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

<u>Reserved on: 7th May, 2015</u>

% **<u>Date of Decision:27th May, 2015</u>**

W.P.(C) 20241/2005

UMED SINGH BAID ..... Petitioner

Through: Mr.Manish Kumar & Mr.Piyush Kaushik, Advs.

versus

UOI & ORS. ..... Respondents

Through: Mr.Narender Kalra, Adv.

CORAM:
HON'BLE MR. JUSTICE V.P.VAISH

<u>JUDGMENT</u>

1. This is a petition under Article 226/227 of the Constitution of India against the order dated 05.09.2005 passed by the learned Appellate Tribunal for Foreign Exchange, New Delhi (respondent No.3) in Def. Appeal No. D-129/05, wherein respondent No.3 directed the petitioner to rectify the deficiency of court fees in accordance with the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules 2000.

2. The facts as emerging from the present petition are that on the basis of information that one Mr. Parasmal Rampuria who was a Director in M/s. GRML Exports Limited had been indulging in transactions in violation of the provisions of Foreign Exchange

Regulation Act, 1973 (hereinafter referred to as 'FERA'), a search was conducted on 24.05.1996 under Section 37 of the FERA, at both residential as well as office premises of Mr. Parasmal Rampuria. During the course of the search operations, several documents were seized from the above premises. On the basis of the documents so seized, statement of Mr. Parasmal Rampuria was recorded on 24.05.1996 and 25.05.1996 under Section 40 of FERA. In his statements, Mr. Parasmal Rampuria alleged that he received an amount of Rs.49,00,000/- (Rupees Forty nine lakhs) from the petitioner in respect of a transaction of USD 2,53,196,93 on 25.02.1996. In addition to the above amount a further sum of Rs. 79,90,000/- (Rupees Seventy nine lakhs ninety thousand) was received by Mr. Parasmal Rampuria.

3. On the basis of the statements of Mr. Parasmal Rampuria summons were issued to the petitioner on 23.04.1997 bearing number T3/106/Cal/96/PKS/3595. Responding to the said summons the petitioner appeared before the Enforcement Officers on 24.04.1997 and the statements of the petitioner were duly recorded denying all allegations against him. On 29.05.2002, based on the alleged statement of Mr. Parasmal Rampuria a show cause notice was received by the petitioner from the respondent No.2. Since the said show cause notice did not contain certain documents, a request was made by petitioner's Advocate vide letter dated 11.06.2002 for the supply of those documents and the said documents were subsequently supplied to him. Vide letter dated 04.10.2002, the petitioner submitted his reply to the show cause notice dated 29.05.2002. Thereafter, on the request of the petitioner to cross-examine Mr. Parasmal Rampuria, an opportunity of

personal hearing was offered to the petitioner. However, the petitioner was never permitted to cross-examine Mr. Parasmal Rampuria. Also the request under Section 72 of FERA that required the prosecution to jointly proceed with Mr. Parasmal Rampuria was also not acceded to. Despite the above request having been made and a detailed reply to show cause notice denying all the allegations and charges, the respondent No.2 vide order dated 28.06.2005 imposed an amount of Rs. 20,00,000/- (Rupees Twenty lakhs) as penalty under Section 50 of FERA against the petitioner.

4. Aggrieved by the above order and the findings, the petitioner preferred an appeal before respondent No.3 in which vide impugned order dated 05.09.2005, respondent No.3 directed the petitioner to rectify the deficiency of court fees in accordance with Rules 2000.

5. Learned counsel for the petitioner contended that the entire proceedings against the petitioner were conducted under the relevant provisions of FERA and the orders were passed under the said Act, therefore, the court fee for filing appeal is to be paid in accordance with the 1974 Rules and not in accordance with the Rules 2000. The Appellate Tribunal failed to appreciate that it was bound by the earlier order passed by the Coordinate Bench of the same Tribunal in Appeal No. 28-31/2002 as well as the order passed by this Court in WP(C) No. 112/2004. The Hon'ble Supreme Court in catena of judgments has categorically mentioned that a coordinate bench of a Court/Tribunal is bound by the decision of another coordinate bench on the same issue. As per the Repeal and Saving Clause under Section 49(4) of FEMA,

offences committed under the Repealed Act shall continue to be governed by the provisions of Repealed Act as if the Act has not been repealed. Had the proceedings under the order completed under FEMA, then the appeal would have been preferred under section 17 of the FEMA before the Special Director and not before the Appellate Tribunal itself and only in that case the provisions of Rules 2000 would have been applicable.

6. *Per Contra,* learned counsel for the respondents contended that after the repeal of the FERA, the petitioner is liable to pay the court fees on an appeal as per Rules 2000 and not 1974 Rules. By means of the present petition, the petitioner wants to delay the proceedings before respondent No.3 and escape from his liability of paying the court fees as per the revised scheme under Rules 2000.

7. I have heard the learned counsel for the petitioner and have also perused the material on record.

8. The short point for consideration before this court is whether on an appeal preferred against an order passed under the repealed provisions of FERA, the court fees would be payable as per provisions of FERA read with 1974 Rules or as per the relevant provisions of FEMA read with Rules 2000.

9. At the outset it would be pertinent to reproduce relevant provisions of FERA, FEMA, 1974 Rules and Rules 2000 which are material to the point in controversy before this court. The relevant provisions of the said enactments reads as under:

“**FERA**

52. Appeal to Appellate Board - (1) The Central Government, may by notificaition in the Official Gazette, to constitute an Appellate Board to be called the Foreign Exchange Regulation Appellate Board consisting of a Chairman [being a person who has for at least ten years held a civil judicial post or who has been a member of the Central Legal Service (not below Grade I) for at least three years or who has been in practice as an advocate for at least ten years] and such number of other members, not exceeding four to be appointed by the Central Government for hearing appeals against the orders of the adjudicating officer made section 51.

(2) Any person aggrieved by such order may, [on payment of such fee as may be prescribed and] after depositing the sum imposed by way of penalty under Section 50 and within forty-five days from the date on which the order is served on the person committing the contravention, prefer an appeal to the Appellate Board:

Provided that the Appellate Board may entertain any appeal after the expiry of the said period of forty-five days, but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time:

Provided further that where the Appellate Board is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, in its own discretion, dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit.

xxx xxx xxx

The Adjudication Proceedings and Appeal Rules, 1974 (1974 Rules):

6. Form of Appeal: (1) Every appeal presented to the Appellate Board under Section 52 shall be in the form of a memorandum signed by the appellant. The memorandum shall be sent in triplicate and accompanied by the three copies of the order appealed against. On every appeal the amount of fee as given in the table below shall be paid in the form of demand draft payable in favour of the Registrar, Foreign Exchange Regulation Appellate Board, New Delhi.

Table

SI NO.	Amount of penalty involved	Amount of fee payable(Rs.)
(1)	Where the amount of penalty involved is Rs. 1 lakh or less than Rs. 1 lakh	750
(2)	Where the amount of penalty involved is more than Rs. 1 lakh and up to Rs. 5 lakhs.	1,500
(3)	Where the amount of penalty involved is above Rs. 5 lakh.	2,000

FEMA

Section 19. Appeal to Appellate Tribunal.- (1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of Section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

xxx xxx xxx"

The Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (Rules 2000):

10. Form of Appeal: Every appeal presented to the Appellate Tribunal under Section 19 of the Act shall be in the Form II signed by the applicant. The appeal shall be sent in triplicate and accompanied by three copies of the order appealed against. Every appeal shall be accompanied by a fee of Rupees ten thousand in the form of cash or demand draft payable in favour of the Registrar, Appellate Tribunal for Foreign Exchange, New Delhi:

Provided that the applicant shall deposit the amount of penalty imposed by the Adjudicating Authority or the Special Director (Appeals) as the case may be, to such authority as may be notified under the first proviso to Section 19 of the Act:

Provided further that where in a particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty.

xxx xxx xxx"

10. It can be observed from a perusal of the aforesaid provisions that as per Section 52 of the FERA read with Rule 6 of the 1974 Rules, the Court fees payable on an appeal depends upon the quantum of fine and

is subject to maximum limit of Rs. 2,000/- (Rupees Two thousand). Whereas, as per Section 19 of the FEMA read with Rule 10 of the Rules 2000, the Court fees payable on an appeal before the Foreign Exchange Appellate Tribunal is Rs. 10,000/- (Rupees Ten thousand).

11. At this stage it is also relevant to consider Section 6 of the General Clauses Act, 1897 to determine the effect of the repealing enactment on a pending proceeding on the commencement of such enactment. Section 6 of the General Clauses Act,1897 reads as under:

> "**Section 6 - Effect of repeal**
>
> Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;
>
> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such

> penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

12. Section 6 of the General Clauses Act,1897 has an effect of protecting the rights, privileges or liabilities acquired, accrued or incurred under the repealed Act. Undoubtedly, a repeal of a statute has an effect of obliterating the earlier statute as if the law never existed; however, a repealing statute may contain certain provision preserving the earlier statute. Section 6 of the General Clauses Act,1897 operates on the same lines. By virtue of this provision, the existing rights, privileges or liabilities incurred under the previous enactment are not affected, unless it is expressly or by necessary implication stipulated to the contrary. The said provision is comprehensive and wide. It protects previous operation of the repealed Act, penalty imposed, forfeiture or punishment incurred, investigation, legal proceedings or remedy available and such investigation, legal proceedings may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealed Act had not been passed.

13. As aforementioned that the operation of Section 6 of the General Clauses Act,1897 would be excluded only when there is a specific provision to that effect in the repealed enactment. The Hon'ble Supreme Court in '**State of Punjab v. Mohar Singh**', *AIR 1955 SC 84* has held as under:

> "8. ….Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple

> repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.
>
> The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case."

14. Learned counsel for the petitioner has contended that as per the Repeal and Saving Clause under Section 49(4) of FEMA, offences committed under the Repealed Act shall continue to be governed by the provisions of Repealed Act as if the Act has not been repealed. It is argued by the learned counsel that when the adjudicating orders have been passed under FERA, after its repeal on 01.06.2000 then Rule 6 of the 1974 Rules shall apply to the present petition and not Rule 10 of Rules 2000. To deal with this contention it is relevant to reproduce Section 49 of FEMA which reads as under:-

"**Section 49. Repeal and saving -** (1) The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

(2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

(3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.

(4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.

(5) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or "any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

> (b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;
>
> (c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement:
>
> Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.
>
> (6) Save as otherwise provided in sub-section (3), the mention of particular matters in sub-sections (2), (4) and (5) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal."

15. A perusal of the said provision shows that the Appellate Board under the FERA, on the commencement of FEMA has been dissolved and the person appointed as Chairman or Member of erstwhile Appellate Board shall vacate their office as per Section 49 (1) and (2) of FEMA respectively. As per Section 49(3) of FEMA period of two years is provided to the Court to take cognizance of an offence under the repealed Act. Sub-Section 4 to the said section states that all offences committed under the repealed Act shall subject to the provision of sub-Section 3 continue to be governed by the provisions

of the repealed Act. Further, sub-Section 5 to Section 49 of FEMA consists of three Clauses (a), (b) and (c). Clause (a) of sub-Section 5 to Section 49 enumerates that any action done or taken or purported to be done or taken including rule, notification, inspection, order or notice or any declaration made permission or authorization or exemption granted or any document or instrument executed under the repealed Act i.e. FERA, to the extent they are not inconsistent with the provisions of FEMA are deemed to be done or taken under the corresponding provisions of FEMA. The said provision has the effect of incorporating or making a general declaration that the existing rules, notifications, declarations, authorization and exemptions granted under FERA will continue to apply despite the repeal of FERA and after enactment of FEMA as long they are not inconsistent with FEMA. It does away with the necessity and requirement to issue fresh or new authorizations, rules, notifications, exemptions general or particular, etc. all over again because FERA has been repealed with enactment of FEMA. However, this is subject to the condition that the said rules, notifications, exemptions, etc. should not be in conflict with the provisions of FEMA. Section 24 of the General Clauses Act,1897 also preserves the continuity of subordinate legislation upon re-enactment, unless there are express words to the contrary and the subordinate legislation is not inconsistent with the law enacted.

16. Section 24 of the General Clauses Act,1897 reads as under:-

"**24. Continuation of orders, etc. issued under enactments repealed re-enacted**

> Where any Central Act or Regulation is, after the commencement of this Act, repealed and re- enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form, or bye-law made or issued under the provisions so re-enacted and when any Central Act or Regulation which by a notification under Section 5 or 5A of the Scheduled Districts Act, 1874 (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section."

17. Clearly, Section 24 of the General Clauses Act,1897 preserves and instills continuity to notifications, orders, schemes, rules and bye-laws made or issued under the repealed Act unless they are inconsistent with the provisions of the re-enacted statute. As per this section, subordinate legislation mentioned therein, consequent upon repeal of an Act or Regulation with re-enactment of a new Act shall continue to remain in force, if they are not inconsistent with the provisions of the re-enacted Act. The subordinate legislation under the repealed Act shall be deemed to have been made or issued under the new Act unless the subordinate legislation is superseded by new subordinate legislation under the new Act which has an overriding

effect. It provides continuity and ensures that the time gap in enforcement of the new enactment and framing of subordinate legislation therein does not cause confusion and inconvenience.

18. Section 49(6) of FEMA is crucial to determine the present contentions. The said Section is in a nature of a preserving clause for the applicability of Section 6 of the General Clauses Act,1897 in determining the effect of the provisions of FEMA on repealed provisions of FERA. The first part of the said sub-section protects the two year limitation period for commencement of proceedings as provided under sub-Section 3 of Section 49. It begins and ends with the words save as otherwise provided in Sub-section 3. Thus, the limitation period in the sunset clause of two years is expressly protected, despite the second part of sub-section 6. Clearly, sub-section 3 to Section 49, which provides for the limitation period of two years for commencement of proceedings, overrides the second portion of sub-Section 6. However, the second portion of sub-Section 6 of Section 49 mentions that particular matters in sub-Sections (2), (4) and (5) shall not be held to prejudice or affect the general applicability of Section 6 of the General Clauses Act,1897 with regard to the effect of repeal. The second part expressly makes Section 6 of the General Clauses Act,1897 applicable inspite of repeal of FERA by FEMA. Section 6 of the General Clauses Act,1897 will apply despite Sub-sections 2, 4 and 5 of Section 49 of FEMA.

19. On a combined reading of the aforesaid sub-Sections and interpretation given to sub-Section 6 to Section 49, the intention of the

legislature is made clear. FERA is replaced by FEMA with effect from 1st June, 2000 and the Appellate Board under FERA under Section 52 of FERA is replaced by Appellate Tribunal under Section 18 of FEMA. Rules, notifications, directions, exemptions etc. granted under FERA continue to apply to the extent they are not in conflict with the provisions of FEMA as per Section 49(5) of the FEMA. Section 6 of the General Clauses Act,1897, which protects rights, obligations, actions and liabilities, applies despite repeal of FERA but subject to two year limitation period specified in Sub-section 3 of Section 49 of FEMA for initiation of proceedings. Therefore, by way of express stipulation under Section 49(3) read with Section 49(6) of the FEMA, the effect of Section 6 of the General Clauses Act,1897 is excluded to the extent indicated which is not so for sub-Sections (2), (4) and (5) of the said Section.

20. The scope of Section 49 of the FEMA in light of Section 6 of the General Clauses Act,1897 and the repealed provisions of FERA was discussed by this court in '**S.K. Mittal and ors. Vs. Union of India and Anr.**',*161 (2009) DLT 789* wherein it was held:-

> "19. In the light of the aforesaid decisions, Section 49 of FEMA and the surrounding factors, it is apparent that Section 49 did not seek to withdraw or take away the vested right to appeal in cases where proceedings were initiated prior to repeal of FERA on 1st June, 2000. FEMA in Section 49(1) and (2) only had the effect of substitution of the Appellate Board under FERA to Appellate Tribunal under FEMA. It did not take away the vested rights to appeal or impose more onerous and stringent conditions for filing of appeals. Imposing stringent or onerous conditions has the effect of taking

away vested right for which there must be an express stipulation or implied intendment, which should be apparent and clear from the enactment and the surrounding circumstances leading to the amendment/repeal. It cannot be said that the FEMA in any manner by incorporating Section 49, which specifically makes reference to Section 6 of the General Clauses Act, 1897 wanted to do away and take away the vested right to appeal or impose more stringent or harsher conditions on the right to appeal. The said reasoning will equally apply to adjudicating orders, which are passed pursuant to the sunset clause in Sub-section 3 of Section 49. The effect of the sunset clause in Sub-section 3 read with Section 6 to Section 49 is to make the provisions of General Clauses Act applicable to the repealed enactment i.e. FERA. However, in such cases proceedings should have commenced within the limitation period specified in Sub-section 3, i.e., two years and not after two years. All proceedings which are initiated under Sub-section 3 of Section 49 read with <u>Section 6 of the General Clauses Act, 1897 the provisions of FERA will continue to apply except with one change that the Appellate Forum, Appellate Board stands substituted with Appellate Tribunal. Change of the Forum does not affect or take away vested right to appeal and does not carries with it stringent or more onerous conditions imposed for filing an Appeal under the FEMA Rules</u>. Reference to Section 6 of the General Clauses Act, 1897 in Sub-section 6 of Section 49 of FEMA is against the plea raised by the respondent-Enforcement Directorate that by implied intendment the provisions of FERA and the 1974 Rules framed thereunder, stand substituted by more onerous stipulation of higher Court fees as per the Rules under FEMA.

20. Sub-section 6 to Section 49 of FEMA makes specific reference to Sub-sections 2, 4 and 5 while referring to the provisions of Section 6 of the General Clauses Act <u>but</u>

this is only by way of clarification or abundant caution. Sub-sections 2, 4 and 5 of Section 49 do not in any way effect the operation of Section 6 of the General Clauses Act, 1897 except to the extent as mentioned in Sub-section 3, i.e., limitation period of two years. Reference to Sub-section 2 in any way refers to Sub-section 1 also. Sub-section 2 to Section 49 of FEMA deals with rights of Chairman and Member of erstwhile Appellate Board. In this manner, Sub-section 6 of Section 49 of FEMA seeks to protect right to appeal inspite of dissolution of the Appellate Board and provides for rights to appeal before the Appellate Tribunal under FEMA."

(emphasis supplied)

21. In '**Bank of foreign Ex. Off. Of USSR v. Union of India**', *W.P. (C) 3755/2000, decided on: 06.11.2007 (Delhi)*, this court reflected upon the provisions of Section 49 of the FEMA and held that:

> "11. As far as the grievance of the petitioner is concerned, I am of the opinion that Section 49(5) and (6) provide a complete answer. The legislative intent in directing statutory transfer of appeal pending before the Appellate Board (of the Repealed Act) to the newly constituted Board is clear. If this thought process is to be pursued further, the logic of the applicability of the General Clauses Act is inexorable. Consequently, if a proceeding is concluded after the commencement of the FEMA by any adjudicating authority in terms of pre-existing law, the appeal would lie to the newly constituted Board under FEMA. As far as the apprehension of appropriate authority under FEMA i.e. whether it should be the Special Director or the Assistant Director, I am of the opinion that there is not much merit in this again. By operation of Section 6 of the General Clauses Act, the same authority continues to be empowered, to adjudicate and render findings in the absence of any other statutory indication to the contrary.

The cumulative effect of Section 49 of FEMA and Section 6 of the General Clauses Act, in my opinion, are that though FERA stands repealed, yet in respect of the investigations pending before the various authorities, the liability under the FERA, has to be enforced and adjudicated."

(emphasis supplied)

22. There is no inconsistency between 1974 Rules under FERA and the repealed enactment i.e. FEMA or Rules 2000 framed there under on the question of Court fees payable. An appeal against an adjudication order passed under FERA is filed under Section 52 of the FERA and Court Fees is payable on the said appeal as per the 1974 Rules under FERA. Section 52 of FERA applies in relation to appeals against adjudication order under FERA. FEMA in view of Section 49 read with Section 6 of the General Clauses Act,1897 substitutes the Appellate Tribunal instead of the Appellate Board as the forum of appeal under Section 52 of FERA. The appeal in view of Section 6 of the General Clauses Act,1897 and Section 49 of FEMA is filed under Section 52 of FERA but is heard by a different appellate forum i.e. Appellate Tribunal instead of Appellate Board. Appeals against the adjudication orders passed under FERA are not filed under Section 19 of FEMA. Appeals under Section 19 of FEMA are filed against orders under FEMA including first appeals decided by the Special Directors. The Rules 2000 framed under FERA fix and prescribe Court Fees payable on appeals filed under Section 19 of FEMA and not appeals filed before the Appellate Tribunal under Section 52 of FERA read

with Section 49 of FEMA. Rule 10 of Rules 2000 under FEMA by express stipulation applies to appeals filed under Section 19 of FEMA. The new Rule does not apply to appeals filed under Section 52 of FERA. The 1974 Rules framed under FERA are applicable to all appeals, even after repeal and enactment of FEMA, when an appeal is filed against an adjudication order passed under FERA. The court fee provisions of Rules 2000 under FEMA do not apply to appeals under Section 52 of the FERA filed against adjudication orders passed under FERA. The court fee provisions of Rules 2000 under FEMA will apply to appeals filed under Section 19 of FEMA and not to appeals filed under Section 52 FERA. There is therefore no inconsistency between Rule 6 of the 1974 Rules under FERA and Rule 10 of the Rules 2000 under FEMA. Both operate independently and separately and to different category or types of appeals. Rule 6 of the 1974 Rules under FERA applies to appeals against order under FERA and Rule 10 applies to appeals against an order under FEMA. Section 24 of the General Clauses Act,1897, therefore, protects operation of Rule 6 of the 1974 Rules and the Court Fees prescribed therein.

23. In the instant case, respondent No.2 had taken cognizance of the offence under Section 9(1)(d) read with Section 72 of the FERA under Section 49(3) and (4) of FEMA on 29.05.2002 on which date summon was also issued to the petitioner and the order imposing a penalty on the petitioner was passed on 28.06.2005. In an appeal filed against this order, the petitioner was directed to rectify the deficiency in the court fees vide impugned order 05.09.2005 directing the petitioner to make the payments as per Rules 2000. This Court is of the opinion that the

Appellate Tribunal while passing the impugned order failed to appreciate that had the proceedings under the order completed under FEMA, then the appeal would have been preferred under Section 19 of the FEMA before the Special Director and not before the Appellate Tribunal itself and only in that case the Adjudication Proceedings and Appeal Rules, 2000 would have been applicable. The Rules 2000 do not apply to appeals filed under Section 52 of FERA. Thus in the present case, 1974 Rules framed under FERA will continue to remain in force and in operation as long as they are not inconsistent with the provisions of the new enactment, FEMA. Similarly, the 1974 Rules framed under FERA are applicable to all appeals, even after repeal and enactment of FEMA, when an appeal is filed against an adjudication order passed under FERA.

24. In the light of the above discussion the present petition is allowed and the impugned order dated 05.09.2005 passed by the Appellate Tribunal for Foreign Exchange, New Delhi is set aside. However, the petitioner will be liable to pay court fees on the appeal filed as per the provisions of FERA read with the Adjudication Proceedings and Appeal Rules, 1974.

CM APPL No.13182/2005

The application is dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

MAY 27th , 2015/gm