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

+ **W.P.(C) 9633/2018 & CM No. 37480/2018**

ASHITA IMPEX PVT. LTD. & ANR.

..... Petitioners

Through: Mr Parag P. Tripathi, Senior
Advocate with Mr Neeraj Chaudhari,
Ms Saakshi Agarwal, Mr Vivek
Mathur, Ms Deepabali Datta, Mr
Sarthak Pathak, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr Amit Mahajan, CGSC for UOI
with Mr Madhav Chitale, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.09.2018

1. The petitioners have filed the present petition, *inter alia*, praying as under:-

“(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ, Order or direction as may be necessary against the Respondent for quashing of the show cause notice dated 24th April, 2018 for being illegal, arbitrary and bad in the eyes of law and/or;”

2. The petitioners are, essentially, aggrieved by the complaint filed by the Deputy Assistant Director, Directorate of Enforcement before the Adjudicating Authority. The case instituted against the petitioners is with regard to remittances of certain amounts made by the petitioners to entities

in Singapore. This includes a sum of USD 358000 remitted to M/s Mayur Resources Pte. Ltd. and USD 9556 towards fee of legal assistance in Singapore. In addition, the complaint also relates to expenses incurred overseas which have not been recovered.

3. The petitioners' case is that the facts on which the complaint is premised was well within the knowledge of the respondent over eighteen years ago. It is stated that the show cause notices were issued to petitioners sometime in the year 2002 and statement of the petitioner no.2 was recorded. Two of the show cause notices have already been adjudicated. Mr Tripathi, learned senior counsel appearing for the petitioner submits that the statements made by the petitioner no.2 during those proceedings clearly disclosed the petitioners' stand in relation to the aforesaid proceedings.

4. The petitioners were once again called upon to respond to the said allegations and make a statement in the year 2013; which the petitioner did.

5. Mr Tripathi, submits that the proceedings now initiated are clearly barred by laches and limitations. He states that although the period of limitation is not prescribed under the Foreign Exchange Management Act, 1999 (FEMA), any action under the said enactment is required to be taken within a reasonable period. He also relies on the decision of a Coordinate Bench of this Court in ***R. M. Mehrotra v. Enforcement Directorate: (2009) 246 ELT 141*** in support of his contentions.

6. Mr Mahajan, learned counsel appearing for the respondent countered the aforesaid submission. He states that although certain statements were made by petitioner no.2 in the year 2002 and thereafter in 2013, investigations remained inconclusive. It is only after conclusion of the investigation that a complaint could be made. He points out that in terms of

the FEMA the adjudicatory proceedings are required to be completed within a period of one year. However, there is no period specified for making a complaint. He also states that last statement was made by petitioner no.2 in the year 2013 and the present complaint cannot be held to be barred by limitation.

7. This Court does not consider it apposite to consider the above contentions at this stage. Clearly, the show cause notice dated 24.04.2018 – which is impugned by way of this petition – is not beyond limitation as it is issued by the Adjudicating Authority pursuant to a complaint filed by the Assistant Director. The petitioners are, essentially, aggrieved by the delay in making the complaint but no prayer for setting the said complaint has been made. The question whether the complaint is unreasonably delayed can be agitated before the Adjudicating Authority.

8. In view of the above, the present petition is dismissed. The pending application is also disposed of.

9. It is clarified that all contentions of the parties are reserved. The petitioners would be at liberty to urge the contentions that the complaint was made beyond the reasonable period and, therefore, should not have been entertained before the Adjudicating Authority. The Adjudicating Authority shall consider the same and pass a speaking order along with the merits of the petition.

VIBHU BAKHRU, J

SEPTEMBER 17, 2018
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