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W.P.No.18626 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.18626 of 2023
and
WMP.No.17870 of 2023

S.Rajendran

...Petitioner

Vs.

1. The Special Director,
The Adjudicating Authority,
Directorate of Enforcement, Southern Regional Office,
'Shastri Bhavan', III Floor, III Block, B Wing,
26, Haddows Road, Chennai-600 006.
2. The Enforcement Officer,
Directorate of Enforcement, Southern Regional Office,
'Shastri Bhavan', III Floor, III Block, B Wing,
26, Haddows Road, Chennai-600 006.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned assessment Order in Original No.SDE/SRO/CEZO-I/03/2023 passed by the 1st Respondent in File No.T-4/8-m/2007(SCN-II) dated 31.01.2023 and to quash the same as it is arbitrary, contrary to law, violative of principles of natural justice.

For Petitioner : Mr.R.Swarnavel

For Respondent : Mr.Rajnish Pathiyil, Spl.PP



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ORDER

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Order in Original No.SDE/SRO/CEZO-I/03/2023 passed by the 1st Respondent in File No.T-4/8-m/2007(SCN-II) dated 31.01.2023.

2. Mr.Rajnish Pathiyil, learned counsel takes notice for the respondents. In view of the consent expressed by the Learned counsel appearing for either side, this petition is taken up for final disposal.

3. The case of the petitioner is that the company namely M/s.Star Forex India Pvt. Ltd., deals with the Travellers Cheques and has obtained Full Fledged Money Changer (in short 'FFMC') under license from RBI. Alleging irregularities in various remittances, action was lodged against the company and other offenders, of which the petitioner is one. Thereafter, for the same cause of action, the Central Bureau of Investigation filed another case in the year 2005 before the Addl. Metropolitan Magistrate, Egmore, in C.C.No.18127/2005 in which the petitioner is also one of the accused. After full fledged trial, the said case was dismissed against which no appeal was preferred by the complainant. Thereafter, the Managing Director of the



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said Company namely Nelson, who was running the firm met with a serious road accident and got hospitalised and during the said time, apprehending some fraud and misappropriation of funds, the said individual surrendered his licence. However, inspite of the same, due to the adverse orders passed in C.C.No.18127/2005, for the very same cause of action, C.C.No.23/2019 was once again initiated by the complainant against which the petitioner preferred Crl.O.P.No.25746/2022 to quash the said proceedings, in which an order of stay has been granted. However, inspite of the order of stay, a show cause notice has been issued to the petitioner to attend the adjudication proceedings and inspite the petitioner seeking certain documents vide his letter dated 2.9.2022, without providing the same, the petitioner has been issued with the aforesaid notice, which is nothing but violation of principles of natural justice and, therefore, the present impugned notice deserves to be quashed for which the present petition has been filed.

4. Learned counsel for the petitioner submitted that the criminal case filed by the CBI was dismissed by the Trial court and despite the said order in favour of the petitioner, initiating proceedings for the very same cause of



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action as against the petitioner under FEMA is not sustainable. Hence, he prayed for appropriate orders.

5. Learned Special Public Prosecutor appearing for the respondents submitted that, as against the order passed by the original authority / 1st respondent, there is an effective appeal remedy available remedy before the Appellate Tribunal under Section 19 and without availing the said appeal remedy, filing this Writ petition is not sustainable. Accordingly, he prayed for dismissal of this Writ petition.

6. Heard learned counsel on either side and perused the materials available on record.

7. Though the petitioner has assailed the notice issued by the respondents calling upon the petitioner to attend the adjudication proceedings, however, the fact remains that the issue involved in this Writ petition is no longer *res integra* and the same has been considered by the Hon'ble Apex Court in Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Ors. reported in **2010 4 SCC 772**.

8. Be that as it may. It is to be pointed out that as against the



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impugned order passed by the Adjudicating Authority, there is an effective remedy available before the Appellate Tribunal under Section 19 of FEMA and without exhausting the said appeal remedy, approaching this Court by way of filing this Writ petition is not sustainable.

9. In view of the above facts, this Court is not inclined to interfere with the order impugned in this Writ petition. However, the petitioner is at liberty to file appropriate appeal before the Appellate Tribunal within a period of four weeks from the date of receipt of a copy of this order, upon filing of such appeal, the Appellate Tribunal shall consider the same on merits and pass appropriate orders within a period of eight weeks thereafter, after affording an opportunity of personal hearing to the petitioner and aggrieved persons, if any. Further, it is made clear that, if there is any delay in filing the appeal, the same shall stand excluded for the purpose of computation of limitation.

10. For the reasons aforesaid, this Writ petition stands dismissed. No



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costs. Consequently, connected Miscellaneous petition is closed.

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NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

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M.DHANDAPANI., J.

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