

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20551 of 2015

Date of Decision: 15.10.2015

Ramesh Kumar Sabharwal

....Petitioner.

Versus

Joint Director of Enforcement Directorate, Jalandhar

...Respondent.

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

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Veneet Sharma, Advocate for the petitioner.

**AJAY KUMAR MITTAL, J.**

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 23.7.2015 (Annexure P-13A) passed by the Appellate Tribunal for Foreign Exchange, New Delhi (in short "the Tribunal") in appeal No. 21 of 2014 directing the petitioner to deposit 15% of the penalty amount and to furnish a security for the balance amount of 85% within 30 days from the date of communication of the order as a pre-deposit.

2. The facts, in brief, necessary for adjudication of the present petition as narrated therein are that the officials of the Enforcement Directorate, Jalandhar searched the residential premises of various

persons including the petitioner and seized ₹ 60,000/- of the petitioner. The statements of the said persons were recorded under Section 40 of the Foreign Exchange Regulation Act, 1973 (in short "the FERA"). On completion of investigation, a memorandum dated 20.8.1996 (Annexure P-1) was issued to the noticee including the petitioner. The petitioner submitted reply dated 17.10.1996 (Annexure P-2) to the said memorandum. The petitioner vide letter dated 4.7.1997 (Annexure P-3) sought copies of the documents. Thereafter, the petitioner received a notice dated 15.6.1999 from the respondent that he had not received the reply. In reply to the notice, it was explained vide letter dated 29.6.1999 (Annexure P-4) that since there was no contravention of FERA, the proceedings were requested to be dropped vide reply dated 17.10.1996. The petitioner vide letter dated 28.9.1999 (Annexure P-5) again requested for the copies of relied upon documents. The opportunity notice dated 21.2.2002 (Annexure P-6) to all the noticee including the petitioner was issued to show cause as to why legal proceedings under Section 56 of the FERA be not initiated against them. The petitioner submitted reply dated 5.3.2002 (Annexure P-7) to the said notice. A complaint dated 29.4.2002 (Annexure P-8) was filed by the respondent in the court of Chief Judicial Magistrate, Jalandhar against Som Nath Sikka, Raj Kumar and Tilak Raj Chadha. The petitioner was not named as an accused in the said complaint. The petitioner was afforded an opportunity of personal hearing on 16.1.2004 and the petitioner submitted his written submissions vide letter dated 22.1.2004 (Annexure P-9). However, no action was taken thereon. The Chief Judicial Magistrate, Jalandhar vide order dated 3.7.2010 (Annexure P-10) acquitted all the accused. At the time of another personal hearing, the

petitioner submitted written submissions vide letter dated 10.2.2012 (Annexure P-11). The adjudicating authority vide order dated 27.3.2014 (Annexure P-12) held that Ramesh Kumar-petitioner along with Som Nath Sikka have contravened Sections 9(1)(b) and 9(1)(d) of the FERA to the tune of ₹ 1,71,11,000/-, Raj Kumar has contravened FERA to the tune of ₹ 5,87,000/- and Tilak Raj has contravened FERA amounting to ₹ 6,59,000/-. The adjudicating authority imposed the penalty of ₹ 34,00,000/- each upon the petitioner and Som Nath Sikka, ₹ 1,10,000/- on Raj Kumar and ₹ 1,30,000/- upon Tilak Raj. The amount of ₹ 60,000/- along with interest as on 27.3.2004 totaling ₹ 2,39,286/- was adjusted against the penalty of the petitioner and rest of the amount was directed to be deposited. Feeling aggrieved, the petitioner filed an appeal along with an application (Annexure P-13) for staying the operation of the order dated 27.3.2014 (Annexure P-12) before the Tribunal. Another application for dispensing with prior deposit of the penalty amount was filed on 6.5.2014. The Tribunal vide order dated 23.7.2015 (Annexure P-13A) directed the petitioner to deposit 15% of the penalty amount and a reasonable surety to the rest of the penalty amount. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the Tribunal had directed the petitioner to pre-deposit 15% of the penalty amount and to furnish security for the balance amount of 85% as a condition precedent for hearing of the appeal which was unreasonable and unjustified.

4. After hearing learned counsel for the petitioner, we do not find any merit in the appeal. In the present case, the Tribunal while directing the petitioner to deposit 15% of the amount of penalty imposed

and to furnish reliable security for the balance amount of 85% as a pre-deposit for hearing of the appeal has noticed that the petitioner has an arguable case and it would cause hardship in case the waiver is not allowed, but no case of complete waiver was made out. The relevant findings recorded by the Tribunal read as under:-

“9. We are convinced that the appellants have an arguable case and will suffer hardship in case the waiver is not allowed to them, however, no case for complete waiver is made out. Considering the facts and circumstances and also the interests of revenue in mind in the light of the judgments of Monotosh Saha Vs. Special Director, ED 2008(12) SCC 359 and Banara Valves Ltd. Vs. Commissioner Central Excise and Another (2006) 13 SCC 347, we are of the view that it will be just fair and appropriate that the appellants be directed to deposit 15% of the amount of penalty imposed against each of them and furnish reliable security for the balance amount of 85% within 30 days from the date of communication of this order.”

6. In the present case, the petitioner has been required to pre-deposit 15% of the penalty amount as a condition precedent for hearing of the appeal, which is reasonable and justified.

7. In view of the above, finding no merit in the instant writ petition, the same is hereby dismissed.

8. A prayer was made by the learned counsel for the petitioner to extend the time for pre-deposit. However, in the interest of justice, we extend the time to deposit the amount as directed by the Tribunal upto

16.11.2015. It is directed that if the petitioner in the present case deposits the amount as directed by the Tribunal by 16.11.2015, the appeal shall be heard on merits.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**October 15, 2015**  
gbs

**(RAMENDRA JAIN)**  
**JUDGE**