In the High Court of Judicature at Madras

Dated : 30.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Civil Miscellaneous Appeal No.666 of 2019 & CMP.No.2032 of 2019

R.Viswanathan ...Appellant

Vs

1.The Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PEPT, rep.by its Registrar, 4th Floor, Lok Nayak Bhavan, Khan Market, New Delhi-3.

2.The Joint Director, Directorate of Enforcement, Government of India, Murugesan Naicker Complex, No.84, Greams Road, Chennai-6. ...Respondents

APPEAL under Section 35 of the Foreign Exchange Management Act, 1999 against the order in MP-FE-352/CHN/2018 (stay) in FPA-FE/98/CHN/ 2018/5133 dated 22.11.2018 on the file of the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PEBT, Government of India, New Delhi-3.

For Appellant : Mr.N.Satish Sundar

For Respondent-2 : Mr.Su.Srinivasan, Standing Counsel

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed challenging an interim order granted on 22.11.2018 by the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PEPT, New Delhi-3. The Tribunal directed the appellant to deposit a sum of Rs.39 lakhs for grant of stay.

2. The short point, which has been canvassed before us by the learned counsel for the appellant, is that the Tribunal failed to consider the income tax returns of the appellant for the year 2018-19, but only noted the income tax returns filed

for the years from 1999-2000 to 2002-2003. A specific ground has been raised in the memorandum of grounds of appeal before us.

3. The learned counsel for the appellant submits that the financial position of the appellant is precarious and that he will not be in a position to make the pre-deposit of Rs.39 lakhs. It is further submitted that the appellant's property worth of Rs.3 Crores has already been under attachment at the instance of the Customs Authorities by way of first attachment and at the instance of the Authorities of the Directorate of Enforcement, by way of second attachment by exercising powers under the provisions of the Prevention of Money Laundering Act, 2002. Hence, it is also submitted that the Tribunal could have considered the undue hardship, to which the appellant is put. According to him, had the income tax returns for the assessment years from 2013-14 to 2018-19 been considered, the Tribunal would not have passed such an order directing pre-deposit of Rs.39 lakhs.

4. Mr.Su.Srinivasan, learned Standing Counsel appearing for the second respondent submits that the Tribunal had specifically recorded that the income tax returns for the assessment year 2018-19 were not produced and that there was no reason for the Tribunal for not looking into the documents, which have been placed before it.

5. In our considered view, without going into the controversy as to whether the appellant had produced the current income tax returns or not, we deem it appropriate that the appellant shall be given one more opportunity to place all the records before the Tribunal, so that the Tribunal can take a decision as to whether the interests of the Revenue stand sufficiently safeguarded on account of the attachment over the immovable property of the appellant, which is stated to be worth of Rs.3 Crores and as to whether the appellant's financial condition precludes from making a pre-deposit.

6. For such a reason alone, we allow this appeal, set aside the order of the Tribunal and remand the matter to the Tribunal for a fresh consideration. No costs. Consequently, the connected CMP is closed.

7. We are informed that the Tribunal listed the matter for reporting compliance on 01.2.2019 i.e. Day after tomorrow. Since we have restored the miscellaneous petition (stay petition) to the file of the Tribunal, we direct the Tribunal to consider the documents, which the appellant may place in the hearing fixed on 01.2.2019 or on any other subsequent date as the Tribunal may fix and examine as to whether the plea raised by the appellant would cause undue hardship to the appellant warranting exercise

of the powers by the Tribunal in terms of the Second Proviso to Section 19(1) of the Foreign Exchange Management Act, 1999.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Registrar, Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PBPT, 4th Floor, Lok Nayak Bhavan, Khan Market, New Delhi-3.
+3 cc's to Mr.B.Sathish Sundar, Advocate SR.No.7372
+1 cc to Mr.Su.Srinivasan, Advocate Sr.No.7743

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CMP.No.2032 of 2019

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