OD-7

FEA 2 of 2011
IA GA 1 of 2011
(Old GA 719 of 2011)
GA 2 of 2011
(Old GA 720 of 2011)
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (FOREIGN EXCHANGE)
ORIGINAL SIDE

UNION OF INDIA & ANR.
VERSUS
M/S L'INTIMO FASHIONS PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK

The Hon'ble JUSTICE MD. SHABBAR RASHIDI
Date : 11th July, 2023.

Appearance:
Mr. Vipul Kundalia,Adv.
Mr. Anurag Roy,Adv.
…for Enforcement Directorate.

The Court:- The appellants are represented. None appears for the respondents.

The appeal is against an order dated June 30, 2003 passed by the Appellate Tribunal. By the impugned order, the Appellate Tribunal set aside a finding of guilt of the respondents of contravening Section 18(2) and Section 18(3) of the Foreign Exchange Regulation Act, 1973.

There is a delay of 2749 days in filing the appeal.

We are not unmindful of the proposition that, an application for condonation of delay is to be treated leniently. An applicant seeking condonation of delay need not explain the delay on a day-to-day basis. An applicant seeking condonation of delay is required to substantiate the ground that the applicant was prevented by sufficient cause in approaching the Court within the time prescribed.

On such parameters, we assessed the averments made in the applicant for condonation of delay.

As noted above, the impugned order is dated June 30, 2003. A time period of 60 days is available under the statute for preferring the appeal. An appeal filed beyond a period of 60 days can be condoned if sufficient cause is shown.

The appellants before us claimed they received the impugned order dated June 30, 2003. Apparently, the appellants sought opinion of the Ministry of Law for the purpose of filing the appeal. Such opinion was received by the appellants on September 8, 2003. Thereafter, the explanation came that the file was sent from one person to the other. The appellant seeks to explain the delay till 2004 when, instructions were sought from the Head Office with regard to the matter. There is a silence between October, 29, 2004 till August 17, 2006. There is a silence between August 17, 2006 till October 23, 2009. The appellant also did not explain various other periods of time between the date of the impugned order and the date of the filing of the application for condonation of delay.

We considered the merits of the appeal also. We find that the Appellate Authority while considering the materials placed on record arrived at the finding that there were request made to the Reverse Bank of India for extension of time. There were correspondences between the respondent and the lawyer regarding legal proceedings against the defaulting foreign buyer. In such conspectus, the Appellate Authority held that the respondents were not at fault for not initiating reasonable steps for realising the export proceeds.

In the present case, two large tranches of period between 2004 to 2006 and between 2006 to 2009, for not preferring the appeal remains unexplained.

In these circumstances, we are not satisfied with the grounds made out in the application for condonation of delay. Moreover this application was kept pending since 2011.

In these circumstances, Section 5 application being GA 1 of 2011 (Old GA 719 of 2011) is dismissed. In view of the delay not being condoned, the department will treat FEA 2 of 2011 and GA No. 2 of 2011 (Old GA No. 720 of 2011) as disposed of.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

s.chandra