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Writ Petition No.13093 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2022

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**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN**

Writ Petition No.13093 of 2004

Chemical Construction Company Private Ltd.,
represented by its Director Mr.O.V.Nambiar,
No.956/957, T.H.Road,
Madras - 600 019.

... Petitioner

Vs.

- 1.Union of India
represented by its
Secretary to Government,
Ministry of Home Affairs,
New Delhi.
- 2.Special Director,
Enforcement Directorate,
(Foreign Exchange Regulation Act)
New Delhi.
- 3.Foreign Exchange Regulation Appellate Board,
4th Floor "B" Wing,
Janpath Bhavan, Janpath, New Delhi.



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4.Enforcement Officer,
Enforcement Directorate,
Government of India,
Sasthri Bhavan,
Chennai - 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Declaration to declare the proceedings initiated by the fourth respondent under Section 57 of the Foreign Exchange Regulation Act, 1973 r/w Section 49(3) and (4) of the Foreign Exchange Maintenance Act, 1999 as null and void.

For Petitioner : Mr.D.Prabhu Mukunth

For Respondents : Mr.Rajnish Pathiyil
Special Public Prosecutor [ED]

ORDER

[Made by **P.N.PRAKASH, J.**]

This writ petition has been filed seeking a declaration declaring the proceedings initiated by the fourth respondent under Section 57 of the Foreign Exchange Regulation Act, 1973 r/w Section 49(3) and (4) of the Foreign Exchange Maintenance Act, 1999 as null and void.



2. The minimum facts that are required for deciding this petition are as under:

For alleged violations of the provisions of the Foreign Exchange Regulation Act, 1973 [in short "FERA"], the petitioner company and its Director were slapped with a penalty of Rs.5,00,000/- each by order dated 20.05.1993 of the Special Director, Enforcement Directorate [Adjudicating Authority] u/s.68(2) of the FERA. Since the penalty was not paid, the Enforcement Directorate filed a complaint u/s.57 of the FERA in C.C.No.276 of 2002 in the Court of Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai. In the mean while, the petitioner preferred appeals in C.A.No.389 and 390 of 1993 before the Appellate Tribunal under FERA, which were eventually partly allowed on 21.09.2010, wherein it is ordered as under:

"14. Now coming to the question of quantum of penalty, it is requested by Ld. Advocate that a lenient view may be taken in favour of the appellants in view of the fact that the appellants have suffered losses in said transactions and due to long pendency of this matter. However, having considered the fact that the matter is pending since 1992 and the appellants have already suffered much agony and trauma due to long pendency of this matter, I am of the view that the amount of penalty may be reduced to the 50% of the penalty amount to achieve the ends of justice. The appeals are, therefore, partly allowed. An order is passed accordingly. The pre-deposited amount may be appropriate towards penalty and the balance amount may be



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deposited by the appellants in their respective appeals within 15 days from the date of receipt of this order failing which respondent may recover the same in accordance with law."

3. Admittedly, the petitioner has paid the reduced penalty on various dates as could be seen from the records produced before us.

4. In the light of the above, we are afraid that the prosecution in C.C.No.276 of 2002 against the two accused *viz.*, Chemical Construction Company Private Ltd. and O.V.Nambiar, cannot be sustained.

5. Though the prayer in the writ petition is for a declaration, we are moulding the relief in the light of the aforesaid facts and quashing the prosecution in C.C.No.276/2002 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai, against both the accused.

Accordingly, this Writ Petition is disposed of. No costs.

[PNP, J.]

[GCS, J.]



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To

- 1.The Additional Chief Metropolitan Magistrate,
Economic Offences, Egmore, Chennai.
- 2.The Secretary to Government,
Ministry of Home Affairs,
New Delhi.
- 3.The Special Director,
Enforcement Directorate,
(Foreign Exchange Regulation Act)
New Delhi.
- 4.The Foreign Exchange Regulation Appellate Board,
4th Floor "B" Wing,
Janpath Bhavan, Janpath, New Delhi.
- 5.The Enforcement Officer,
Enforcement Directorate,
Government of India,
Sasthri Bhavan,
Chennai - 600 006.
- 6.The Special Public Prosecutor [ED],
High Court, Madras.



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