IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.09.2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.27838 of 2004
and WPMP.No.33853 of 2004

R.Venkatesh ... Petitioner

vs.

The Deputy Director
Adjudicating Authority
Directorate of Enforcement
Shastri Bhavan, 3rd Floor, 3rd Block
No.26, Haddows Road
Chennai - 600 006 ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the order in proceedings No.DD/MAS/73/2004 (VS) dated 30.07.2004 on the file of the Deputy Director, Directorate of Enforcement (Foreign Exchange Management) Government of India, Shastri Bhavan, Chennai- 600 006 and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.K.Sugumar

For Respondent : Mr.N.Ramesh
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the respondent/Adjudicating Authority imposing a penalty of Rs.3,00,000/- (Rupees Three Lakhs only) on the petitioner for contravention of Section 8 r/w. Section 64(2) of the Foreign Exchange Regulation Act, 1973 (hereinafter be referred to as "FERA" for brevity).

2. According to the petitioner, he is a Chartered Accountant by profession, and he has given advise to his client for management in relation to remittances of foreign exchange and investment, under Foreign Exchange Bands (Immunities and Exemptions) Act, 1991, (Act 41 of 1991). Now finding that the

petitioner's clients have committed some violation, proceedings have been initiated against the petitioner and others under the provisions of FERA. After enquiry, Adjudicating Authority found that the petitioner guilty of above offence, holding that, being a Chartered Accountant by profession, he cannot claim that he misunderstood the provisions of the Act, and hence, imposed a penalty of Rs.3,00,000/- on the petitioner. Now challenging the same, the present writ petition has been filed.

3. A preliminary objection has been raised on behalf of the respondent stating that, against the order passed by the Adjudicating Authority, only an appeal lies under Section 52 of FERA before Appellate Board, further against that order of the Appellate Board, an appeal lies to the High Court on question(s) of law under Section 54 of the Act. Without availing those alternate remedies, the petitioner cannot challenge the order of the Adjudicating Authority in the writ petition, hence, the writ petition is not maintainable.

4. Mr.K.Sukumaran, learned counsel appearing for the petitioner submitted that though there is an alternate remedy available to the petitioner, as the original order has been passed in the year 2004, at that point of time he cannot file the appeal before the Appellate Board. Learned counsel further contended that, the findings of the Adjudicating Authority in paragraph 81 of the order will have some bearing on his professional conduct, and there is a likelihood of action being taken against him by other authorities, for professional misconduct, and therefore, the same may be expunged. As far as the penalty is concerned, pending writ petition, as directed by this Court while granting interim order, the petitioner has deposited a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) and the penalty imposed on the petitioner is also excessive and the same may be suitably modified.

5. Per contra, learned counsel appearing for the respondent contended that the observation made against the petitioner by the Adjudicating Authority will not reflect on his professional conduct, and that apart, the Adjudicating Authority has imposed only lesser penalty as per the provisions of the Act considering the total amount involved in the transaction, and hence, penalty need not be reduced.

6. Considering the circumstances that the impugned order has been passed in the year 2004, now almost 15 years have lapsed. In view of the limitation prescribed in the Act, the petitioner cannot file an appeal at this stage. That apart, the observation made against the petitioner by the Adjudicating Authority in paragraph 81 of the impugned order reads as follows:

'81. The noticees, being Chartered Accountants by profession cannot be said to have not understood the provisions of the Act 41 of 1991 and particularly the purpose for which it was enacted by the Parliament. Their contention that they had acted in good faith to help their clients cannot be accepted as they had indulged in purchasing foreign currencies from black-market through brokers and mislead their clients.'

The above said observation could have some bearing on the professional conduct of the petitioner and it may go against him. In the above circumstances and in the interests of justice, I am inclined to expunge the observation made against the petitioner in paragraph 81 of the impugned order. So far as the penalty is concerned, considering the fact that the petitioner only said to have given some professional advise, which ultimately ended in violation of provisions of the Act, and the petitioner is not directly involved in any offence, hence I am inclined to modify the penalty imposed on the petitioner to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only).

7. Accordingly, the observation made against the petitioner in paragraph 81 of the impugned order, is expunged and the penalty imposed on the petitioner is modified to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only).

In the result, this writ petition is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

gpa Sub Assistant Registrar

To

The Deputy Director
Adjudicating Authority
Directorate of Enforcement
Shastri Bhavan, 3rd Floor, 3rd Block
No.26, Haddows Road, Chennai - 600 006

+3 ccs to Mr.K.Sukumaran, Advocate, S.R.No.82514
+1 cc to Mr.N.Ramesh, Advocate, S.R.No.82527

W.P.No.27838 of 2004
and WPMP.No.33853 of 2004

EV(CO)
SSM(30/09/2019).