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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.25430 OF 2021

AND

W.M.P.NOS.26856 AND 26857 OF 2021

P.Rosu Readdy

... Petitioner

.Vs.

1. The Joint Director,
Directorate of Enforcement,
Chennai Zonal Office,
2nd & 3rd Floor,
'Murugesu Naicker Complex',
No.84, Greaves Road,
Chennai - 600 006.

2. The Assistant Director,
Directorate of Enforcement (FEMA),
'Shastri Bhavan',
Nungambakkam,
Chennai - 600 034.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the impugned proceedings of the 1st respondent in Order No.JD/CEZO/Z-1/03/2021 dated 29.10.2021 and quash the same as illegal and violative of the principles of natural justice.

For Petitioner : Mr.A.L.Swaminathan
Standing Counsel
For M/s.R.Hemalatha

For Respondents : Mr.N.Ramesh
Special Public Prosecutor
For R1 and R2



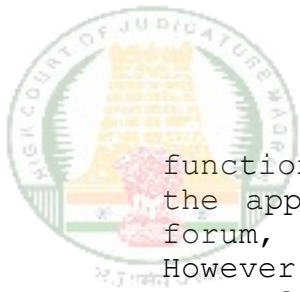
O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the impugned proceedings of the 1st respondent in Order No.JD/CEZO/Z-1/03/2021 dated 29.10.2021 and quash the same as illegal and violative of the principles of natural justice.

2. Heard the arguments advanced on either side and perused the materials available on record.

3. The case of the petitioner is that the 2nd respondent caused a search on 12.11.2007 in the premises of the petitioner, during which, the officials seized Rs.13.5 Lakhs and 4 FDRs along with various other documents in connection with the importation of photocopier machines from U.S.A. Thereafter, the 2nd respondent has recorded statements from the petitioner, based on which, the 2nd respondent framed a complaint in file No.T-3/29/SZ/C/2007 alleging various contraventions of the provisions of the Foreign Exchange Management Act, 1999. The 2nd respondent issued a Show Cause Notice dated 27.08.2009 alleging prima-facie contravention of the provisions of Sec.3 (d), 4 & 8 of FEMA. The petitioner submitted his reply through his counsel on 08.10.2009. Subsequent to the letter dated 08.10.2009, the 1st respondent directed the 2nd respondent to issue copies of the alleged statements recorded. After adjudication, second Show Cause Notice was issued on 27.08.2009 to the petitioner and thereafter, the petitioner, vide letter dated 30.09.2021 filed a reply and supplemented further replies on 11.10.2021 & 18.10.2021 along with supporting documents. However, without properly considering the replies, the 1st respondent imposed a penalty to the tune of Rs.24,00,00,000/- under Section 13(1) of Foreign Exchange Management Act. As against the said order, though the petitioner has an appeal remedy before the Appellate Tribunal for Foreign Exchange under Section 19 of the Foreign Exchange Management Act 1999 and the appellate authority is vested with powers to dispense with the deposit for hearing the appeal, however, there being no person manning the Tribunal appellate, the petitioner is not able to file the appeal. Challenging the same, this Writ Petition is filed.

4. The learned Senior Counsel appearing for the petitioner submits that impugned order was passed by the 1st respondent imposing penalty to the tune of Rs.24,00,00,000/-, and deposit of the said amount for hearing the appeal is not mandatory as per Section 19 of the Act as the appellate authority is vested with power to dispense with deposit of the penalty amount for hearing the appeal. However, as on date, appellate forum is not



functioning in the absence of any authority being appointed to the appellate forum. Therefore, due to non availability of the forum, this Writ Petition is filed with above said prayer. However, learned Senior Counsel further submits that, on his own volition, without prejudice to his rights, the petitioner is ready to deposit an amount of Rs.2,00,00,000/- by way of cash before the 1st respondent within a period of four weeks from the date of receipt of copy of this order and also ready to execute property security worth about Rs.5,00,00,000/- in favour of the 1st respondent and this Court may keep in abeyance the order passed by the 1st respondent till the constitution of the Appellate Tribunal, whereinafter, Thereafter, this Court may also grant liberty to the petitioner to file appeal before the Appellate Tribunal.

5. Mr.N.Ramesh, learned Special Public Prosecutor appearing for the respondents fairly concedes that the appellate authority is not functioning in the absence of any person being posted, and, therefore, this Court may pass appropriate orders, safeguarding the interest of the respondents.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

7. It is not in dispute that as against the order passed by the 1st respondent, the petitioner is having a remedy of appeal before the appellate authority u/s 19 of the Foreign Exchange Management Act. Further, Section 19 also clothes the appellate authority with power to dispense with the deposit of the penalty amount for hearing the appeal, on being satisfied that such deposit would cause undue hardship to the appellant subject to the conditions that the Appellate Tribunal thinks fit to impose.

8. In the case on hand, it is fairly conceded by the learned Special Public Prosecutor that as on date, the appellate forum is not functioning effectively in the absence of any person being appointed to the said position. Such being the case, the petitioner cannot canvass his remedy by filing an appeal as he would not be in a position to file the appeal without depositing the penalty amount levied. It should also not be lost sight of that the penalty imposed on the petitioner is to the tune of Rs.24 Crores. The petitioner, to show his bona fide has fairly accepted to make a cash deposit of Rs.2 Crores with the 1st respondent and also to give property security to the extent of Rs.5 Crores before the 1st respondent.

9. Taking into consideration the fact that there is no effective appellate tribunal functioning as on date and,



therefore, appeal along with petition to dispense with the deposit of the penalty amount cannot be filed by the petitioner and also taking note of the fair stand of the petitioner to make deposit in cash and property security before the 1st respondent, this Court is inclined to pass the following order :-

"The petitioner is directed to deposit an amount of Rs.2,00,00,000/= (Rupees Two Crores only) within a period of four weeks from the date of receipt of a copy of this order and also execute property security worth not less than Rs.5,00,00,000/= (Rupees Five Crores only) within a period of eight weeks from the date of receipt of a copy of this order in favour of the 1st respondent and on such deposit being made, the petitioner is granted liberty and permission to file appeal before the concerned Appellate Tribunal and till the appeal is taken on file by the Appellate Tribunal, the respondent is directed not to precipitate the issue any further and that no coercive steps shall be taken against the petitioner till the disposal of the appeal by the Appellate Tribunal."

10. This writ petition is disposed of with the aforesaid observation and direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Director,
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Directorate of Enforcement (FEMA),
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+1cc to M/s.R.Hemalatha, Advocate, S.R.No.65593

W.P.NO.25430 OF 2021 AND
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PL (CO)
PBS/07/02/2022