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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (FOREIGN EXCHANGE)
ORIGINAL SIDE

FEA/1/2018
IA NO: GA/1/2018(Old No:GA/1064/2018)
DIRECTORATE OF ENFORCEMENT
(FOREIGN EXCHANGE MANAGEMENT ACT)
VS
JATENDRA SINGH MARVAHA

BEFORE :
THE HON'BLE JUSTICE DEBANGSU BASAK
-A N D-
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI
DATED : 10TH OCTOBER, 2023.

Appearance :-
Mr. Arijit Chakraborty, Adv.
Mr. Deepak Sharma, Adv.
...for Appellant

The Court :- The appeal is directed against the order dated January 09, 2018 passed by the Appellate Tribunal, Foreign Exchange Management Act, New Delhi in FPA-FE-20/DLI/2008.

The appeal is at the behest of the department.

Learned Advocate appearing for the appellant submits that, by the impugned order, the Tribunal exercised powers under Section 19 of the Foreign Exchange Management Act, 1999 read with Rule 10 of the Foreign Exchange Management (Adjudication, Proceedings & Appeal) Rules 2000. However, the Tribunal did not ascribe any reason, as to why, the Tribunal directed deposit of 20% of the penalty imposed. He submits that the penalty imposed, as against the respondent was Rs.20 lakhs by the Special Director on appeal. No reason transpires from the impugned order, as to why, 20% of the amount of penalty imposed was directed to be deposited. He submits that no ground for undue hardship was made out. At least, no reason appears on the face of the impugned order as to whether, there was any undue hardship or not.

Learned Advocate appearing for the appellant submits on instruction that, the respondent is yet to comply with the impugned order of the Appellate Tribunal. The respondent did not deposit the amount of Rs. 4 lakhs as directed to be deposited.

None appears for respondent in spite of service.

As noted above, the appeal is directed against an order dated January 9, 2018.

By the impugned order, the Tribunal noted that, the respondent herein suffered a penalty of Rs.20 lakhs. The Tribunal proceeded to direct deposit of a sum of Rs.4 lakhs i.e. 20% of the total penalty amount imposed within six weeks from the date of the order.

The impugned order does not contain any reason, as to why, the Tribunal directed deposit of 20% of the total penalty amount. The Tribunal derives power under Section 19 of the Act of 1999 read with Rule 10 of the Rules of 2000 to dispense with the deposit of the penalty amount, in the event, the amount of penalty caused undue hardship.

Since the impugned order is non speaking on such aspect, it would be appropriate to set aside the same.

In such circumstances, the appeal is allowed. Impugned order dated January 9, 2018 is set aside. Parties are at liberty to proceed in accordance with law. Appellant is at liberty to proceed to execute the order of imposition of penalty in the event of absence of stay with regard thereto.

FEA 1 of 2018 is disposed of accordingly, without any order as to costs.

All connected applications stand disposed of.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

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