



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.6.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.Nos.2487, 2489, 2490 and 2503 of 2019
and

C.M.P.Nos.11635, 11655, 11657, 11827,
12210, 12214, 12216 and 12218 of 2019

V.Bhaskaran

Appellant in all CMA's

Versus

The Special Director of Enforcement,
Directorate of Enforcement,
Government of India,
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

Respondent in all CMA's

Prayer: Civil Miscellaneous Appeal filed under Section 35 of the Foreign Exchange Management Act, 1999 against the order dated 5.12.2018 passed by the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PBPT Act, New Delhi in FPA-FE-12/CHN/2011, FPA-FE-13/CHN/2011, FPA-FE-14/CHN/2011 and FPA-FE-11/CHN/2011.

For appellant : Mr.K.V.Dhanapalan

For Respondents : Ms.Hema,
Central Government Standing Counsel

COMMON JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

These Appeals have been filed by the Assessee V.Bhaskaran against the impugned order dated 5.12.2018 passed by the learned Single Member of the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PBPT Act, New Delhi, holding that interest of justice would be served if the Appellant is directed to pay 50% of the total penalty covering all the four Appeals within a period of 2 months.

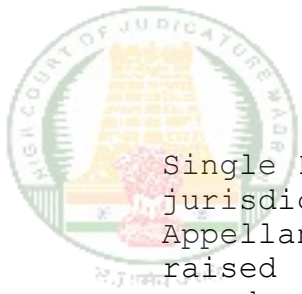
2. The Appellant before the said Appellate Tribunal approached this court by way of present Civil Miscellaneous Appeals under Section 35 of the Foreign Exchange Management Act,



1999 which is corresponding to Section 54 of the earlier Enactment viz., Foreign Exchange Regulation Act, 1973.

3. Learned counsel for the Appellant Mr.K.V.Dhanapalan submitted that any order passed by the said Tribunal is appealable before the High Court. Relying upon the decision of the Hon'ble Supreme Court in the case of Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement (AIR 2010 SC 2239) he submitted that the present Appeals can be maintained before this court on the question of law viz., whether the learned Single Member of the Appellate Tribunal could have passed the order on the stay applications filed by the appellant in the absence of any appeal filed by the Department before the said Tribunal. He drew the attention of this court towards section 52(6) of the Foreign Exchange Regulation Act, 1973 enumerates the powers of the Appellate Board constituted under the earlier law viz., Foreign Exchange Regulation Act, 1973 and submitted that the powers and functions of the Appellate Board can be exercised and discharged by Bench consisting of two Members and as constituted by the Chairman of the Appellate Board. He further drew the attention of this court to Sub-section (6) of Section 52 of the said Act and submitted that the learned Single Member of the Board could deal with the matters only if the impugned order imposes penalty amount not exceeding Rs.2,50,000/-. He therefore, submitted that the order passed by the learned Single Member of the Appellate Tribunal was not sustainable and deserves to be set aside. He further submitted that the submission with regard to lack of jurisdiction of the learned Single Member was not raised before the Appellate Tribunal below.

4. On the other hand, the learned Standing Counsel for the Respondent, Ms.Hema, opposing the said submissions of the learned counsel for the appellant, submitted that firstly no question of law arises in the present appeal before this court and she has also relied upon the same judgment cited by the learned counsel for the appellant wherein the question as to whether appeal could be maintained before the High Court under Section 35 of the Foreign Exchange Management Act, 1999 was considered and it was held that the court should not entertain the appeal against such interlocutory orders passed in the pre-deposit application filed by the appellants. She has further submitted that Foreign Exchange Management Act, 1999 empowers the Chairperson of the Appellate Tribunal constituted under the Foreign Exchange Management Act to constitute such Benches with one or more Members which the Chairperson may deem fit and therefore, the impugned order passed, while exercising the powers under the Foreign Exchange Management Act, by the learned



Single Member of the said Tribunal cannot be said to be without jurisdiction as contended by the learned counsel for the Appellant. She also submitted that since the said issue was not raised before the learned Single Member, the appellant herein can be relegated before the said Tribunal to raise the said issue and file his application before the Tribunal itself.

5. Having heard the learned counsel for the parties, we are of the opinion that we cannot entertain the present Appeals on merits against the impugned order passed by the learned Single Member of the Tribunal on 5.12.2018 on the pre-deposit applications filed by the appellant whereby the learned Single Member directed to deposit 50% of the penalty amount in question.

6. On the question of jurisdiction of the learned Single Member or Division Bench of the Tribunal, we are of the opinion that since the said issue was not raised before the said Tribunal itself in the first instance, the Appellant/Petitioner can be given liberty to raise the said issue before the Tribunal itself in the first instance.

7. Therefore, we dispose of the present Appeals with liberty to the appellant to raise such an issue of jurisdiction as to whether the said pre-deposit applications have to be heard by the learned Single Member before the said Tribunal itself. If such an issue is raised before the learned Tribunal, the learned Tribunal may deal with the same in accordance with law. No order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

ssk.

Sub Assistant Registrar

To:

The Special Director of Enforcement,
Directorate of Enforcement,
Government of India,
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

+4 ccs to M/s.K.V.Dhanapalan, Advocate, S.R.No.48720 to 48723

C.M.A.Nos.2487, 2489,
2490 and 2503 of 2019

RP(CO)
SSM(12/09/2019)