18.05.2023
Item No.15
gd/ssd

MAT/855/2023
IA NO: CAN/1/2023
SANJAY JHUNJHUNWALA
VS
OFFICE OF THE SPECIAL DIRECTOR, EASTERN REGION, ENFORMENT DIRECTORATE AND ORS.

Mr. S.N. Mookherjee,
Mr. Surendra Dube,
Mr. Sudip Deb,
Mr. Meghajit Mukherjee,
Mr. Raju Ghosh,
Mr. Yash Singhi,
Ms. Vidisha Gupta
..for the Appellant.

Mr. Asok Kumar Chakraborti, learned ASG,
Mr. Sudumar Bhattacharyya
..for the Union of India.

Mr. Arijit Chakrabarti,
Mr. Deepak Sharma
..for Enforcement Directorate.

1. This intra court appeal by the writ petitioner is directed against the order dated 10.05.2023 passed by the learned Single Bench in WPA 10962 of 2023. The said writ petition was filed by the appellant challenging the action initiated by the Enforcement Directorate which has ultimately laid to an opinion being formed by the adjudicating authority by order dated 11th April, 2023 in terms of Rule 4(3) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (hereinafter referred to as the "said Rules").

2. The learned senior advocate for the appellant would vehemently contend that Rule 4 is comprehensive and provides for opportunity to the person alleged to have followed the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as the "said Act") to put forth the submissions at different stages of the matter and that opportunity should be a meaningful opportunity and the same cannot be reduced to an empty formality in this regard. The learned senior advocate elaborately referred to the findings which were recorded by the adjudicating authority while forming an opinion in terms of Rule 4(3) of the Act.

3. The learned standing counsel appearing for the Enforcement Directorate submitted that the authority has followed the mandate under Rule 4 and the opportunity contemplated under these various sub-rules in Rule 4 will be complied with.

4. Rule 4 of the said Rules deals with holding of inquiry. Sub-rule (1) states that for the purpose of adjudicating under section 13 of the Act whether any person has committed any contravention as specified in section 13 of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held

against him. Sub-rule (2) states that every notice issued under sub-rule (1) of Rule 4 to any such person shall indicate the nature of contravention alleged to have been committed by him.

5. Earlier a show cause notice was issued on 20th April, 2022. The appellant had challenged the said notice by filing WPA 9270 of 2021 on the ground that the provisions of Rule 4 have not been adhered to.

6. The learned Writ Court accepted the submissions of the appellant and by order dated 22.08.2022 the show cause notice was quashed with liberty to the adjudicating authority to proceed in accordance with law. Pursuant to which, the fresh show cause notice dated 18th November, 2022 was issued in terms of sub-rule (1) of Rule 4 and the notice indicated the nature of contravention alleged to have been committed by the appellant. The appellant was granted liberty to show cause and, accordingly, reply was filed on 20th January, 2023. On the same date the appellant has also filed an application before the 3rd respondent for compounding the alleged contravention under the Act and the said application is stated to be pending. In the meantime, the present writ petition has been filed alleging that there has been contravention of sub-rule (3) of Rule 4. Sub-rule (3) of Rule 4 states that after considering the cause shown by the notice in response to the show cause notice issued

by the adjudicating authority, the adjudicating authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through legal practitioner or chartered accountant duly authorized by him. The appellant alleges that there is infraction of Rule 4(3) of the Rules.

7. On going through the opinion of the adjudicating authority as recorded in his order dated 11th April, 2023 in terms of Rule 4(3), we find that there is no infraction of the said Rule and this is clear on perusal of Rule 4(4) of the Rules. The said Rules states that on the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention alleged to have been committed by such person indicating the provisions of the act or of rules, regulations, notifications, direction or orders or any condition subject to which an authorization is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place. Thus, sufficient safeguard has been provided to the appellant under Rule 4 and only when the appellant appears before the adjudicating authority on the date fixed by the said authority the adjudicating authority shall explain about the alleged contravention. In the light of the opportunity which is provided for under

sub-rule (4) of Rule 4, the question of providing another opportunity at the stage of the proceedings under sub-rule (3) of Rule 4 would not arise. Thus, we are satisfied that Rule 4(4) of the said Rules affords necessary opportunity to the appellant to put forth their contentions after the appellant has been explained about the contravention alleged to have been committed by the appellant. It is thereafter in terms of Rule 5 the Adjudicating Authority shall give an opportunity to the appellant to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of Indian Evidence Act, 1872. Thus, the stage of the proceedings at present is only in the stage of Rule 4(3) and as and when the date is fixed by the adjudicating authority if the appellant appears on the date and time indicated, it goes without saying that the adjudicating authority will follow sub-rule (4) of Rule 4 and thereafter proceed with the matter in accordance with the other sub-rules under Rule 4.

8. Therefore, we are of the view that at this stage of the matter the appellant cannot seek to indirect the proceedings and we find no error in the process adopted by the adjudicating authority.

9. Accordingly, the appeal fails and stands dismissed.

10. The adjudicating authority is directed to fix the date on which the appellant shall appear personally or through his legal practitioner or chartered accountant duly authorized by him and thereafter the proceedings shall be taken in accordance with Rules.

11. It is pointed out by the learned senior advocate appearing for the appellant that learned Single Bench has imposed costs on the appellant and directed Rs.14,000/- to be paid to the Enforcement Directorate.

12. Considering the legal interpretation which was put forth before us, we are of the view that costs need not be imposed on the appellant.

13. Accordingly, the costs imposed on the appellant stands deleted.

14. It is made clear that the observations made in the judgment and order are to justify our ultimate conclusion in dismissing this appeal and this will not in any manner prejudice the rights of the appellant to pursue the compounding application filed under law.

15. Learned advocate appearing for the appellant is directed to serve one set of copies on the office of the learned Additional Solicitor General by 3 pm. today.

16. The learned standing counsel appearing for the Enforcement Directorate submitted that the application for compounding said to have been filed by the appellant is not maintainable.

17. This submission is placed on record.

18. Affidavit of service is kept on record.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)