



W.P.No.37618 of 2016 &
WMP.No.32253 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2023

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.37618 of 2016 &
WMP.No.32253 of 2016

K.B.Sasidharan

... Petitioner

Vs

1.Special Director of Enforcement,
Directorate of Enforcement,
Department of Revenue, Government of India,
6th Floor, Lok Nayak Bhawan, Khan Market,
New Delhi – 110 003.

2.Deputy Director,
Directorate of Enforcement,
Chennai Zonal Office,
Shastri Bhawan, 3rd Floor, 3rd Block,
No.26, Haddows Road,
Chennai – 600 006.

3.Thasildar's Office,
Tirupur North Post Office,
Tiruppur Taluk, Coimbatore District – 641 602,
Tamil Nadu.

4.The District Collector,
Coimbatore District, Tamil Nadu.

... Respondents



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WEB COPY: **Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the first respondent, more specifically the order dated 05.11.2009 bearing reference F.No.T-5/SDE/SSB/IV/22/2001 (PRMC) addressed to the fourth respondent, under Section 70(1)(iii) of the Foreign Exchange Regulation Act, 1973, read with Section 49 of the Foreign Exchange Management Act, 1999, and the consequent direction issued by the third respondent in 4217/2016/A5 dated 21.09.2016 and quash the same.

For Petitioner : Mr.Nagesh Nakhul
for M/s.Preeti Mohan

For Respondents : Mr.Rajnish Pathiyil
Senior Central Government Standing Counsel
- R1 & R2

Mr.S.Balamurugan
Government Advocate – R3 & R4

ORDER

The petitioner has challenged notice dated 05.11.2009 issued by R1/the Special Director of Enforcement. This notice is addressed to the District Collector, Coimbatore District, arrayed as R4 and refers to an adjudication order bearing No.SDE/SSB/IV/22/2001 dated 31.12.2001 under which a demand has been fastened upon the petitioner in terms of Sections 70(1)(i) &



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70(1)(ii) of the Foreign Exchange and Regulation Act, 1973 (in short 'FERA Act').

2. The Special Director of Enforcement has requested that the penalty imposed under the aforesaid adjudication order be realized as arrears of land revenue in accordance with the provisions of the FERA Act, the Foreign Exchange Management Act, 1999 in short ('FEMA Act') and the General Clauses Act, 1897 (in short '1897 Act') as applicable and credited thereafter to the appropriate Head of Account.

3. The substratum of the case of the petitioner is that the order of adjudication dated 31.12.2001 has never been served upon it. To be noted, the present writ petition is of the year 2016 and thus the question that would arise for determination is as to what had transpired in the interim and whether the elapse of fifteen years from date of order to date of institution of the writ petition was justifiable.

4. The affidavit filed in support of the writ petition proceeds on the basis that no order was ever served upon the petitioner. To this extent, the petitioner may or may not be right since the respondents are not in a position to produce the records to establish service of the order upon the petitioner. However, had



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matters stood thus, this Court may even have been persuaded to exercise discretion and direct that a copy of the order be supplied to the petitioner for necessary action.

5. However, the petitioner has gone on to state that he was of the bonafide belief that no orders have been passed at all and was consequently under the bonafide belief that the proceedings under the FERA had been dropped. To test this statement and since the petitioner has produced a copy of C.C.No.407/2002 pending before the Additional Chief Metropolitan Magistrate, Economic Offences I/II Court Egmore initiating prosecution in terms of the applicable provisions of the FERA based on the order of adjudication dated 31.12.2001, the petitioner was asked to produce any material that it would have to indicate that it had made any request for the order in the interim or had made any statement in any pleadings before any authority that would support his belief that no orders at all had been passed.

6. The respondents were also directed to produce records that would establish this position one way or the other. A compilation has been filed on 21.02.2023 by R1 & R2 containing four documents. That apart, the complaint copy itself refers to order of adjudication having been passed, though perhaps



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not served. Thereafter, an opportunity notice dated 21.02.2002 has been issued which has been duly served upon the petitioner on 26.02.2002.

7. The diary of proceedings before the Criminal Court have also been produced to show that the petitioner has been present from 10.06.2008 onwards, on various dates till 29.01.2018. In the meantime, steps were initiated by the respondent for splitting of the complaint qua the company and the Directors. As a result, C.C.No.407 of 2002 was continued in the name of the company and one Director and E.O.C.C.No.75 of 2008, as against the petitioner and another Director.

8. Thus, through all this, the petitioner has certainly been aware of the factum of order dated 31.12.2008 having been passed and this is the question that this Court has to contend with, as to whether such prolonged inaction on the part of the petitioner to even seek a copy of the order and then initiate appropriate steps, may be condoned.

9. The response, in my considered view, must be in the negative, for the reason that there is no justification whatsoever, let alone justifiable explanation, that has been set out to consider condonation of such intervening inaction. In fact, and as been noted in the preceding paragraphs, the case of the petitioner



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has bordered on stating that he was not even aware of the order which position is clearly contrary to the facts.

10. Learned counsel for the petitioner finally pleads that all the petitioner requests is a copy of order dated 31.12.2008 for academic purposes. If he continues to be so desirous, he may seek a copy and the respondents will furnish the same solely for purpose of record.

11. In light of the discussion as aforesaid, I see no merit in this writ petition and, confirming the impugned order, dismiss the same. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2023

kbs

Index : Yes / No

Speaking Order

Neutral Citation : Yes



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Dr.ANITA SUMANTH, J.
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