

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Tuesday, the Fifth day of March Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE T.RAJA

WP.Nos.1844, 1846, 1848 & 1849 of 2007

MR.P.V.KRISHNAMANI ... PETITIONER in WP No.1844 of 2007

M/S NEW LINE FINANCE LTD., ... PETITIONER in WP No.1846 of 2007
REP. BY MR.R.PARANTHAMAN HAVING OFFICE AT
OLD NO.9 NEW NO.15 HALLS ROAD EGMORE
CHENNAI 8

M/S NEW LINE FINANCE LTD ... PETITIONER in WP No.1848 of 2007
REP. BY MR.R.PARANTHAMAN HAVING OFFICE AT
OLD NO.9 NEW NO.15 HALLS ROAD EGMORE
CHENNAI 8

MR.A.MUTHUSAMY ... PETITIONER in WP No.1849 of 2007

Vs

1 THE APPELLATE TRIBUNAL FOR RESPONDENTS IN ALL THE
FOREIGN EXCHANGE, MINISTRY OF LAW, PETITIONS
JUSTICE AND COMPANY AFFAIRS,
GOVT OF INDIA

2 THE SPECIAL DIRECTOR OF THE
ENFORCEMENT, FOREIGN EXCHANGE MANAGEMENT ACT,
DIRECTORATE OF REVENUE INTELLIGENCE, GOVT
OF INDIA, NEW DELHI

Writ Petitions and writ miscellaneous petition filed under
Article 226 of the Constitution of India praying that in these
circumstances stated therein and in the respective affidavits
filed therewith the High Court will be pleased to

1 WP No.1844 of 2007

Pass an order or direction or writ more particularly in the
nature of writ of certiorarified mandamus to call for the records
of the first respondent in the impugned order dated 28.2.2006 in
Appeal No.700/2005, directing the petitioner to deposit 35% as
pre-deposit condition as unsustainable and quash the same and
further consequently directing the first respondent to hear the
appeal on merits without insisting for Pre-deposit of the amount

2 WP No.1846 of 2007

Pass an order or direction or writ more particularly in the nature of writ of certiorarified mandamus to call for the records of the first respondent in the impugned order dated 28.2.2006 in Appeal No.697/2005, directing the petitioner to deposit 35% as pre-deposit condition as unsustainable and quash the same and further consequently directing the first respondent to hear the appeal on merits without insisting for Pre-deposit of the amount

3 WP No.1848 of 2007

Pass an order or direction or writ more particularly in the nature of writ of certiorarified mandamus to call for the records of the first respondent in the impugned order dated 28.2.2006 in Appeal No.696/2005, directing the petitioner to deposit 35% as pre-deposit condition as unsustainable and quash the same and further consequently directing the first respondent to hear the appeal on merits without insisting for Pre-deposit of the amount

4 WP No.1849 of 2007

Pass an order or direction or writ more particularly in the nature of writ of certiorarified mandamus to call for the records of the first respondent in the impugned order dated 28.2.2006 in Appeal No.698/2005 and 699/2005 directing the petitioner to deposit 35% as pre-deposit condition as unsustainable and quash the same and further consequently directing the first respondent to hear the appeal on merits without insisting for Pre-deposit of the amount

Order : These petitions coming on this day for hearing upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.B.SATISH SUNDAR Advocate for the petitioner in each the petitions, and of M/S.RAJNISHPATHIYIL, Panel Counsel for the 2nd respondent in all the petitions the Court made the following order:-

There are four writ petitions filed, viz. two by the Companies and two by the Managing Directors of the said Companies. The issue revolving in all these four writ petitions is one and the same. Therefore, all the four writ petitions are taken up together for common adjudication with the consent of both the parties.

2. All the Writ Petitions are challenging the interim order passed by the 1st respondent, namely, the Appellate Tribunal for Foreign Exchange, Ministry of Law, Justice and Company Affairs, Government of India, dated 28.02.2006, directing each of the petitioner to deposit 35% of the penalty amount as pre-deposit condition imposed against the petitioners in the adjudication proceedings held by the 2nd respondent, namely, the Special Director of the Enforcement, Foreign Exchange Management Act, Directorate of Revenue Intelligence, Government of India, New Delhi vide order dated 18.12.2006.

3. Since all the Writ Petitions were admitted, this Court has granted an order of interim stay and the same has also been extended till now. In view of the interim order passed by this Court and subsequently extended, the 1st respondent Appellate Tribunal has safely not adjudicated the appeals pending before him filed by the petitioners, challenging the respective penalties imposed by the 2nd respondent.

4. Learned Counsel for the petitioners submitted that during the pendency of the writ petitions, a similar issue was taken up by the Apex Court in the case of **Raj Kumar Shivhare vs. Assistant Director, Directorate of Enforcement** reported in **2010 (253) E.L.T.3(S.C.)** and while dismissing the said appeal, the Apex Court has held that a Writ Petition under Article 226 of the Constitution of India is ordinarily not maintainable, especially, against an order of pre-deposit made by the Tribunal constituted under Section 19 of Foreign Exchange Management Act, 1999 and only an appeal in terms of Section 35 of the said Act could be entertained against an order of pre-deposit passed by the Tribunal in the jurisdictional High Court. However, interpreting Section 35, the Apex Court also has held that a person aggrieved by any decision or order of the appellate Tribunal may file an appeal to the High Court within the time stipulated on any question of law arising out of such order. Therefore, the learned Counsel for the petitioners requested this Court to convert these Writ Petitions as Writ Appeals under Section 35 of FEMA and to place the same before a Division Bench of this Court for further adjudication and also to give liberty to frame substantial questions of law.

5. Learned Standing Counsel for the 2nd respondent submitted that these Writ Petitions, which are pending for more than 10 years, are liable to be rejected on the point of limitation inasmuch as the order dated 28.02.2006 has been questioned beyond the statutory period of 60 days.

6. Immediately, meeting the said objection, the learned Counsel for the petitioners submitted that the objection raised by the learned Standing Counsel for the 2nd respondent is untenable in the light of the order passed by the learned Appellate Tribunal for FEMA dated 18.12.2006 in Appeal Nos.614, 696, 697, 698 to 700/2005 wherein it is held that according to the petitioner, pre-deposit order dated 28.02.2006 is not received by him or his client where 30% amount is directed to be deposited. Therefore, a direction was issued to furnish a copy of the order dated 28.02.2006. Only on the basis of the order passed by the Appellate Tribunal for FEMA, a copy of the impugned order dated 28.02.2006 was furnished to the petitioners only during December, 2006. On receipt of the same only, the above writ petitions have been filed within 60 days time.

7. I also agree with the submission made by the learned Counsel for the petitioners because the order dated 18.12.2006 passed by the learned Appellate Tribunal for FEMA clearly shows that a direction was issued to the respondents to furnish a copy of the order dated 18.12.2006. The said order is also reproduced here under :

'In Appeal No.614/05 Shri Balaji, advocate is present who stated that pre-deposit has been made. In other appeals Shri Sathish Sunder, advocate is present. According to him the pre-deposit order dated 28.2.06 is not received by him or his client where 30% amount is directed to be deposited. A copy of this order dated 28.2.06 may be sent and time for pre-deposit is extended for three weeks from today under the same conditions.

8. In the light of the above, the objection raised by the 2nd respondent that these Writ Petitions are not maintainable on the point of limitation goes. Further, in the light of the order passed by the Apex Court in **Raj Kumar Shivhare vs. Assistant Director, Directorate of Enforcement** reported in **2010 (253) E.L.T.3(S.C.)**, the Writ Petitions are liable to be converted as Writ Appeals. The relevant portion is extracted here under:

'50. In view of this Court's jurisdiction under Article 136 of the Constitution, we give liberty to the appellant, if so advised, to file an appeal before an appropriate High Court within the meaning of Explanation to Section 35 of FEMA and if such an appeal is filed within a period of thirty days from today, the appellate forum will consider the question of limitation sympathetically having regard to the provision of Section 14 of the Limitation Act and also having regard to the fact that the appellant was bona fide pursuing his case under Article 226 of the Constitution before the Delhi High Court and then its appeal before this Court.'

9. Accordingly, the Registry is directed to convert all these writ petitions as Writ Appeals and to place before the concerned Division Bench for further adjudication after getting necessary orders. The petitioners are also given liberty to frame substantial questions of law within a period of one week.

-sd/-

05/03/2019

/ TRUE COPY /

TO

1 THE APPELLATE TRIBUNAL FOR
FOREIGN EXCHANGE, MINISTRY OF LAW, JUSTICE
AND COMPANY AFFAIRS, GOVT OF INDIA

2 THE SPECIAL DIRECTOR OF THE
ENFORCEMENT, FOREIGN EXCHANGE MANAGEMENT ACT,
DIRECTORATE OF REVENUE INTELLIGENCE, GOVT
OF INDIA, NEW DELHI

3 THE SECTION OFFICER,
WRIT SECTION,
HIGH COURT, CHENNAI.

4 THE SUB ASSISTANT REGISTRAR,
WRIT AE SECTION,
HIGH COURT, CHENNAI.

C.C. to M/S.B.SATISH SUNDAR Advocate on payment of necessary
charges

The Government Advocate, High Court, Madras - 104.

Order

in

WP.Nos.1844, 1846, 1848 & 1849 of 2007

Date :05/03/2019

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
KP(12/03/2019)