IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20932 of 2015

Date of Decision: 5.10.2015

Tilak Raj

....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. D.K. Bhatti, Advocate for the petitioner(s).

**AJAY KUMAR MITTAL, J.**

1. This order shall dispose of a bunch of three petitions bearing CWP Nos. 20932, 21024 and 21026 of 2015 as according to learned counsel for the petitioners, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 20932 of 2015.

2. 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-9) passed by the Appellate Tribunal for Foreign Exchange, New Delhi (in short "the Tribunal") in appeal No. 23 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.

3. 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 recovered documents from the petitioner regarding distribution of compensatory payment. The petitioner in his statement recorded under Section 40 of the Foreign Exchange Regulation Act, 1973 (in short “the FERA”) denied any payment in India by order or on behalf of a person resident outside India. But the recipient mentioned in the seized documents admitted being received payments from unknown person under the instructions of their relations outside India. As per the documents, the payment of ₹ 6,59,000/- has been made in India to different persons. 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 30.10.1996 (Annexure P-2) to the said memorandum. Thereafter, opportunity notice dated 21.2.2002 (Annexure P-3) 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. A complaint dated 29.4.2002 (Annexure P-4) was filed by the respondent in the court of Chief Judicial Magistrate, Jalandhar against Som Nath Sikka, Raj Kumar and Tilak Raj Chadha (petitioner herein) only. The petitioner was afforded an opportunity of personal hearing on 16.1.2004 and the petitioner submitted his written submissions dated 12.2.2004 (Annexure P-5). However, no action was taken thereon. The Chief Judicial Magistrate, Jalandhar vide order dated 3.7.2010

(Annexure P-6) acquitted all the accused. The adjudicating authority vide order dated 27.3.2014 (Annexure P-7) held that Ramesh Kumar and 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-petitioner has contravened FERA amounting to ₹ 6,59,000/-. The adjudicating authority imposed the penalty of ₹ 1,30,000/- upon the petitioner and directed to deposit the said amount by way of demand draft drawn in favour of Assistant Director, Directorate of Enforcement, Jalandhar in the office of respondent. Feeling aggrieved, the petitioner filed an appeal along with an application (Annexure P-8) for staying the operation of the order dated 27.3.2014 (Annexure P-7) before the Tribunal. Another application for dispensing with prior deposit of the penalty amount was filed on 12.5.2014. The Tribunal vide order dated 23.7.2015 (Annexure P-9) 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.

4. 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. He has relied upon the judgment of the Supreme Court in **A. Tajudeen v. Union of India (2015) 4 SCC 435** in support of the aforesaid contention.

5. After hearing learned counsel for the petitioners, we do not find any merit in the appeal. In the present case, the Tribunal while directing the petitioner(s) 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 (s) 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 interest 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(s) 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. In the judgment in **A. Tajudeen's case (supra)** relied upon by the learned counsel for the petitioner, the principle of law enunciated therein, is well recognized, however, being based on individual fact situation involved therein would be of no help to his case.

7. In view of the above, finding no merit in the instant writ

petitions, the same are hereby dismissed.

8. A prayer was made by the learned counsel for the petitioner (s) 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(s) in the present case deposits the amount as directed by the Tribunal by 16.11.2015, the appeals shall be heard on merits in accordance with law.

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

**October 5, 2015** **(RAMENDRA JAIN)**
gbs **JUDGE**