clear the goods from the Port, in spite of their repeated requests. Though an alternative buyer is ready to purchase the goods, the shipping company wanted 100% security deposit to release the goods, as the appellant failed to release the goods or clear the goods from the Port, the Port authorities having no other option auctioned the goods to recover the demurrage and port charges. Moreover, the appellant, for certain period, seems to have paid some amount towards demurrage charges through their shipping agent *i.e.,* M/s. Kamal Shipping Services Limited, Hyderabad, but as he failed to obtain permission from the Reserve Bank of India (for short, 'RBI'), he could not pay the subsequent demurrage charges.

3. The appellant addressed several letters to the Reserve Bank of India, seeking extension of time to realize the export proceeds of the consignment

from overseas buyer at Dubai, but the RBI maintained silence without passing any order and, finally, by letter dated 14.08.1997, directed the appellant to follow the conditions laid down in its order HY.EC.EXP.II No./CL.31/97-98 dated 11.08.1997, prior to any export of goods. Subsequent thereto, the appellant also sought permission from RBI to engage a counsel and to initiate legal proceedings against overseas buyer at Dubai for sustaining damages due to non-clearance of export goods. The Reserve Bank of India, by letter dated 01.11.2004, declined to accede to the request of the appellant. Subsequently, the appellant made several applications for extension of time; in spite of addressing several applications and pending such applications for sufficiently long time, the RBI granted neither permission for extension of time nor for initiating legal proceedings in a foreign Court and payment of fees in foreign currency, the appellant was totally disabled to take any further action in the matter. In the meanwhile, the 2nd respondent issued a show-cause notice dated 12.08.1999 requesting the appellant to show cause why adjudication proceedings, as contemplated under Section 51 of Foreign Exchange Regulation Act, 1973 (for short, 'the FERA, 1973), should not be initiated for contravening the provisions of Sections 18(2) and 18(3) of the FERA, 1973. Consequent upon hearing the arguments of learned counsel for the petitioner-appellant and the State representatives, and after being satisfied that the appellant herein failed to take any effective reasonable steps to realize the export proceeds of the consigned goods, imposed penalty of Rs.4,00,000/- upon the petitioner-appellant *vide* order dated 25.08.2003.

4. Aggrieved by the order of 2nd respondent, the appellant preferred Appeal No.502 of 2003 before the 1st respondent, who, upon hearing the argument on either side, affirmed the order holding that the appellant violated Section 18(2) and (3) of the FERA, 1973 and directed that the pre-deposited amount be appropriated towards recovery of the remaining penalty amount from the appellant.

5. Aggrieved thereby, the appellant preferred Review Petition No.4 of 2009 before the 1st respondent, who, upon hearing argument on either side, dismissed the Review Petition, as there are no grounds to review the order

made in the Appeal.

6. However, the appellant herein preferred the instant Second Appeal, aggrieved by the order made in Appeal No.502 of 2003, raising the following contentions in the grounds of Appeal:

a) The appellant did not violate Section 18(2) and (3) of the FERA, 1973 thereby, question of initiating proceedings is *ultra-vires* and without jurisdiction, placed reliance on a judgment of the Apex Court in ***Life Insurance Corporation of India Vs. Escorts Limited and others***[1] and as such the respondents without considering the purport of the decision of the Apex Court committed an error in imposing penalty against the appellant;

b) The respondents failed to consider the circumstances under which the extension of the time could not be obtained by the appellant and did not take into consideration various applications addressed to RBI for extension of time and finally issued the proceedings dated 01.11.2004, which shows that the appellant made attempts to get extension of time within reasonable time but the respondents erroneously did not consider the same;

c) There is no willful negligence on the part of the appellant in taking reasonable steps for getting extension of time. It is only due to the circumstances beyond his control the value of the consignment was not repatriated to India and, in the absence of any negligence to take reasonable steps, imposition of penalty is unwarranted, placed reliance on a judgment of the Apex Court reported in ***State of Orissa Vs. Minerals and Metals Trading Corporation of India Limited***[2]; and

d) Finally, it is contended that the consignment though sent to the overseas buyer it was not cleared by the port authorities thereby there is no sale, actually and, in the absence of sale of consignment, question of violating Section 18(2) and (3) of the FERA, 1973 does not arise and, apart from that, auctioning the consignment for non payment of demurrage charges does not amount to sale but the 1st respondent without considering the same in proper perspective, committed an error in dismissing the Appeal while confirming the imposition of penalty and finally prayed to allow the Appeal setting-aside the order passed by the 1st respondent.

7. The main contention of the appellant is that auction of consignment of goods for realization of demurrage charges by the port authorities at Dubai is not a sale, either as per the Central Sales Tax Act, 1956 or as per the Sale of Goods Act, 1930. Therefore, in the absence of sale of consignment, question of repatriating the value of the consignment of goods to India does not arise. In view of this contention, this Court is required to decide whether the auction of consignment of goods by port authorities at Dubai for realization of demurrage charges amount to sale? If so, whether the appellant failed to repatriate the value of the consignment to India in violation of Section 18(2) read with Section (3) of the FERA, 1973?

8. The learned counsel for the appellant while reiterating the above contention drawn the attention of this Court to the facts of the present case and reasonable steps taken by the appellant to get extension of time from the Reserve Bank of India, by addressing several letters, but by drawing presumption under Section 18(3) of the FERA, 1973, the respondents passed the orders and the same are not sustainable under law and finally prayed to set-aside the order under challenge.

9. *Per contra*, learned Standing Counsel for the respondents argued totally in support of the finding recorded by the respondents and prayed to dismiss the Appeal confirming the impugned orders.

10. In view of the specific contentions raised in the grounds of Appeal questioning the legality of the orders passed by the respondents, and this Court is of the view that ground Nos.3 to 5 in the grounds of appeal are the substantial questions of law, the following recasted substantial question of law alone is required to be decided in this matter:

Whether the auction of consignment of goods for realization of the demurrage charges by the port authorities at Dubai is sale within the ambit of sale?

11. **POINT**: In fact, according to Section 54 of the FERA, 1973, an Appeal shall lie to the High Court only on questions of law from any decision or order of Appellate Board under sub-section (3) or sub-section (4) of Section 52. Interference of this Court is warranted only where an error of law can be urged and normally this Court did not interfere with the discretion exercised by the Appellate Board in increasing or decreasing penalty.

12. A bare look at the purport of Section 54 of the FERA, 1973, if any question of law arises for consideration required to be decided by this Court the Appeal can be entertained. In the present case, the specific contention is that there was no sale, thereby question of repatriating the amount or value of the consignment to India does not arise.

13. The word 'sale' is not defined under the Foreign Exchange Regulation Act, 1973 or the Foreign Exchange Management Act, 1999. In the absence of any definition for the word 'sale', it is better to rely on the definition of sale under the Sale of Goods Act, 1930. But, sub-section (3) and sub-section (4) sale and agreement to sell are distinguished. Section 4 of the Sale of Goods Act, defines the sale and agreement to sell as follows:

> "4. Sale and agreement to sell – (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
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> (2) A contract of sale may be absolute or conditional.
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> (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
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> (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

14. In fact, in the present case, the appellant did not transfer the goods to the purchaser *i.e.,* overseas buyer at Dubai but for non payment of demurrage charges the port authorities at Dubai conducted auction of the consignment, sold the same in the public auction realized the demurrage

charges. Even the auction of sale also amounts to sale but the sale was not directly by the appellant herein and it was only by the port authorities for realization of demurrage charges. Even then, the auction can be said to be a sale on behalf of the appellant and not for the port authorities. Therefore, the auction of the consignment of the goods amount to sale within the definition of sale.

15. As per Section 2(g) of Central Sales Tax Act, 1956, sale is defined as follows:

> "'sale', with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes, -
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> (i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
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> (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
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> (iii) a delivery of goods on hire-purchase or any system of payment by installments;
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> (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
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> (v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
>
> (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods;"

16. The sale includes a contract + conveyance that means transfer of goods from one person to the other for price paid or promised. Thus, the sale by the port authorities at Dubai also amount to sale for the purpose of deciding the present dispute. Even otherwise, it is a deemed sale in view of the principle laid down by the Apex Court in ***State of Madras Vs. Ganon Dunkerley and Company***[3], wherein it was held as follows:

> "the expression 'sale of goods' as used in the entries in the Seventh Schedule to the Constitution of India has the same meaning as in

> the Sale of Goods Act. It held that in order to be subject to the levy of sales tax, a transaction should have the following ingredients, namely, parties competent to contract, mutual assent, and transfer of property in goods from one of the parties to the contract to the other party thereto for a price."

17. If the principle laid down by the Apex Court in ***Ganon Dunkerley***[3] is applied to the present facts of the case, on behalf of the appellant, the port authorities at Dubai auctioned the consignment of goods for realization of demurrage charges. Hence, the transaction is a sale.

18. In view of my foregoing discussion, the act of transfer of goods by port authorities for auction at Dubai Port is only on behalf of the appellant, since the goods were not cleared by the overseas buyer. Even in such case, the port authorities at Dubai received price of the consigned goods and appropriated the same towards demurrage charges payable by the appellant. When the appellant fell due of the demurrage charges, appropriation of the amount realized in the auction sale, can be said to have paid by the appellant himself indirectly. In such a case, the said amount has to be repatriated to India, as per the FERA, 1973, within a reasonable time or otherwise take steps to get the time extended.

19. Section 18(2) of the FERA, 1973 obligates the exporter of goods to repatriate the value of the goods consigned to the overseas buyer, within the prescribed time in the prescribed manner under Sub-section (1) of Section 18 of the FERA, 1973. In view of the controversy involved in this matter, I feel that it is better to extract Section 18(2) and (3) of the FERA, 1973, which is as follows:

> "(2) Where any export of goods, to which a notification under clause (a) of sub-section (1) applies, has been made, no person shall, except with the permission of the Reserve Bank, do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing –
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> (A) in a case falling under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1), -
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> (a) that 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), or

(b) that the proceeds of sale of the goods exported do not represent the full export value of the goods subject to such deductions, if any, as may be allowed by the Reserve Bank; and

(B) in a case falling under sub-clause (ii) of clause (a) of sub-section (1), also that the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade:

Provided that no proceedings in respect of any contravention of the provisions of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full export value has not been made in the prescribed manner within the prescribed period.

(3) Where in relation to any goods to which a notification under clause (a) of sub-section (1) applies the prescribed period has expired and payment therefore has not been made as aforesaid, it shall be presumed, unless the contrary is proved by the person who has sold or is entitled to sell the goods or to procure the sale thereof, that such person has not taken all reasonable steps to receive or recover the payment for the goods as aforesaid and he shall accordingly be presumed to have contravened the provisions of sub-section (2)."

20. Section 18(2) of the FERA, 1973 obligates Indian exporter to repatriate the value of consignment within the prescribed time or at least take steps to extend time for repatriation within reasonable time; section 18(3) therein gives raise to a legal presumption.

21. One of the contentions of the learned counsel for the appellant is that the appellant made several efforts to obtain extension of time from the RBI and addressed several letters, but they were not considered and finally the RBI rejected permission by its letter dated 01.11.2004. A show-cause notice was issued by the Directorate of Enforcement, long prior to the rejection of representations for extension of time. Even then, he did not take steps to repatriate the value of the goods supplied to the overseas buyer. Mere pendency of applications with the RBI is not a ground to exonerate the appellant from levying penalty for violation of Sections 18(2) and (3) of the FERA, 1973. The appellant addressed several letters to the RBI seeking for extension of time explaining the reasons for not getting payment so far from the overseas buyer at Dubai but the RBI rejected the applications immediately. In fact, the export took place in 1995 but the letters addressed were almost more than 3 to 4 years after sending consignment to the overseas buyer. Therefore, making a representation for extension of time by

the appellant to the RBI cannot be said to be within reasonable time. Even otherwise, several fax letters addressed by Dubai Port clearly shows that the appellant did not pay demurrage charges and ultimately the consignment of goods were sold by the port authorities at Dubai by way of auction under due intimation to the appellant. If really, the appellant had an intention to obtain necessary extension of time within reasonable time, he would have applied for extension of time at least within 1st six months or within one year from the date of sending the consignment. What is reasonable time was not explained anywhere in the Act but the 1st respondent referred to the judgment of the Apex Court in ***Veayae M.L. Ammal Vs. Seeni Ammal***[4], wherein the Apex Court had an occasion to deal with similar case under Section 18(2) and (3) of the FERA, 1973 and interpreted the word ‘reasonable’.

22. In ***E.S.I. Corporation Vs. C.C. Santhakumar***[5], the Apex Court held as follows:

> “35. A reasonable period would depend upon the factual circumstances of the case concerned. There can not be any empirical formula to determine that question. The Court/authority considering the question whether the period is reasonable or not has to take into account the surrounding circumstances and relevant factors to decide that question.
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> 36. In ***State of Gujarat Vs. Patel Raghav Natha***, 1969 (2) SCC 187, it was observed that when even no period of limitation was prescribed, the power is to be exercised within a reasonable time and the limit of the reasonable time must be determined by the facts of the case and nature of the order which was sought to be varied. This aspect does not appear to have been specifically kept in view by the division Bench. Additionally, the points relating to applicability of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 and even if it is held that the Act was applicable, the reasonableness of the time during which action should have been initiated were also not considered. It would be hard to give an exact definition of the word “reasonable”. Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child’s joy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the Judge usually determines what is “reasonable” in each particular case; but frequently reasonableness “belongs to the knowledge of the law, and therefore to be decided by the courts.” It was illuminatingly stated by a learned author that an attempt to give a specific meaning to the word

> "reasonable" is trying to count what is not a number and measure what is of space. It means prima-facie in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know. (See: Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar (1987 (4) SCC 497), Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) Private Limited (1989 (1) SCC 532). As observed by Lord Romilly, M.R. in Labouchere Vs. Dawson (41 LJ Ch 472), it is impossible to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable under the circumstances. Reasonable, being a relative term is essentially what is national according to the dictates of reason and not excessive or immoderate on the facts and circumstances of the particular case."

23. From a perusal of the principle laid down by the Apex Court in ***Seeni Ammal***[4] and ***Santhakumar***[5], it is clear that when the exporter failed to take reasonable steps for realization of export proceeds and not realized the export proceeds, it is a violation of Section 18(2) of the FERA, 1973. It is settled law that reasonableness is a question of fact which may vary from case to case.

24. As per Section 18(3) of the FERA, 1973, a legal presumption shall be drawn against the exporter who failed to receive/realize the export proceeds within 6 months from the date of export. Rule 8 of the Foreign Exchange Regulation Rules, 1974 (for short, 'the FERR, 1974') further says the amount representing the full export value of the goods exported shall be realized and be paid to the authorized dealer on the due date of payment or within 6 months from the date of shipment of the goods whichever is earlier: Provided that, where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing full export value of the goods exported shall be paid to the authorized dealer as soon as it is realized, and in any case, within 15 months from the date of shipment of goods: provided further that the Reserve Bank may, for sufficient and reasonable cause shown, extend the said period.

25. From a bare reading of Section 18(2) of the FERA, 1973 and the FERR, 1974 the Rules framed therein, the maximum prescribed time is 6 months from the date of shipment of the goods. It is not the case of the appellant that the goods were exported to a warehouse established outside

India with the permission of Reserve Bank of India. Therefore, proviso to Rule 8 is not applicable. Evidently, the appellant did not take steps to get extension of time showing reasonable cause for repatriating the value of the consigned goods to India. Moreover, shipment of the goods took place in the month of November, 1995 and up to 1996 there was no correspondence between the overseas buyer and the appellant. After December, 1996 till October, 1997 there was no correspondence between the Dubai Port Authorities regarding postponement of auction and finally by fax message dated 08.10.1997 a final deadline was fixed to take steps for auction of the consigned goods for realization of the demurrage charges.

26. The entire record placed before the respondents 1 and 2 or before this Court does not disclose the reasonable steps the appellant had taken for seeking extension of time and as such, the appellant miserably failed to bring any material to establish the *bona-fide* steps he had taken for extension of time for repatriating the value of the goods to India from Dubai. Even, no reasonable explanation was offered. In the absence of any evidence to dislodge or dispel the legal statutory prescription, the respondents have no option except to draw presumption under Section 18(3) of the FERA, 1973 that the appellant failed to take steps within reasonable time to repatriate the sale proceeds of the consignment.

27. The only endeavour of learned counsel for the appellant is that due to non-co-operation of Reserve Bank of India, the appellant could not file suit for realization of the consignment amount against the overseas buyer and, admittedly, the Reserve Bank of India declined to grant permission to file a suit for realization of sale proceeds of the consignment. The respondents 1 and 2 have nothing to do with the legal proceedings proposed to be initiated by the appellant against the overseas buyer and the 1st respondent discussed the law laid down by the Apex Court in ***SRC Export Private Limited Vs. Director of Enforcement***[6] and, consequently, concluded that the judgment of the Court is not statutory prescription but has to be read under the factual context and, therefore, the factual and situational flexibility in a judgment has to be always kept in mind during the search of a binding precedent. The observations made in any judgment can neither be treated as

Lucid Theorem nor statutory prescription and placed reliance on a judgment in ***London Graving Dock Company Limited Vs. Horton***[7] and concluded that the law laid down by the Apex Court in ***SRC Export Private Limited***[6] has no application to the present facts of the case. Further, the decisions of the Apex Court in ***Escorts Limited***[1] and ***State of Orissa***[2] referred to in the grounds of Appeal were not relied upon during the course of argument. However, I have gone through the above judgments but they have no direct application to the present facts of the case.

28. Thus, the 1st respondent after due consideration of entire material including the steps taken by the appellant to obtain permission from the Reserve Bank of India, within a reasonable time, concluded that the appellant miserably failed to take steps within the reasonable time and declined to set-aside the order passed by the 2nd respondent.

29. In similar circumstances the Apex Court in ***P and S Export Corporation Vs. Deputy Director of Enforcement***[8] considered the same issue, wherein the appellant has been carrying on the business of exporting goods to the various parts of the world. During the year 1966, it effected shipment of brassware goods to a foreign buyer in the United States valued at US $5976, out of which the appellant repatriated US $2931.42 leaving a balance of US $3044.58. Since the appellant failed to repatriate the entire value of the exported goods, a show-cause notice was issued under Section 12(2) of the Act initiating adjudication proceedings contemplated by Section 23D of the Act against the appellant and its partners. In reply to the notice, the appellant submitted that the goods had been exported to the Oriental Imports, New York, who did not pay the entire amount but, instead, the buyer set up a counter-claim against the appellant on account of devaluation of the Indian rupee. The appellant further asserted that since the consignee had not paid, full export value of the goods could not be repatriated. The Deputy Director, Enforcement Directorate, by his order dated November 20, 1975 rejected the defence set up by the appellant, on the findings that there was no evidence to show that the foreign buyer had raised counter-claim against the appellant. The Reserve Bank of India had advised the appellant to get the goods returned to India or to approach the Indian Embassy at

Washington, for its intervention. The appellant made no attempt to adopt either of the two courses of action advised by the Reserve Bank of India. The National and Grindlays Bank who were the appellant's bankers informed that the goods were privately disposed of by Mr. Sarma, a partner of the appellant-firm. The Deputy Director found the appellant guilty of having contravened Section 12(2) of the Act and imposed fine of Rs.30,000/- under Section 23(1)(a). In appeal, the Foreign Exchange Regulation Appellate Board confirmed the order of the Deputy Director but it reduced the amount of penalty from Rs.30,000/- to Rs.22,824/-. The appellant thereafter preferred appeal under Section 23EE of the Act before the High Court against the appellate order. The High Court dismissed the appeal on the findings that the order of the Appellate Authority did not suffer from any error of law. The Apex Court observed as follows:

> "4. Under the aforesaid provision an exporter who exports goods notified under Sub-section (1) of Section 12 shall not do anything or refrain from doing anything which may have the effect of delaying of sale of goods to an unreasonable period or which may have the effect of ensuring payments otherwise than in the prescribed manner or it has the effect of securing the payment not representing the full amount payable by the foreign buyer. Section 12(2) ensures prompt sale of goods exported to a foreign buyer and repatriation of the full value of the goods. If an exporter sells the goods to a foreign buyer and if he fails to realise full amount payable by the foreign buyer in respect of goods so exported he would be contravening Section 12(2) (b) of the Act. The appellant exported goods to foreign buyer in the United States but he failed to repatriate the full amount payable by the foreign buyer. The findings recorded by the Deputy Director Enforcement and the Appellate Authority leave no room for doubt that the appellant took delivery of goods himself when he was in U.S.A. and sold the same by private sale in a surreptitious manner disregarding the directions of the Reserve Bank of India and keeping it in dark about it. The appellant has not proved how much value and foreign exchange he realized by such private sale. In the first place he could not have sold the goods privately in a secretive manner contrary to the directions of the Reserve Bank of India. In the next place he should have candidly come forward to state how much he realized and ought to have repatriated the said amount. Instead the appellant resorted to manipulations to show that the importer had paid only 50% of the value which fact is established to be untrue. The full export value is reflected in the transaction which was made with the foreign buyer at $ 5976.00 but he has repatriated only $2931.42. He has thus clearly violated Section 12(2). The order under appeal is unassailable."

30. The facts in the case on hand are almost identical to the facts in

P and S Export Corporation[8] and if it is applied to the present facts of the case, certainly, the appellant violated Section 18(2) of the FERA, 1973 and failed to repatriate the amount realized by sale of consignment of goods within 6 months as required under Rule 8 or at least within reasonable time after obtaining extension of time for such repatriation from Reserve Bank of India but he maintained silence without taking any steps and not even responded to the invitation of the RBI *vide* its letter dated 27.06.1997. Therefore, by drawing statutory legal presumption under Section 18(3) of the FERA, 1973, it can safely be concluded that the appellant failed to repatriate the value of the goods exported to the overseas buyer at Dubai. Of course the presumption under Section 18(3) is a rebutable presumption and the appellant can rebut the same by producing any evidence. Moreover, he did not produce any evidence before the respondents 1 and 2 to rebut the presumption. In those circumstances, the respondents 1 and 2 have no other option except to impose penalty for violation of Section 18(2) drawing a presumption under Section 18(3) of the FERA, 1973. Even after reappraisal of entire material available on record, I have no slightest hesitation to concur with the findings recorded by both the respondents. The Review Petition preferred by the appellant, was dismissed by the 1st respondent on the ground that the Review is impermissible under the provisions of the FERA, 1973. If Review is permitted under the FERA, 1973 and had been disposed of on merits by the 1st respondent, then the maintainability of this Second Appeal would be in doubt. Here, the reason for dismissing the Review is that the FERA, 1973 did not provide for such review. Therefore, the Second Appeal is maintainable against the original appellate order passed by the 1st respondent and dismissal of the Review Petition is not a bar to prefer this Appeal. However, the order under challenge passed by the 1st respondent is free from any legal infirmities and it is well reasoned order, supported by law, it does not call for interference of this Court even by exercising the power under Section 54 of the FERA, 1973. Hence, the point is held in favour of the respondents and against the appellant.

31. In view of my foregoing discussion, I find no ground much less a substantial question of law warranting interference with the findings of the respondents 1 and 2 to set-aside or reduce the penalty imposed by both the

respondents and, consequently, the Appeal deserves to be dismissed.

In the result, the Civil Miscellaneous Second Appeal is dismissed.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

JUSTICE M. SATYANARAYANA MURTHY

Date.21.08.2015.
DSH

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Date.21.08.2015

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[1] AIR 1986 SC 1370

[2] 1994 Supp (3) SCC 109

[3] AIR 1958 SC 560

[4] JT 2001 (9) SC 145

[5] JT 2006 (10) SC 549

[6] 2000 112 Taxman 142 (FERAB)

[7] 1951 AC 737 Page 761

[8] 1987 CriLJ 539