

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 15.01.2015**

% **CRL.A. 300/2009**

M/S XEROX MODI CORP LTD. Appellant
Through: Mr. Vijay Nair with Ms. Neeharika
Aggarwal, Advocates
versus

THE SPECIAL DIRECTOR,
ENFORCEMENT DIRECTORATERespondent
Through: Mr. Vineet Malhotra, Mr. Vishal
Gohri and Mr. Jitender, Advocates

% **CRL.A. 58/2009**

DR. BHUPENDRA KUMAR MODI Appellant
Through: Ms. Shweta Bharti, Mr. Neelesh
Sinha and Ms. Mishika Singh,
Advocates
versus

ENFORCEMENT DIRECTORATE & ANR.Respondents
Through: Mr. Vineet Malhotra, Mr. Vishal
Gohri and Mr. Jitender, Advocates

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present appeals under Section 35 of the Foreign Exchange Management Act, 1999 (FEMA) have been preferred to assail the common

final order dated 24.10.2008 passed by the Appellate Tribunal for Foreign Exchange (The Appellate Tribunal) in Appeal Nos.401/2004 and 430/2004. The Appellate Tribunal by the impugned order dismissed the two appeals, preferred by the appellant company and its director Dr. Bhupendra Kumar Modi against the common order passed by the adjudicating authority, namely, Special Director, Enforcement Directorate, New Delhi (ED) dated 13.02.2004 bearing SDE/SKP/III/47/2003, by which penalty of Rs.22,75,000/- was imposed on the appellant company, and a penalty of Rs.7,50,000/- was imposed on the appellant-director of the appellant company for contravention of Section 8(3) and 8(4) read with Section 68 of FEMA read with para-7A, 20(i) of Exchange Control Manual, 1995 (ECM).

2. The predecessor-in-interest of the appellant company M/s Xerox Modi Corp Ltd. (now known as Xerox India Ltd.), namely, Modi Xerox Ltd. (MXL) was issued a notice dated 18.01.2002 by the ED alleging that MXL had not submitted the exchange control copies of the Bills of Entries to the authorized dealer, namely, Bank of India as proof of actual import within the stipulated period of three months in respect of 64 remittances of Foreign Exchange made by MXL.

3. The appellant responded to the said notice on 28.01.2002. It appears that the appellant submitted the relevant documents and satisfied the ED with regard to 60 out of the 64 transactions in respect whereof notices had been issued. The four remittances in respect whereof the respondent sought to continue the proceedings were as follows:

1. JY 1734784 dt. 1.12.93
2. US\$ 23587 dt. 10.5.96
3. GBP. 8367.17 dt. 13.12.96
4. GBP.91341.87 dt. 30.6.99

4. In respect of the first three remittances aforesaid, the Bank of India had acted as the authorized dealer, whereas in respect of the fourth remittance aforesaid, CitiBank was claimed to have acted as the authorized dealer. CitiBank certified that it had not made the alleged remittances of GBP 91341.87 on 30.06.1999, as alleged. Consequently, proceedings in respect of the same were dropped. The only aspect which needed examination was in relation to the first three remittances aforesaid.

5. The appellant sent a response on 07.02.2002 to the ED in respect of the aforesaid three transactions pertaining to Bank of India. The appellant claimed that though they had already submitted the proofs of their submission of exchange control copies of the bills of entries to the bank, it was taking time to retrieve data as the cases were quite old. Further time was sought to enable the appellant to resolve the cases with the Bank of India. A further reply was sent on 05.04.2002 stating that despite its best efforts, for almost two months with Bank of India, the appellant was not able to obtain the desired certificate.

6. Vide communication dated 14.05.2002, the appellant claimed – in respect of the two remittances of US\$ 23587.20 and GBP 8367.17 aforesaid:

“Importer copy of bill of entries against both the above said cases have been sent to the office of Central Excise, Rampur,

alongwith our MODVAT claim and inspite of our putting best efforts, we could not obtain the importer copy of bill of entry, duly attested from the Custom Authorities. In the meantime, we enclose copy of invoice, copy of TR-6 challan and copy of exchange control copy of bill of entries against both the cases.”

7. The appellant further submits that in relation to the remittance of GBP 8367.17, the appellant had submitted the exchange control copy of Bill of Entry to the Bank of India on 14.12.1996 along with several other Bills of Entries in respect of other remittances. A copy of the said document was produced before the adjudicating authority.

8. The appellant also claims that its banker, namely, Standard Chartered Bank had forwarded the appellant's communication addressed to the Reserve Bank of India dated 12.07.1994, on 04.08.1994. In its communication dated 12.07.1994, the appellant had claimed that it had shifted its office from Hemkunt Towers to Punj Lloyd House in Nehru Place. While shifting the records, the file containing the exchange control copies of Bill of Entries had been misplaced and was not traceable immediately. The appellant enclosed with the said letter an affidavit, undertaking to submit the exchange control copy of Bill of Entries as soon as they are traced; photocopy of the relevant bill of entries, and; the original triplicate copy of the Bill of Entries for verification of Reserve Bank of India. The affidavit of the appellant enclosed with the said communication, *inter alia*, pertained to the remittance of JY 1734784 on 01.12.1993. According to the appellant, the said remittance was in respect of bill of entry no.262065 relating to invoice no.TIC-163. The appellant also produced a copy its communication dated 07.05.1998 sent to Bank of India, *inter alia*, in

respect of the remittance of US\$ 23587 made on 10.05.1996.

9. It appears that the appellant sent a communication on 14.07.2003 in response to the show cause notice dated 28.05.2002, wherein the appellant, *inter alia*, stated that the adjudicating authority may get a report from the authorized dealer on the submissions made by the appellant, in case it felt necessary. The appellant also stated in the same communication that:

“If, however, any reliance is sought to be placed by the learned adjudicating officer upon the documents, copies of which have not yet been provided to the Noticee or the same are referred to, the Noticee respectfully prays that copies thereof be provided to the Noticee and the Noticee be granted an opportunity to deal with the same.”

10. The adjudicating authority passed the order in original on 13.02.2004 rejecting the explanation sought to be furnished by the appellant in respect of the first three remittances aforesaid, while accepting the explanation of the appellant in respect of the fourth alleged remittance of GBP 91341.87. The order in original discloses that the ED made inquiries with the Bank of India vide letter dated 08.01.2004, and the Bank of India responded to the same on 03.02.2004 which, apparently confirmed *“that all the bill of entries at sl. nos.1 to 3 are outstanding”*. On this basis, the adjudicating authority levied penalty, as aforesaid, upon the appellant company to the extent of Rs.22,75,000/-, and upon its director-appellant Dr. Bhupendra Kumar Modi to the extent of Rs.7,50,000/-.

11. One of the main grounds urged before the Appellate Tribunal by the appellants was that the adjudicating authority had interacted with the Bank of India behind their back while sending their communication dated

08.01.2004. The response received from the Bank of India dated 03.02.2004 – wherein the said Bank allegedly confirmed that the Bills of Entries qua the aforesaid 3 remittances were outstanding, was also never provided to or communicated to the appellant by the adjudicating authority before passing the impugned order in original, even though the same had been passed – primarily on the basis thereof. The Appellate Tribunal dealt with the said aspect in para 19 of the impugned order, which reads as follows:

“19. Further enquiries were made by the Adjudicating Officer during adjudication proceedings with the Bank of India, which revealed by letter dated 03.02.2004 that the Bill of Entry for the subject remittances were still outstanding which fact was mentioned in the adjudication order. On being asked, Ld. Counsel of the appellant company stated that the company did not approach Bank of India to seek clarification about the said letter. Thus no effort was made by the company to have a certificate of the Bank of India about furnishing the Bill of Entries for the subject remittances even after said letter of 03.02.2004 was issued by the bank of India till date.”

12. Learned counsel for the appellant submits that the proceedings before the adjudicating authority as well as before the Appellate Tribunal stand completely vitiated on account of breach of principles of natural justice. Neither the communication sent by the ED on 08.01.2004 to the Bank of India, nor the response of the said Bank dated 03.02.2004 have seen the light of the day. These documents were not produced or relied upon in the adjudication proceedings, and the appellant had no occasion to deal with the same. I may note that 14.07.2003 is said to be the date when the order was reserved by the adjudicating authority, and no further hearings were held thereafter. The appellants are not aware as to what was the query raised by

the ED in the said communication dated 08.01.2004, and what is the nature of the response thereto. It is not clear as to who had responded to the said communication of 08.01.2004, and whether the said alleged response was genuine or not.

13. Learned counsel for the appellant points out that after the passing of the order in original, when the appellants learnt that the adjudicating authority had relied upon on the aforesaid two documents, the appellant company had sought copies of the said communications vide their communication dated 29.03.2004. Despite the said request, copies of these documents were not provided and till date they have not been provided. I may note that these documents do not even form part of the present record, as the respondents have not cared to produce the same on record even at this stage.

14. Learned counsel for the appellant further submits that the transactions in question were very old, i.e. pertaining to the period 01.12.1993 to 13.12.1996. The show cause notice had been issued only on 18.01.2002, i.e. after over five years of even the last transaction of 13.12.1996. Learned counsel submits that the appellants were not expected to maintain their records for such a long period. They further submit that under the ECM dated 31.05.2005, in terms of para 7A.20(iv)

“In case an importer does not furnish the Exchange Control copy of Bill of Entry within three months from the date of remittance (or within prescribed period as provided in paragraph 7A.10), the authorised dealer should issue a reminder to the importer asking him to produce it forthwith. If there is still no response, a reminder by registered post with

acknowledgement due should be issued not later than one month from the date of the first reminder”.

15. Learned counsel submits that the show cause notice does not recite that the authorized dealer had ever sent a reminder to the appellant company asking it to produce the exchange control copies of the Bill of Entries on the basis that the same had not been produced within three months from the date of remittance. The authorized dealer, i.e. the Bank of India had also not claimed that it had sent a further reminder through registered post acknowledgment due, requiring submission of the exchange control copies of the Bills of Entries. It is submitted that the non-issuance of reminder, or a further reminder in terms of para 7A.20(iv) shows that the said documents, namely, the exchange control copies of the Bill of Entries were duly submitted, which is why the cause for issuance of such notices did not arise. Reference is also made to clause (vi) of para 7A.20, which obliges that the exchange control copy of the Bill of Entry for home consumption/postal wrappers should be preserved by the authorized dealers for a period of one year from the date of its verification. Learned counsel submits that no such obligation is cast on the person remitting the foreign exchange for import. He submits that since the notice was issued after over five years, apparently, the authorized dealer, namely, the Bank of India had not preserved the exchange control copy of the Bills of Entries in respect of the three remittances aforesaid.

16. It is submitted that the documents relied upon and referred to herein above sufficiently establish that the appellant company had submitted the exchange control copies of the Bills of Entries in respect of the three

transactions contemporaneously. The appellants, it is argued, cannot be condemned on account of delay in initiating proceedings which resulted in misplacement of original documents in the office of the appellant company. Lastly, it is submitted that the appellant – in the course of its business had made a large number of foreign remittances – to the tune of Rs.700 crores. The respondents had initially raised queries regarding 64 remittances, which, eventually got reduced to merely 3. He submits that this shows that the appellant was a credible and compliant business entity which could not be expected to indulge in such petty violations. It was highly unlikely that the appellant would not have made imports in respect of the three foreign remittances. In support of his submission, learned counsel has sought to place reliance on the following decisions:

- (i) ***M/s Bareilly Electricity Supply Co. Ltd. v. The Workmen & Ors.***, AIR 1972 SC 330;
- (ii) ***Sunil Engineering Corporation & Ors. v. Union of India & Ors.***, 117 (2005) DLT 525;
- (iii) ***Shanti Prasad v. Director of Enforcement***, (1963) 2 SCR 297;
- (iv) ***Bata India Ltd. v. Special Director, Enforcement Directorate***, (1999) 95 Comp Cas 101 (Cal).
- (v) ***Vipin Gupta v. Director of Enforcement, Enforcement Directorate*** – in Crl A No.469/2008 decided on 16.07.2014 by this Court.

17. On the other hand, Mr. Malhotra, learned counsel for the ED has submitted that the appellants cannot have a grievance with regard to communication being exchanged with the authorized dealer, namely, Bank of India, as aforesaid, since the appellant company had itself suggested that

the ED may seek information from the Bank of India in its communication dated 14.07.2003.

18. Mr. Malhotra further submitted that the authorized dealer in the present case was Bank of India. However, the appellants sought to rely upon the communication of Standard Chartered Bank dated 04.08.1994 sent to the Reserve Bank of India, whereby the Standard Chartered Bank, in turn, forwarded the communication dated 12.07.1994 claimed to have been addressed to Reserve Bank of India by the appellant company. Mr. Malhotra submits that since Standard Chartered Bank was not the authorized dealer, there was no occasion for the said Bank to forward the appellants communication of 12.07.1994 to the Reserve Bank of India. He submits that the Appellate Tribunal correctly rejected reliance placed on the said document by the appellants in para 18 of the impugned order, which reads as follows:

“18. Now coming to the factual situation, from perusal of record it is clear that the said three remittances of foreign exchange were effected during the year 1993 & 1996. The appellants submitted the copy of the letter of Standard Chartered Bank regarding submission of documents of imports of goods dated 04.08.1994, Pg.171 on record. However, there is no mention of the subject remittances in this letter of Standard Chartered Bank and the appellants have not been able to prove the import of goods particularly when the Bank of India and not Standard Chartered Bank was the authorized dealer of the appellant company. As regards the third remittance, the appellants submitted photocopy of the letter to Bank of India but there is no bank receipt, stamp/signature on the letter. Thus, the appellants have not been able to prove the import of goods as against the remaining two subject remittances also”.

19. Having heard learned counsels for the parties and perused the record, as well as the order in original and the impugned order, this Court is of the view that the impugned order of the appellate tribunal and the order-in-original suffer from serious infractions of the principles of natural justice and, even on merits, it appears that the appellants were able to provide sufficient material on record to raise a serious doubt about the alleged violation of FEMA.

20. The Supreme Court in ***Bareilly Electricity Supply Co. Ltd.*** (supra), *inter alia*, observed as follows:

“14. But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not

strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt”.

21. In the present case, the order in original, as noticed above, is primarily founded upon the response dated 03.02.2004 received from Bank of India by the ED to its communication of 08.01.2004. It is not clear as to what is the nature and content of the information elicited by the ED from the Bank of India in its communication of 08.01.2004. It also remains in suspense as to what was the nature and content of the response sent by Bank of India in its communication dated 03.02.2004. It is not clear as to who sent the said alleged communication – i.e. whether it was sent by an authorized officer of the Bank or not.

22. The submission of Mr. Malhotra is that the appellants had themselves suggested that the ED may get information from the Bank of India. Conveniently, the respondents ignore what they said in the last paragraph of their communication dated 14.07.2003, which has been extracted herein above. *De hors* the same, the obligation of the respondents to provide the said materials to the appellants, to enable them to deal with them is not whittled down merely because the appellants had suggested that information may be gathered from the Bank of India. The submission of Mr. Malhotra

that even if the said documents were not put to the appellants at the adjudication stage, the appellants became aware of the fact (when they received the order-in-original) that the said correspondence has taken place with Bank of India. The appellants should have then approached the Bank of India and enquired about the same. This argument has only to be stated, to be rejected. Pertinently, when the appellant company demanded copies of the said communications vide their letter dated 29.03.2004, the same were not provided. Without having copies of the said communication, this Court fails to appreciate as to how the appellants could be expected to gather any information from the said Bank, or get them verified. In fact, the appellants were not even obliged to do so, and it was the primary obligation of the adjudicating authority to place all incriminating material – which was intended to be relied upon to condemn the appellants and penalize them in a quasi-criminal proceedings, before the appellants to elicit their response. The order imposing penalty is undoubtedly a prejudicial order as it entails quasi criminal and penal consequences. No such order could have been passed behind the back of the appellants, without confronting them with all the material which was sought to be relied upon and granting adequate opportunity to them to deal with the same. It was obligatory for the adjudicating authority to thereafter consider the response of the appellants, if any, and after consideration of the entire matter, pass the adjudication order.

23. In my view, the reasoning adopted by the Appellate Tribunal in para 19 borders of perversity, when it observes that the appellant company had not approached the Bank of India to seek clarification about the said letter dated 03.02.2004. Pertinently, it appears that the Appellate Tribunal also

did not even consider it necessary to go through the said correspondences dated 08.01.2004 and 03.02.2004 between the ED and the Bank of India. The Appellate Tribunal did not consider it necessary to satisfy itself as to the nature of information sought from, and provided by the Bank of India. On this short ground, the order in original and the impugned order of the Appellate Tribunal are liable to be quashed and set aside.

24. Even on merits, this Court is satisfied that the appellants had raised substantial defence to raise sufficient doubt with regard to the allegations that the appellant had not made imports in respect of the three remittances aforesaid. The utilization of the first remittance of JY 1734784 made on 01.12.1993 was sought to be explained by reference to the communication of Standard Chartered Bank dated 04.08.1994 to the Reserve Bank of India, which forwarded the appellants communication dated 12.07.1994 to the Reserve Bank of India. In the said communication, the appellant company had claimed that during the shifting of office from one building to another in Nehru Place, the file containing exchange control copy of Bill of Entry had been misplaced. The appellant company sought to produce photocopies of the Bill of Entry duly attested by customs authorities. The affidavit filed by the appellant company mentioned the details of the contract number, invoice number and Bill of Entry number pertaining to remittance of JY 1734784. It is not the respondents case that the ED had verified and found that the said communication dated 04.08.1994 was not sent to the Reserve Bank of India. A photocopy of the Bill of Entry in question has also been placed on record by the appellant.

25. So far as the second remittance of US\$ 23587 dated 10.05.1996 is

concerned, the appellant has placed on record a copy of the communication dated 07.05.1998 stated to have been sent to Bank of India, enclosing therewith the exchange control copies of Bills of Entry in respect of the said remittance, apart from two others. Similarly, in respect of the third remittance of GBP 8367.17 dated 13.12.1996, the appellant appears to have sent a communication dated 14.12.1996 to the Bank of India enclosing therewith the exchange control copies of Bill of Entries. Pertinently, this communication pertains to several other remittances/bill of entry. It is not the case of the respondent that these documents have been found to be forged, fabricated or otherwise unreliable. The fact that it is not shown, that the Bank of India, namely, the authorized dealer did initiate notices in terms of para 7A.20(iv) of the ECM also supports the case of the appellants, that the occasion for issuance of such notices did not arise.

26. It appears that the appellants may have been penalized on account of a highly belated inquiry initiated by the ED, and with passage of time the appellants may not have preserved the original documents. In *Vipin Gupta* (supra), the Court observed that the noticee could not have been expected to retain the proof of all remittances for over six years. The explanation given by it for not being able to immediately furnish the exchange control copies of the Bill of Entries was bonafide. I may note that in that particular case, during the appellate stage, the appellant had secured the certified copies of documents to prove the import of goods against some of the remittances – which is not the position in the case in hand. However, the same does not detract from the fact that notices have been issued belatedly – even though there is no period of limitation prescribed therefor. For such delays, the

noticee cannot be made to suffer and the circumstance pleaded by the noticee that the documents have not been preserved or are not available would have to be given due weightage.

27. In ***Sunil Engineering Corporation*** (supra), the petitioner raised a similar plea that the authorized dealer was not shown to have issued a reminder in terms of the ECM. The Court observed as follows:

“6. Petitioners submit that original Bills of Entry had also been tendered but they were not having the receipt for the same as the same had been misplaced and was not traceable. However, petitioners had duly furnished the copies of Bills of Lading, Invoices. The photocopy of Exchange Control copy of the Bill of Entry duly carried endorsement by the Customs Authorities of the clearance of the goods. Mr. Sharma also submitted that the Bank itself had failed to comply with the procedure.

7. In this view of the matter, there was hardly any doubt left regarding genuineness of the transactions which fact is not even disputed by the respondents. In these circumstances, the omission of the petitioners is merely a procedural irregularity. Reference is invited to the judgment of the Supreme Court in M/s. Hindustan Steel Ltd. v. The State of Orissa, AIR 1970 SC 253 wherein the Court while dealing on the question of imposition of penalty observed as under:-

"Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

28. In ***Bata India Ltd.*** (supra), the Calcutta High Court observed that it was obligatory for the authorities under FERA (which stands replaced by FEMA) to consider the question of propriety of imposing penalty in the facts of a given case. It observed that it is settled law that penalty would not be imposed in quasi criminal proceedings merely because it is lawful to do so. Whether penalty should be imposed or not is a matter of discretion to be exercised judicially and on a consideration of all the relevant circumstances. The Calcutta High Court also placed reliance on the decision in ***Hindustan Steel Ltd. v. State of Orissa***, (1972) 83 ITR 26 SC, which had been relied upon by this Court in ***Sunil Engineering Corporation*** (supra). The Calcutta High Court held as follows:

“18. We are also of the view that in any event both the authorities under the said Act erred in not specifically considering the question of propriety of imposing penalty in the facts of the case. Decisions are legion in support of the proposition that penalty will not be imposed in quasi-criminal proceedings merely because it is lawful to do so. Whether penalty should be imposed or not is a matter of discretion to be exercised judicially and on a consideration of all the relevant circumstances. In this connection reference may be made to the decisions in Hindustan Steel Ltd. v. State of Orissa, [1972]83ITR26(SC), Anantharam Veerasinghaiah and Co. v. CIT, [1980]123ITR457(SC) , and in Cement Marketing Co. of India Ltd. v. Asst. CST AIR 1960 SC 346. There was no such consideration in this case at all.

19. That the proceedings for imposition of penalty under the Act are of quasi-criminal nature follows from the nature of the proceedings itself. It is also settled law that where proceedings are penal in nature, they are quasi-criminal proceedings. (See the decisions in CIT v. Anwar Ali, [1970]76ITR696(SC) , and Shanti Prasad Jain v. Director of Enforcement, [1963]2SCR297). The consequence of this is two fold, first is

the question of mens rea before finding of guilt and second is the question of mens rea once guilt has been established. The decision in State of Maharashtra v. Mayor Hans George, [1965]1SCR123 , is an authority for the proposition that mens rea is not required to be established in respect of an offence under Section 8(1) of the Foreign Exchange Regulation Act, 1973, and that it was an offence which creates absolute liability. The decision is not apposite. We are not concerned with the pre-guilt finding of mens rea in this case. What is important is whether the appellant had any mala fide intention of violating the law”.

29. In ***Shanti Prasad*** (supra), the Supreme Court observed that proceedings under FERA are quasi criminal in character, and it is the duty of the respondent/department as prosecutor to make out a case beyond all reasonable doubt that there has been a violation of the law. In this regard, reliance was placed on ***In re HPC Productions Ltd.***, 1962 (2) WLR 51.

30. In my view, the respondents have not established the violation of provisions of FEMA as alleged against the respondent beyond all reasonable doubt. There is likelihood of the appellant company having utilized the remittances for import as claimed by it. The situation has to be viewed from the context that the initial inquiry pertained to 64 remittances. Eventually, the same was narrowed down to only four, and thereafter in respect of the fourth alleged remittance, the respondents were satisfied with the appellants explanation. According to the appellants, remittances to the tune of Rs.700 crores have been made in relation to the business of the appellant company. If one were to keep the entire conspectus of facts in view, it does not stand to reason that the appellant company would fall foul of the law in respect of such miniscule amounts as claimed by the respondent, compared to the total remittances made by it.

31. For all the aforesaid reasons, the appeals are allowed and the impugned order-in-original, as well as the appellate order stands quashed. The amounts deposited by the appellants in pursuance of the original order of adjudication before the Appellate Tribunal, shall be refunded without any delay. Similarly, the amounts, if any, deposited in this Court shall also be refunded to the appellants without any delay.

JANUARY 15, 2015
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VIPIN SANGHI, J.

