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

\+ **<u>W.P.(C) 4407/2017</u>**

THE COMPETENT AUTHORITY, DELHI ..... Petitioner

Through: Mr Ashutosh Nandan Atrey, Advocate.

versus

MANPREET SINGH OBEROI ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **06.11.2017**

<u>VIBHU BAKHRU, J</u>

1. The petitioner - the competent authority (hereafter the 'Competent Authority') authorized under Section 5 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereafter 'SAFEMA') - has filed the present petition impugning an order dated 02.12.2016 (hereafter 'the impugned order') passed by the Appellate Tribunal (hereafter 'the Tribunal') constituted under Section 12 of SAFEMA.

2. The impugned order was passed by the Tribunal against an order dated 04.03.2016 passed by the Competent Authority forfeiting the following properties under the provisions of SAFEMA:-

"(1) Ms Oberoi Industries, 2/1B Anand Parbat Industrial Area, New Rohtak Road, New Delhi;

(2) M/s Oxford Fashion 2/1B Anand Parbat Industrial Area, New Rohtak Road, New Delhi."

(The abovementioned properties are hereafter also referred to as 'the said properties')

3. The Tribunal accepted the respondent's contention that the said properties had been purchased in the year 1993, which is much prior to the alleged acts constituting violation of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereafter 'COFEPOSA'). Consequently, the Tribunal allowed the respondent's appeal and set aside the order dated 04.03.2016 passed by the Competent Authority forfeiting the said properties.

4. Briefly stated, the relevant facts necessary to address the controversy involved in the present petition are as under:-

4. 1 An order of detention dated 23.10.2002 under Section 3(1) of COFEPOSA, was passed against the respondent. Thereafter, on 19.10.2003, the respondent was declared a Proclaimed Offender by the learned ACMM. The respondent was detained on 29.08.2003 and the said order was confirmed on the advice of the Advisory Board on 10.11.2003.

4.2 The principal allegation against the respondent was that he along with his associates, was engaged in fraudulent exports of cheap quality of automotive parts (Fuel Pump, Diaphragm) Microphones & Readymade Garments under Duty Entitlement, Passbook Scheme - cum Export Promotion Capital Goods Scheme DEPS cum Drawback scheme and Duty Free Replenishment Certificate Cum Drawback Scheme. It is alleged that the respondent and his associates used to over-value the consignments declared before the customs authorities in India. Whereas, the consignments were declared to be of exorbitant values in India, the declarations made before the customs authorities of the importing countries indicated a significantly lower value. In this manner, the respondent had mis-declared the value of the goods in question and fraudulently availed of export benefits under the above-mentioned schemes.

4.3 In view of the above, there is no dispute the respondent is a person covered under Section 2(a)(d) of SAFEMA and his properties that fall with the definition of "illegally acquired property" within the meaning of Section 3(c) of SAFEMA, are liable to be forfeited under Section 7 of SAFEMA.

4.4 In accordance with Section 6(1) of SAFEMA, a Show Cause Notice dated 29.03.2005 was issued to the respondent to explain the sources of income out of which the respondent had acquired right, title and interest in the said properties. The respondent responded to the said Show Cause Notice and filed an affidavit affirming that he had purchased the property located at 2/1B, Anand Parbat, Industrial Area, New Rohtak Road, from O.P. Narula s/o of Diwan Chand Narula, resident of 6/38 Joshi Road, Karol Bagh, New Delhi on 26.03.1993 for a total consideration of ₹28,000/-. He further stated that he was aged about 19 years at the material time when the said property was purchased. He further stated that his mother, who was then working with the Ministry of Defence, Government of India since the year 1962, had provided ₹15,000/- for purchase of the said properties. Respondent's mother also filed an affidavit confirming the same.

4.5 The Competent Authority rejected the respondent's contention and passed the order dated 04.03.2016 for forfeiture of the said properties principally for the reason that (i) that the documents produced by the respondent for establishing that he had purchased the said properties in 1993 – photocopy of sale agreement, General Power of Attorney, Purchase Receipt, etc. – were unregistered and unauthenticated; (ii) that the respondent did not place any evidence that he was 19 years old when the said properties were purchased; and (iii) that the respondent's mother had not produced any documentary evidence to explain the source of investment and, therefore, the contention that she had given ₹15,000/- to her son to acquire the said properties could not be accepted.

5. Before the Tribunal, the respondent produced various documents which are referred to in paragraph 9 of the impugned order, which reads as under:-

> "(i) Copies of the affidavits dated 25th March, 2006 sworn in by Smt. Amerjeet Kaur Mother of the appellant regarding submission and sources of investment in purchase of property bearing No.2/1B, Anand Parbat Industrial Area, New Rohtak Road, New Delhi.
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> (ii) Copy of receipt dated 26th March, 1993 for Rs.28,000/- for payment of the aforesaid property.
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> (iii) Copy of unregistered General Power of Attorney (GPA) executed between Sh. O.P. Narula and Sh. Manpreet Singh Oberoi in respect of the above said property.
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> (iv) Copy of unregistered sale agreement made on 26th March, 1993 between Sh. O.P. Narula and the appellant.

(v) Copy of affidavit (on a plain paper) sworn in by Sh. O.P. Narula regarding sale and transfer of property in question."

(vi) Copy of pensioner's identity card of Smt. Amerjeet Kaur."

6. The original documents were also produced by the respondent before the Tribunal as is noted in paragraph 16 of the impugned order, which is set out below:-

> "16. The original documents were produced by the appellant before us. The said documents, i.e. Receipt, General Power of Attorney, Sale Agreement and Affidavit were duly attested by the Notary on 26th March, 1993. The agreement to sell appears to be signed by two witnesses. We have also examined the back page of the stamp papers which contain the date 26th March, 1993. The photograph of Mr. O.P. Narula, who has sold the property to the appellant, is also pasted on the General Power of Attorney which is duly attested by the Notary Public. Similarly, the Agreement to Sell is apparently witnessed by the father of the appellant and the same was executed by Mr. O.P. Narula, seller and the appellant. Mr. O.P. Narula, seller has also executed an affidavit which is attested by the Notary Public, confirming that he has sold and transferred his property measuring 12' x 36' on ground floor and one room and open terrace on first floor built of land measuring 48 Sq. Yards to Manpreet Singh son of Sh. Amarjit Singh Oberoi and he has received the full consideration from the said purchaser. He also deposed that he has also executed the General power of Attorney, Agreement to Sell, Will and a Receipt in favour of the appellant and he would not revoke or cancel any of the said documents."

7. As opposed to the aforesaid evidence, the Competent Authority did not produce any material to even remotely suggest that the said properties were not purchased by the respondent in 1993 (as claimed by the

respondent) but subsequently. The Tribunal noted that the firm which was allegedly involved in the illegal activities was incorporated in 2000. The Tribunal also observed that it had come on record that respondent was helping his father during the year 1993-2000 who was carrying on the business of plastic goods

8. The Appellate Tribunal also repelled the contention that the documents produced by respondent were forged or fabricated as no material to indicate the same had been produced by the Competent Authority.

9. The learned counsel appearing for the petitioner assailed the impugned order on the solitary ground that the documents produced by the respondent to establish that the properties in question were purchased in 1993 were unregistered and, therefore, the respondent had failed to prove that the properties were legally acquired.

10. This Court is not persuaded to accept the aforesaid contention. A plain reading of the impugned order indicates that the Tribunal had examined the relevant material including the original documents produced by the respondent as well as the affidavit executed by Mr O.P. Narula, the seller, confirming that he had sold the property in question to the respondent and had received the full consideration for the same. Mr Narula had also deposed that he had executed the relevant documents, namely, the General Power of Attorney, Agreement to Sell, Will, receipt, etc. for transfer of the property in 1993. Thus, there was ample evidence on record to substantiate the respondent's claim that the said properties were purchased in 1993. As opposed to the same, the Competent Authority had not produced any

material that would even remotely cast a doubt as to the respondent's claim. The Tribunal had also noted that the Competent Authority had not even discussed that the firm involved in the illegal activities were established in the year 2000 and there was no allegation that respondent was involved in any illegal activity prior to the year 2000.

11. In view of the above this Court does not find any infirmity with the impugned order. The petition is, accordingly, dismissed. The parties are left to bear their own costs.

VIBHU BAKHRU, J

NOVEMBER 06, 2017
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