

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.02.2018

Delivered on : 22.02.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.34010 of 2012

Arun Mammen

.. Petitioner

versus

1. U.O.I.,
rep. by Secretary to Government,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Joint Director,
Adjudicating Authority,
Foreign Exchange Management Act,
Sastri Bhavan,
Haddows Road,
Chennai-600 006.

3. The Assistant Director,
Foreign Exchange Management Act,
Sastri Bhavan,
Haddows Road,
Chennai-600 006.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Prohibition, prohibiting the first respondent from in any way adjudicating the show cause notice in File No.T.4/2JD/CZO/2012, dated 27.09.2012 on the file of the Directorate of Enforcement, Chennai.

For Petitioner : Mr.V.T.Gopalan, SC for
Mr.S.Ashok KUMar

For Respondents: Mr.G.Hema, Spl.P.P.

ORDER

The petitioner has approached this Court, seeking the

following relief:

"To issue Writ of Prohibition, prohibiting the first respondent from in any way adjudicating the show cause notice in File No.T.4/2JD/CZO/2012, dated 27.09.2012 on the file of the Directorate of Enforcement, Chennai.

2. A complaint was filed under Section 16(3) of the Foreign Exchange Management Act, 1999 (in short, 'the FEMA, 1999') before the second respondent by the third respondent. In the complaint, it was alleged that on 24.3.2000, the brother of the petitioner made a declaration of endowment in favour of Webster Foundation at Switzerland. The said declaration of endowment was to the tune of Euro 1,23,000 equivalent to INR 52,20,784/-. The said amount was transferred into the account with LGT Bank in Liechtenstein, Vaduz, a State in Europe. It is relevant to mention here that originally the time of commission of alleged offence was during the period when Foreign Exchange Regulation Act, 1973 (in short, 'the FERA, 1973') was in force and the same was replaced by FEMA with effect from 01.06.2000.

3. On the basis of the complaint, a show cause notice was issued on 27.9.2012 by the Directorate of Enforcement, directing the petitioner and his brother as to why adjudication proceedings as contemplated in Section 16 of the FEMA, 1999 should not be held against them for certain contravention of the provisions of the FEMA, 1999. Although the impugned proceeding is only a show cause notice issued to the petitioner and his brother, the same is put to challenge in the present writ petition by the petitioner on the ground that the said notice issued was without jurisdiction in view of a specific provision contained in the FEMA, 1999 and also that the Adjudication Officer and the Enforcement Officer is one the same and therefore, the same was legally invalid and unenforceable.

4. Shri V.T.Gopalan, learned senior counsel appearing for the petitioner would challenge the impugned proceedings by placing heavy reliance on Section 49(3) of the FEMA, 1999, which, according to him, a sunset clause has been incorporated in the new Act. Section 49(3) of the FEMA, 1999 reads as under:

"49. Repeal and Saving:

(1) & (2).

(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."

5. According to the learned senior counsel, the contravention is said to have taken place on or before 24.3.2000 and as per the sunset clause as reproduced above, no Adjudicating Officer shall take notice of any contravention of the repealed Act after expiry of period of two years from the date of commencement of the new Act, since the new act had come into force from 1.6.2000, any contravention of the repealed Act ought to have been taken note of by the authority under the new Act on or before 31.5.2002. In this case, admittedly, the show cause notice was issued after 31.5.2002 and therefore, such action on the part of the authority cannot be countenanced in law. In the said circumstances, there was no legal requirement on the part of the petitioner to submit to the jurisdiction of the adjudicating authority and give a reply to the show cause notice.

6. The learned senior counsel would draw the attention of this Court to Clause 6 of the General Clauses Act, 1897, which reads as under:

"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) to (e)

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."

7. According to the learned senior counsel, once the Act or Regulation is repealed, no investigation or legal proceedings may be instituted or continued or enforced as if the repealing Act has not been passed. He would therefore submit that sub Section 4 of Section 49 of the FEMA, 1999 which empowers the authority to continue with the offence committed under the repealed Act, cannot be invoked in the present case.

Sub Section 4 of Section 49 reads as under:

"49. Repeal and saving:

(1) to (3)

(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.

8. He would, therefore, submit that sub-section 3 is exception to Section 49 and as far as the instant case is concerned, the petitioner is entitled to protection by virtue of the sunset clause.

9. Upon notice, Mrs.G.Hema, learned Special Public Prosecutor entered appearance and a detailed counter has also been filed.

10. The first and foremost submission of the learned Special Public Prosecutor appearing for the respondents is that the impugned proceedings is mere a show cause notice and a writ petition against the show cause notice, is not maintainable as it is always open to the petitioner to urge all the contentions before the adjudicating authority. She would submit that the authority who issued the show cause notice is a competent authority as constituted under the FEMA, 1999 and therefore, the ground of attack on that aspect is to be rejected outright as the adjudicating authority mentioned in the show cause notice is as per the provisions of the Act.

11. As regards the main thrust of arguments regarding application of sunset clause 49(3) of the FEMA, 1999, the learned Spl.Public Prosecutor would draw the attention of this Court to copy of the account summary in respect of the deposit made in the petitioner's account in the foreign bank, and the date i.e. 31.12.2001, if taken into consideration, the contravention falls well within two year period as mentioned in Section 49(3) of the FEMA, 1999. Therefore, the authority is well within his right to issue the present show cause notice and therefore, the petitioner cannot successfully challenge the show cause notice on this ground. In any case, she would submit that no prejudice would be caused if the petitioner is directed to approach the authority directly and make his submissions.

12. At this, the learned senior counsel Shri V.T.Gopalan, would submit that that mere account summary of the foreign bank cannot be an extension of limitation period and such account summary cannot be a valid legal basis for initiating the action under FEMA, 1999 for more than one reason. Firstly, he would submit that as per Section 39 of the FEMA, 1999, any document received from any place outside India, the same can be presumed that it was executed by the person by whom it purports to have been so executed.

Section 39 of the FEMA, 1999 reads as under:

39. Presumption as to documents in certain

cases.—Where any document— —Where any document—"

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person, and such document is tendered in any proceeding under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the Adjudicating Authority, as the case may be, shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document."

Relying on the above, the learned senior counsel would submit that the document purported to be the basis of such action, is not duly authenticated as per the provisions of the FEMA, 1999. He would also draw the attention of this Court to Rule 2 of the Foreign Exchange (Authentication of Documents) Rules, 2000, which reads as under:

"2. Authority for authentication and the manner of authentication of documents:

Any document received from any place outside India purporting to have affixed, impressed or submitted thereon or thereto the seal and signature of any person who is

authorised by Section 3 of the Diplomatic and Consular Officer (Oaths and Fees) Act, 1948 (41 of 1948) to do any notarial acts shall be deemed duly authenticated for the purpose of Section 39 of the Act."

13. He would also rely on Section 78(6) of the Evidence Act, 1872, which reads as under:

78. Proof of other official documents:
The following public documents may be proved as follows:

(1) to (5)

(6) Public documents of any other class in a foreign country,— by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of 7[an Indian Consul] or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country. 3[an Indian Consul] or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country."

14. As per the above provision also, the document, namely, account summary was not duly certified by the officer of the legal custody of the original. Therefore, the document relied upon by the authority for initiating the impugned action, is not legally acceptable and therefore, any initiation of action on such invalid document, is to be discountenanced outright.

15. Learned senior counsel appearing for the petitioner would rely on the following decisions in support of his contentions, viz.,

a) "MANU/DE/4067/2010 (Bhupendra V.Sha versus Union of India and others)" wherein, the Delhi High Court, in similar circumstances, had quashed the proceedings initiated under the FEMA, 1999 by applying the principles of sunset clause as provided in Section 49(3) of the FEMA, 1999. In fact, a similar contention was raised about the statement of accounts obtained after coming into force the new Act and it was held that such account of summary does not extend the limitation beyond the sunset period as set out in Section 49(3) of the FEMA, 1999. The learned counsel would draw the attention of this Court to paragraphs 3, 11, 13 and 14 of the judgment, which are

reproduced herein below:

"3. The first submission of Mr. V.Sridharan, learned counsel for the Petitioners, is that the show cause notice is untenable in law inasmuch as the alleged contravention took place in 1997-98 when the FERA was in force. Section 49(3) FEMA provides that notwithstanding anything contained in any other law for the time being in force, no adjudicating officer shall take notice of the contravention under Section 51 of the FERA after the expiry of the period of two years from 1 st June 2000. In view of the above „sunset" clause, Section 6 of the General Clauses Act, 1897 (hereinafter the "GC Act") stands excluded. The savings clause under Section 49(5) FEMA applies only if any action is taken or any notification is issued under FERA during the time the FERA was in force. The impugned show cause notice dated 10th August 2004 by which the Special Director, ED purportedly took note of the contravention of Sections 7 and 8 FEMA, in fact related to a period prior to the coming into force of the FEMA. No notice of the contravention of any of the provisions of FERA could have been taken by the Special Director, ED after 31st May 2002.

"4. to 10.

"11. Although the letters from the banks pursuant to the clarification sought by the ED are dated later than 31st May 2002, the said letters mention export outstanding in the account of JTS for the period 1997-98. The mere fact that the statement of accounts for the half yearly ended as on 30th June 2002 showed export outstandings does not extend the limitation for proceeding against the JTS and its directors for contravention of Section 18 FEMA 1973 beyond the sunset period as set out in Section 49(3) FEMA. The complaint itself refers to the letters of the various banks which state that JTS had ceased its operations in 1999 itself. The above details unmistakably show that the exports in question were during the period 1997-98 and the contravention of Section 18 FEMA due to the non- realisation of the

export proceeds also pertained to the same period. Even according to the ED the non-realisation of the export proceeds did not pertain to any export later than 1997-98. At the given time, FEMA was not yet in force. There was therefore no question of the contravention of any provision of FEMA. The contravention if any was only of the provisions of FERA. However, the show cause notice dated 10th August 2004 and the complaint preceding it invoke only the provisions of Sections 7 and 8 FEMA read with Section 42 thereof and not the provisions of the FERA.

"12.

"13. Under Section 49 (3) FEMA, no notice of the contravention of any provision of the FERA can be taken by the Special Director beyond the sunset period, i.e. beyond 31st May 2002. Consequently, unless the ED is able to show that the failure to realise the proceeds of exports for the period 1997-98, which was a contravention of the FERA provisions, "continued" even beyond the "sunset" period under Section 49(3) FEMA, the show cause notice issued would be unsustainable in law. The legislative intention appears to be that under the FEMA, there is only a limited continuation for a period of two years after coming into force of the FEMA of a contravention of a provision of FERA 1973. This can be contrasted with the FERA 1947 which was repealed by FERA 1973. FERA 1973 did not contain any sunset clause. That permitted the ED to prosecute a contravention of FERA 1947 even after its repeal. This was explained in the decision of the Supreme Court in P.V. Mohd. Barmay Sons v. Director of Enforcement 1993 [3] SCR 960.

"14. Section 49 (4) FEMA makes it abundantly clear that subject to the provisions of Section 49 (3) "all offences committed under the repealed Act" shall continue to be governed by the provisions of the repealed Act, i.e., the FERA 1973 as if that Act, i.e., FERA 1973 was not repealed. Section 49(3) is the sunset clause and states that no court shall take cognizance of any offence and "no adjudication officer

shall take notice of any contravention under Section 51 FERA 1973" after the expiry of the period of two years from the date of the commencement of the FEMA. There is no dispute that the sunset period ended on 31st May 2002. Section 49 (3) and (4) FEMA were interpreted by the Supreme Court in Standard Chartered Bank v. Directorate of Enforcement (2006) 4 SCC 278. It was explained in para 32 that the word "offence" occurring in Section 49(3) includes criminal prosecution as well as adjudication proceedings. A combined reading of Sections 49 (3) and 49 (4) FEMA and Section 6 GC Act show that unless proceedings had already commenced against the Petitioners under the FERA for contravention of Section 18 thereof before 31st May 2002, there was no question of such contravention continuing even after the expiry of the sunset period in terms of Section 49 (3) FEMA. Therefore, even if the impugned show cause notice dated 10th August 2004 were to be read as pertaining to contraventions of FERA, it is unsustainable in law."

b) "(2006) 12 SCC 33 (Siemens Ltd versus State of Maharashtra and others). The learned senior counsel would place reliance on paragraphs 9 11 which are extracted hereunder:

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I.

Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

"10. The said principle has been followed by this Court in V.C. Banaras Hindu University and Ors. v. Shrikant [2006 (6) SCALE 66], stating:

"48. The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

"49. In K.I. Shephard & Ors. etc. v. Union of India & Ors. [AIR 1988 SC 686], this Court held :

"It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

[See also Shri Shekhar Ghosh v. Union of India & Anr. 2006 (11) SCALE 363 and Rajesh Kumar & Ors. v. D.C.I.T. & Ors. 2006 (11) SCALE 409]

"11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable."

The learned senior counsel would submit that the writ Court ordinarily may not exercise jurisdiction in entertaining the writ petition questioning the show cause notice unless the same is without jurisdiction. The learned senior counsel would point out that the expression "appears" used by the authority, reveals that already an opinion has been formed and no useful purpose would be served and any reply to the show cause notice would be an empty formality. He would draw the attention of this Court to the show cause notice wherein, in more than one place, the authority used the expression "appears" and therefore, on this ground alone, the show cause notice is liable to be quashed.

c) "(2010) 13 SCC 427 (Oryx Fixheries Private Limited versus Union of India and others)", wherein, the Hon'ble Supreme Court quashed the proceedings on the ground that the authority by using certain expressions, already pre-judged the show cause notice. The learned senior counsel would rely on paragraphs 23, 28, 31, 33, 35 and 43, which are reproduced hereunder:

"23. Relying on the underlined portions in the show cause notice, learned counsel for the appellant urged that even at the stage of the show cause notice the third respondent has completely made up his mind and reached definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.

"24. to 27.

"28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

"29. & 30.

"31. 31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an

impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

"32.

"33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

"35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show cause notice itself.

"36. to 42.

"43. For the reasons aforesaid, this Court quashes the show cause notice as also the order dated 19.03.2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed."

d) "(2014) 8 SCC 425 (Hussein Ghadially alias M.H.g.A.Shaikh and others versus State of Gujarat)", wherein, the Hon'ble Supreme Court of India has held in para 21(3) as under:

"21(3). Thirdly, because if the statute provides for a thing to be done in a particular manner, then it must be done in that manner alone. All other modes or methods of doing that thing must be deemed to have been prohibited. That proposition of law first was stated in "Taylor v. Taylor 1875 LR 1 Ch D 426" and adopted later by the Judicial Committee in Nazir Ahmad v. King Emperor (AIR 1936 PC 253) and by this Court

in a series of judgments including those in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh AIR 1954 SC 322), State of U.P. v. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha v. Mahavir Prasad (1999 8 SCC 266), Dhanajaya Reddy v. State Of Karnataka. (2001 4 SCC 9) and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.(2008 4 SCC 755). The principle stated in the above decisions applies to the cases at hand not because there is any specific procedure that is prescribed by the statute for grant of approval but because if the approval could be granted by anyone in the police hierarchy the provision specifying the authority for grant of such approval might as well not have been enacted."

The learned senior counsel would rely upon the above for the proposition that when a statute provides for a thing to be done in a particular manner, then it must be done in that manner alone. He would submit that when the state provides for authentication of documents in a particular manner, the same has to be done in that manner and not in any other manner. In the absence of proper authentication and certification, the document cannot held to be a valid document, giving rise to any action by the authority under the FEMA, 1999. Any action without following the procedure contemplated in the provisions of the FEMA, 1999 stands vitiated as being illegal and void.

16. On the other hand, the learned Special Public Prosecutor would rely upon a judgment of the Hon'ble Supreme Court of India in Civil Appeal No.3221 of 2010, dated 12.4.2010 in the matter of "Raj Kumar Shivhare versus Assistant Director, Directorate of Enforcement and Another", particularly paragraph 34 of the judgment in support of her contention that writ petition should not be entertained ignoring the statutory principles. Paragraph 34 is relevant and it is extracted as under:

"34. When a statutory forum is created by law for redress of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case, High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go bye by a litigant for invoking the forum of judicial review of the High Court under Writ jurisdiction. The High Court,

with great respect, fell into a manifest error by not appreciating the aspect of the matter. It has, however, dismissed the writ petition on the ground of lack of territorial jurisdiction."

17. This Court has given its anxious consideration to all the factual and legal submissions made on behalf of both parties, particularly in view of the fact what is challenged in the writ petition is only a show cause notice issued to the petitioner, calling upon him to give an explanation in order to set in motion of the adjudicating process under the provisions of the FEMA, 1999.

18. From a reading of Section 49(3) of the FEMA, 1999, it gives us no room for any other interpretation than what is submitted by the learned senior counsel that as per the sunset clause, no offence can be taken cognizance of after a period of two years from coming into force of the new Act, i.e. 1.6.2000. In the instant case, it was factually demonstrated that the offence is said to have taken place somewhere in March, 2000 and show cause was issued only on 27.9.2012 and therefore, the action of the authority, is directly hit by sunset clause, i.e. Section 49(3) of the FEMA, 1999. The argument that under sub clause (4) of Section 49, the action can be continued under the new Act, cannot be legally acceptable one in view of the exception carved out under Sub Section 3 of Section 49 of the FEMA, 1999. Therefore, such argument is legally hollowed and preposterous and the same is to be rejected outright. As rightly contended by the learned senior counsel appearing for the petitioner that the account summary dated 31.1.2001 issued by the foreign bank is not duly certified or attested as provided under Section 39(ii) of the FEMA, 1999 and also not duly authenticated under Rule 2 of the Foreign Exchange (Authentication of Documents) Rules, 2000.

19. In addition, as per Section 78(6) of the Indian Evidence Act, such foreign document if not duly certified, loses its legal existence. That being the case, the reliance placed by the department on the account summary is flawed and therefore, any action initiated on that basis cannot be countenanced in law.

20. In fact, the Delhi High Court, in the decision cited supra, had an occasion to deal with similar contentions raised on behalf of the petitioner herein and has eventually held in favour of the petitioner therein and quashed the proceedings.

Further all, Section 49(3) is very clear and unambiguous and does not give any room for reading anything else other what is provided therein. As regards the contention raised on behalf of the respondents that the impugned proceedings is only a show cause notice, such argument in the facts and circumstances of the case, cannot hold good since this Court is of the considered view that the impugned show cause notice is invalid and falls outside the scope of FEMA, 1999 and therefore, is without jurisdiction and when such conclusion is reached by this Court, there is no justification for directing the petitioner to submit explanation for the show cause notice issued under the impugned proceedings. The discretion to entertain the writ petition against show cause notice as far as the present case on hand is concerned, is entirely in favour of the petitioner, since the authority has taken cognizance of the offence very much after coming into force the FEMA, 1999 which is specifically barred under the sunset Clause. Therefore, such action is liable to be held as illegal and contrary to the mandatory provisions of the FEMA, 1999.

21. In view of this Court holding that the impugned proceedings suffer from jurisdictional error which cuts the root of the matter, other contentions namely, whether the adjudicating authority can be the same as enforcing authority or whether the authority issued show cause notice has pre-judged the issue, etc., are not specifically dealt with by this Court since no findings are called for on those aspects when this Court held that the action taken by the authority is hit by Section 49(3) of the FEMA, 1999.

22. From the above narrative and discussion, the Writ Petition is allowed and the respondents are hereby prohibited from in any way adjudicating the show cause notice in File No.T.4/2JD/CZO/2012, dated 27.09.2012 on the file of the Directorate of Enforcement, Chennai. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

suk

To

1. The Secretary to Government,
U.O.I.,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Joint Director,
Adjudicating Authority,
Foreign Exchange Management Act,
Sastri Bhavan,
Haddows Road,
Chennai-600 006.

3. The Assistant Director,
Foreign Exchange Management Act,
Sastri Bhavan,
Haddows Road, Chennai-600 006.

4. The Directorate of Enforcement, Chennai.

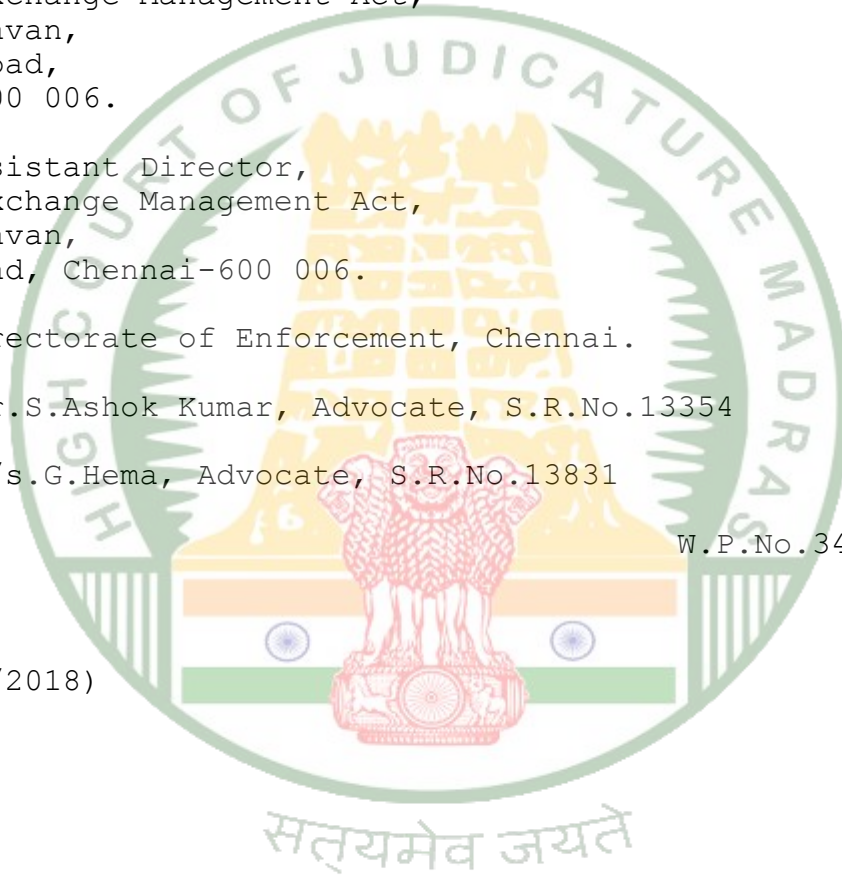
+1cc to Mr.S.Ashok Kumar, Advocate, S.R.No.13354

+1cc to M/s.G.Hema, Advocate, S.R.No.13831

W.P.No.34010 of 2012

KAN (CO)

RRK (28/02/2018)



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