

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1175 of 2004

ITC Limited

-vs.-

Sri S.K. Mukherjee.

Mr. Pradip Kumar Ghosh,
Mr. Sandipan Ganguly,
Mr. Kaushik Gupta,
Mr. Sourav Bhagat,
Mr. Jishnujit Roy.

...For the Petitioner.

Mr. Vipul Kundalia,
Mr. Anurag Roy.

...For the Opposite Party/ED.

Reserved on : 26.04.2024.

Judgment on : 28.06.2024.

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the proceedings being Case No. C-2482/2002 pending before the learned Metropolitan Magistrate, 9th Court, Calcutta under Sections 56 and 68 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as “FERA, 1973”).

The allegations as made in the petition of complaint, are reproduced as follows:

“3. On the basis of search warrants issued by the competent authorities of the Enforcement Directorate under Section 37 of Foreign Exchange Regulation Act, 1973 searches were conducted on 30.10.96, 31.10.96, 6.11.96, 10.11.96 and 12.11.96 at the office premises of various Divisions of M/s ITC Ltd./ITC Bhadrachalam Paper Board Ltd. and their associated companies in and at the residential premises of the Chairman, Ex-chairman, Directors and Executives at the Calcutta, Delhi, Bombay, Madras, Guntur, Hyderabad and Secandrabad covering 36 premises in execution of search warrants, a large number of documents were seized as per Panchanama/Search lists/ Mahazar on the respective dates.

4. That during the course of investigation, documents and information(s) were called for and/or collected from M/s ITC Ltd. and other sources from time to time under Section 33(2) of the Foreign Exchange Regulation Act, 1973 and statements of Directors and Executives of M/s ITC Ltd. and/or other persons under Section 40 of the Foreign Exchange Regulation Act, 1973 on the various dates, were recorded.

5. It further transpired that the Chairman, Ex-chairman and directors of different Divisions of M/s ITC Ltd., such as IBD, ILTD, ITD, ITC Bhadrachalam (hereinafter referred to as ITCBPBL) BAT nominee Directors and directors of financial institutions were examined on various dates and their statements were recorded under Section 40 of the Foreign Exchange Regulation Act, 1973.

6. During the course of investigation, it has been revealed that M/s ITC Ltd. exported various Agro products commodities viz cashew and coffee to the extent of Rs. 130 crores during the period 1991-93 against Counter Trade agreements with and understanding between M/s. ITC Ltd. EST Group of Chitalia of USA and various other ultimate overseas buyers, that M/s ITC Ltd would receive 3 to 4% Counter Trade Premium on the total volume of business.

7. That it transpired from the statements dated 26.10.96 of Sri G.K.P. Reddy, Chairman of IBD, M/s ITC Ltd. in which he admitted that during the period 1991-93 in respect of export of the said commodities to the tune of Rs. 130 Crores, M/s ITC Ltd. was to receive 3 to 4% premium on the Counter Trade Business and as

per instructions from Mr. K.L. Chugh, he authorised Dr. E. Rabindranath, Vice-president (operation) of Agro Business of M/s ITC Ltd. to remit/transfer funds generated through Counter Trade to various M/s ITC Ltd., companies in Singapore and EST Group of Chitalias in USA and total amount of US \$ 2 Million generated out of said counter trade business was transferred directly by counter Trade Business overseas through Chitalia group of companies in USA.

8. It further transpired from the statement of Dr. E. Rabindranath, Vice-president (operation) of IBD, M/s ITC Ltd, that since 1990 they have been doing counter trade business and that he was instructed by Sri G.K.P. Reddy to remit the counter trade fund to M/s ITC Ltd Singapore and EST group of companies in USA and EST Rotterdam A/s and that he pleaded ignorance about the purpose for which those amounts were generated out of the counter trade premium and was used by the Chitalia company on behalf of M/s. ITC Ltd. and that he was told by the then M/s ITC Ltd., chairman Sri K.L. Chugh that M/s ITC Ltd. would get premium ranging from 3% to 3.5% plus interest for 120 days post shipment credit along with counter trade benefit and that benefits would be remitted through overseas offices by adjusting the price and that with the knowledge of Line Directors, the Financial Controller used to communicate the product Manager how much premium to be added to each contract and that Mr. M.B. Rao, Export Executive of IBD, M/s ITC Ltd. used to maintain the counter trade benefit A/c and submitted consolidated report to Sri N. Lakshminarayan, Financial Controller of IBD, M/s ITC Ltd.

9. That from the statement dated 25.10.96 of Mr. M.B. Rao, Export Manager of IBD M/s ITC Ltd. it further transpired that through full filling of counter trade obligation of various companies. M/s ITC Ltd. was able to get service charge ranging from 5% to 11% from time to time and that counter trade business and the profits thereof was periodically reported to Dr. E. Rabindranath, Vice-president (operation) of IBD, M/s ITC Ltd, and that he was told that these information were shared by him with Sri G.K.P. Reddy, the Line Director of IBD, M/s ITC Ltd, and eventually with the chairman of M/s. ITC Ltd. that he was also told that the aforesaid fund was to come back to IBD, M/s. ITC Ltd. through

pricing of products and that by the time he left M/s ITC Ltd. the counter trade profit to the extent of US \$ 1.5 Million were transferred to various account of M/s ITC Ltd. Singapore or to the EST A/c of Chitalia.

10. It further transpired from the statements dated 14.1.97 of Sri N. Lakshminarayan, Financial Controller of IBD, M/s ITC Ltd. that he was told by Dr. E. Rabindranath, Vice-president (operation) that IBD Agro was getting certain percentage of counter trade benefit of export deals but the same was not accounted for in their books of accounts.

11. It further transpired that though in their statements Sri J.N. Sapru, Ex-chairman of M/s ITC Ltd, Sri B. Mitter, Ex-director of M/s ITC Ltd. pleaded ignorance of the transactions and also utilization of certain funds to the NRIs and others for settlement of Bukhara pay of matter but the said contention cannot be accepted in the light of admission made by Line Director Sri G.K.P. Reddy and also Sr. Executives involving in the transaction and also in view of the documents seized and collected by the Directorate.

12. It further transpired from the statement dated 7.11.96 of Sri R. Ranganathan, chief Executive of ILTD, M/s ITC Ltd. before the officers of Enforcement Directorate that IBD, M/s ITC Ltd. did counter trade of US \$ 14.4 Million in respect of sale of leaf tobacco on which no counter trade profit were realized by ILTD from IBD and ILTD have been informed of the profit generated through the counter trade done by IBD and that counter trade margin varied from time to time any where from 2% to 5% depending on through when counter trade was carried out and profit earned @4% should have been US \$ 6,60,000 on a turn over of US \$ 14.4 million and ILTD, M/s ITC Ltd did not receive the trade profit amounting to US \$ 6,60,000.

13. It transpired from the statement dated 9.10.96 S/Shri Suresh Chitalia and Devang Chitalia of USA and also the subsequent documents sent by them with their letter dated 15.10.96 that Dr. E. Rabindranath arranged US \$ 2,44,000 through EST, A/c of Chitalia for Bukhara settlement out of the counter trade benefit and that US \$1.37 million used for Bukhara settlement by M/S ITC Ltd. appears to have been generated out of counter trade benefit as Sri G.K.P.Reddy

viz statements dated 23.10.96 and 24.10.96 admitted to have transferred and utilized about US \$ 2 million generated out of counter trade benefit towards Bukhara settlements in USA.

It also transpired that M/s ITC Ltd. (IBD) otherwise accounted US\$ 2.66 million by way of counter trade business in respect of export of Agro-product commodities and sale of leaf tobacco by way of counter trade business through Chitalias and others and transferred funds generated by way of a counter trade benefit to Chitalia companies in USA and ITC's subsidiaries in Singapore, a portion of which used i.e. US \$ 1.614 million was by them for making payment towards Bukhara settlement to the NRIs in USA and the balance amount of US \$ 1 million approximately was retained with M/s ITC Ltd. subsidiaries in Singapore and or with Chitalias instead of bringing back into India without any general or special permission/exemption of Reserve Bank of India

14. That by otherwise acquiring and frastering of US \$ 2.66 million of EST Group of companies of Chitalias in USA and ITCs subsidiaries in Singapore and by making payment of US \$ 1.614 million to NRIs and other towards Bukhara pay off settlement in USA and also by their failure to repatriate US \$ 1.046 million into India in the manner as aforesaid without any general or special exemption from the Reserve Bank of India, the said M/s ITC Ltd. appeared to have contravened the provisions of Section 8(1), 9(1)(a), and 16(1)(b) of the Foreign Exchange Regulation Act, 1973 and thereby rendered themselves liable to be proceeded against under Section 56 of the Foreign Exchange Regulation Act, 1973.

15. It also transpired that Shri R.K. Kutty, Director, of M/s ITC Ltd., Sri G.K.P. Reddy, Line Director of IBD, M/s. ITC Ltd., Dr. E. Rabindranath, Vice-president (operation), Sri K.K. Rao, Manager (Export), Sri M.B. Rao, Export Executive and Sri N. Lakshminarayan, Finance Controller, IBD, M/s ITC Ltd. were responsible for the control and conduct of the day to day business activities of the said company, accused No. 1 during the relevant time and therefore appeared to have contravened the provisions of Section 8(1), 9(1)(a) and 16(1)(b) of the Foreign Exchange Regulation Act, 1973 and in terms of Section 68(1) and 68(2) ibid and

thereby rendered themselves liable to be proceeded under Section 56 of the Foreign Exchange Regulation Act, 1973.”

The revisional application was initially preferred on the grounds that M/s. ITC Ltd being a juristic person cannot be subjected to any punishment for imprisonment and so cannot be proceeded with under Section 4 of Foreign Exchange Regulation Act, 1973. In order to emphasise on such issue the judgment of the Hon'ble Supreme Court in *The Assistant Commissioner, Assessment-II, Bangalore & Ors. -Vs. - M/s. Velliappa Textiles Ltd & Anr.* reported in (2003) 11 SCC 405 was relied upon. The additional grounds which were canvassed in the revisional application relate to the authority of the complainant to file the complaint in terms of Section 61(2)(ii) of the FERA, 1973, as under the Act a complaint could be presented only by the Director of Enforcement or an Officer specially authorised in writing by the Director of the Enforcement or the Central Government. According to the petitioner the complaint was filed without any specific permission as stipulated under Section 61(2)(ii) of the FERA, 1973, as such the cognizance which was taken was barred under the law. Several other issues were also canvassed in the revisional application however at the time of final hearing petitioner filed a supplementary affidavit which included a fresh question of law, as during the pendency of the present revisional application a show cause memorandum being no. T-4/18-C/97 (SCN XV) dated 2nd January, 1998 was issued by the Enforcement Directorate upon the petitioner and others alleging contravention of Sections 8(1), 9(1)(a) and 16(1)(b) of the Foreign Exchange Regulation Act,

1973. According to the petitioner the said show cause memorandum is a replica or verbatim/representation of the allegations in the complaint filed in the criminal proceeding which is under challenge. The Special Director, Enforcement Directorate, FERA, after detailed hearing in the departmental proceedings during the pendency of the application under Section 482 of the Code of Criminal Procedure by his order dated 20th August, 2015 decided the said proceedings on merit and dropped all the charges against the petitioner and other persons against whom notice was issued. Petitioner as such, in course of arguments solely emphasised on the issue, that as the petitioner has been exonerated in the departmental/adjudication proceedings and the allegations in the aforesaid proceedings are identical to the allegations made in the criminal proceedings, under such circumstances as per the settled proposition of law, exoneration from the adjudication/departmental proceedings would enure benefit to the petitioner and further continuance of the criminal proceedings would be an abuse of the process of the Court as such the same should be quashed. Learned senior advocate appearing for the petitioner has in detail dealt with the allegations in the show cause as well as the criminal complaint by way of a comparative chart, which for convenience is set out as follows:

Para	Complaint Dated 31.05.2002	Show Cause Memorandum (SCM) (SCM) XV dated 02.01.1998	Para
Para 3	On the basis of search warrants issued by the competent authorities of the Enforcement Directorate under section 37 of FERA 1973 searches were conducted on 30.10.96, 31.10.96, 06.11.96, 10.11.96 & 12.11.96 at the	WHEREAS as a result of searches conducted on 30.10.96, 31.10.96, 06.11.96, 10.11.96 & 12.11.96 at the office premises of various divisions of M/s. ITC Ltd/ ITC Bhadrachalam Paper Board Ltd., and their associate companies and at the residential premises of	Para 1 of SCM XV

	office premises of various divisions of accused No. 1 and ITC Bhadrachalam paper Board Ltd., and their associate Companies in and at the residential premises of the Chairman/Ex-Chairman, Directors, Executives at Calcutta, Delhi, Bombay, Madras, Guntur, Hyderabad and Secunderabad covering 36 premises in execution of the search warrants a large number of documents were seized as per Panchanama/ Search Lists/ Mahazar on the aforesaid respective dates;	the Chairman/Ex-Chairman, Directors, Executives at Calcutta, Delhi, Bombay, Madras, Guntur, Hyderabad and Secunderabad covering 36 premises in execution of the search warrants issued under Section 37 of the Foreign Exchange Regulation Act, 1973, a large number of documents were seized as per Panchanamas/ search lists/ Mahazars on the respective dates details of which are separately annexed marked as 'A' ;	
Para 4	That during the course of investigation of documents/ information were called for and/ or collected from accused No. 1 and other sources from time to time under Section 33 (2) of the Foreign Exchange Regulation Act, 1973 and during the course of recording of statements of Directors and Executives of accused No. 1 and/ or other persons under Section 40 of the Foreign Exchange Regulation Act, 1973 on the various dates were recorded;	AND WHEREAS, during the course of investigation documents/ information were called for and/ or collected from ITC Ltd., and other sources from time to time under Section 33 (2) of the Foreign Exchange Regulation Act, 1973 and during the course of recording of statements of Directors and Executives of ITC Ltd. and/ or other persons under Section 40 of the said Act on the various dates;	Para 2 of SCM XV
Para 5	It further transpired that the Chairman, Ex-Chairman, Directors of different divisions of accused No. 1 such as IBD, ILTD, ITD, ITC Bhadrachalam (hereinafter referred to as ITC BPBL), BAT Nominee Directors and Directors of Financial Institutions were examined on various dates and their statements were recorded under section 40 of the Foreign Exchange Regulation Act, 1973;	AND WHEREAS, it further appears that the Chairman, Ex-Chairman, Directors of different divisions of ITC Ltd., such as IBD, ILTD, ITD, ITC Bhadrachalam (hereinafter referred to as ITC BPBL), BAT Nominee Directors and Directors of Financial Institutions were examined on various dates and their statements were recorded under Section 40 of the said Act; (Annexure - B);	
Para 6	During the course of investigation it has been revealed that M/s ITC Ltd exported various Agro products commodities viz. cashew and coffee to the extent of Rs 130 crores during the period 1991-93 against Counter Trade arrangements with an understanding between M/s ITC Ltd. EST Group of Chitalia of USA and various other ultimate overseas buyers, that M/s ITC Ltd would receive 3 to 4% Counter Trade Premium on the total volume of business;	And Whereas it has been revealed during the course of investigation that M/s ITC Ltd exported various Agro products commodities viz. cashew and coffee to the extent of Rs 130 crores during the period 1991-93 against Counter Trade arrangements with an understanding between M/s ITC Ltd. EST Group of Chitalia of USA and various other ultimate overseas buyers, that M/s ITC Ltd would receive 3 to 4% Counter Trade Premium on the total volume of business;	Para 4 of SCM XV
Para 7	That it transpired from the statements dated 26.10.96 of Sri GKP Reddy, Chairman of IBD, M/s ITC Ltd in which he admitted that during the period 1991-93 in respect of export of the said commodities to the tune of Rs 130 crores, M/s ITC Ltd was to receive 3 to	And whereas it appears from the statement dated 26.10.96 of Sri GKP Reddy, Chairman of IBD, M/s ITC Ltd in which he admitted that during the period 1991-93 in respect of export of the said commodities to the tune of Rs 130 crores, M/s ITC Ltd was to receive 3 to 4% premium on the Counter Trade	

	4% premium on the Counter Trade Businesses and as per instructions from M/s K L Chugh, he authorised Dr. E Ravindranath, Vice President (Operations) of Agro Business of M/s ITC Ltd to remit/transfer funds generated through Counter Trade to various ITC Ltd companies in Singapore and EST Group of Chitalias in USA and total amount of US\$ 2 Million generated out of said counter trade business was transferred directly by counter trade business overseas through Chitalia group of companies in USA;	Businesses and as per instructions from M/s K L Chugh, he authorised Dr E Ravindranath, Vice President (Operations) of Agro Business of M/s ITC Ltd to remit/transfer funds generated through Counter Trade to various ITC Ltd companies in Singapore and EST Group of Chitalias in USA and the total amount of US\$ 2 Million generated out of said counter trade business was transferred directly by counter trade beneficiaries overseas through Chitalia group of companies in USA;	
Para 8	It further transpired from the statement of Dr E Ravindranath, Vice President (Operations) of IBD, M/s ITC Ltd that since 1990 they have been doing counter trade business and that he was instructed by Sri GKP Reddy to remit the counter trade fund to M/s ITC Ltd Singapore and EST group of companies in USA and EST Rotterdam A/s and that he pleaded ignorance about purpose for which those amounts were generated out of the counter trade premium and was used by the Chitalia company on behalf of M/s ITC Ltd. and that he was told by the then M/s ITC Ltd chairman Sri K L Chugh that M/s ITC Ltd would get premium ranging from 3% to 3.5% plus interest for 120 days post shipment credit along with counter trade benefit and that benefits would be remitted through overseas offices by adjusting the price and that with the knowledge of Line Directors, the Financial Controller used to communicate the product Manager how much premium to be added to each contract and that Mr M B Rao Export Executive of IBD, M/s ITC Ltd used to maintain the counter trade benefit A/c and submitted consolidated report to Sri N Lakshminarayan, Financial Controller of IBD, M/s ITC Ltd;	And whereas it appears from the statement of Dr E Ravindranath, Vice President (Operations) of IBD, M/s ITC Ltd that since 1990 they have been doing counter trade business and that he was instructed by Sri GKP Reddy to remit the counter trade fund to M/s ITC Ltd Singapore and EST group of companies in USA and EST Rotterdam A/s and that he pleaded ignorance about the purpose for which those amounts were generated out of the counter trade premium and was used by the Chitalia company on behalf of M/s ITC Ltd. and that he was told by the then M/s ITC Ltd chairman Sri K L Chugh that M/s ITC Ltd would get premium ranging from 3% to 3.5% plus interest for 120 days post shipment credit along with counter trade benefit and that benefits would be remitted through overseas offices by adjusting the price and that with the knowledge of Line Directors, the Financial Controller used to communicate the product Manager how much premium to be added to each contract and that Mr M B Rao Export Executive of IBD, M/s ITC Ltd used to maintain the counter trade benefit A/c and submitted consolidated report to Sri N Lakshminarayan, Financial Controller of IBD, M/s ITC Ltd;	Para 6 of SCM XV
Para 9	That from the statement dated 25.10.96 of Mr M B Rao, Export Manager of IBD M/s ITC Ltd it further transpired that through fulfilling of counter trade obligation of various companies, M/s ITC Ltd was able to get service charge ranging from 5% to 11% from time to time and that counter trade business and the profits thereof was periodically reported to Dr E Ravindranath, Vice	And whereas it further appears from the statement dated 25.10.96 of Mr M B Rao, Export Manager of IBD M/s ITC Ltd it further transpired that through fulfilling of counter trade obligation of various companies, M/s ITC Ltd was able to get service charge ranging from 0.5% to 4% from time to time and that counter trade business and the profits thereof was periodically reported to Dr E Ravindranath, Vice President (Operations)	Para 7 of SCM XV

	President (Operations) of IBD, M/s ITC Ltd and that he was told that these information were shared by him with Sri GKP Reddy, the Line Director of IBD, M/s ITC Ltd and eventually with the chairman of M/s ITC Ltd that he was also told that the aforesaid fund was to come back to IBD, M/s ITC Ltd, through pricing of products and that by the time he left M/s ITC Ltd the counter trade profit to the extent of US\$ 1.5 Million were transferred to various account of M/s ITC Ltd Singapore or to the EST A/c of Chitalia;	of IBD, M/s ITC Ltd and that he was told that these information were shared by him with Sri GKP Reddy, the Line Director of IBD, M/s ITC Ltd and eventually with the chairman of M/s ITC Ltd that he was also told that the aforesaid fund was to come back to IBD, M/s ITC Ltd, through pricing of products and that by the time he left M/s ITC Ltd the counter trade profit to the extent of US\$ 1.5 Million were transferred to various account of M/s ITC Ltd Singapore or to the EST A/c of Chitalia;	
Para 10	It further transpired from the statements dated 14.1.97 of Sri N Lakshminarayan, Financial Controller of IBD M/s ITC Ltd that he was told by Dr E Ravindranath, Vice President (Operations) and that IBD Agro was getting certain percentage of counter trade benefit of export deals but the same was not accounted for in their books of accounts;	And whereas it appears from the statement dated 14.1.97 of Sri N Lakshminarayan, Financial Controller of IBD M/s ITC Ltd that he was told by Dr E Ravindranath, Vice President (Operations) and that IBD Agro was getting certain percentage of counter trade benefit of export deals but the same was not accounted for in their books of accounts;	Para 8 of SCM XV
Para 11	It further transpired that though in their statements Sri J N Sapru, Ex chairman of M/s ITC Ltd, Sri B Mitter Ex-director of M/s ITC Ltd, pleaded ignorance of the transactions and also utilization of certain funds to the NRIs and others for settlement of Bukhara pay of matter but the said contention cannot be accepted in the light of admission made by Line Director Sri GKP Reddy and also Sr Executives involving in the transactions and also in view of the documents seized and collected by the Directorate;	And whereas it appears that though in their statements Sri J N Sapru, Ex chairman of M/s ITC Ltd, Sri B Mitter Ex-director of M/s ITC Ltd, pleaded ignorance of the transactions and also utilization of certain funds to the NRIs and others for settlement of Bukhara pay of matter but the said contention cannot be accepted in the light of admission made by Line Director Sri GKP Reddy and also Sr Executives involving in the transactions and also in view of the documents seized and collected by the Directorate;	Para 9 of SCM XV
Para 12	It further transpired from the statement dated 7.11.96 of Sri R Ranganathan chief Executive of ILTD, M/s ITC Ltd before the officers of Enforcement Directorate that IBD, M/s ITC Ltd did counter trade of US\$ 14.4 million in respect of sale of leaf tobacco on which no counter trade profit were realized by ILTD from IBD and ILTD have been informed of the profit generated through the counter trade done by IBD and that counter trade margin varied from time to time any where from 2% to 5% depending on through when counter trade was carried out and profit earned @4% should have been US\$ 660,000 on a turnover of US\$ 14.4 million and ILTD, M/s ITC Ltd. did not receive the trade	And whereas it further appears from the statement dated 7.11.96 of Sri R Ranganathan chief Executive of ILTD, M/s ITC Ltd before the officers of Enforcement Directorate that IBD, M/s ITC Ltd did counter trade of US\$ 14.4 million in respect of sale of leaf tobacco on which no counter trade profit were realized by ILTD from IBD and ILTD have not been informed of the profit generated through the counter trade done by IBD and that counter trade done by IBD and that counter trade margin varied from time to time any where from 2% to 5% depending on through when counter trade was carried out and profit earned @4% should have been US\$ 660,000 on a turnover of US\$ 14.4 million ILTD, M/s ITC Ltd. did not receive the trade profit amounting to US\$	Para 10 of SCM XV

	profit amounting to US\$ 660.000;	660.000;	
Para 13	It transpired from the statement dated 9.10.96 S/Shri Suresh Chitalia and Devang Chitalia of USA and also the subsequent documents sent by them with their letter dated 15.10.96 and Dr E Ravindranath arranged US\$ 244000 through EST A/c of Chitalia for Bukhara settlement out of the counter trade benefit and that US\$ 1.37 million used for Bukhara settlement by M/s ITC Ltd appears to have been generated out of counter trade benefit as Sri GKP Reddy viz. statements dated 23.10.96 and 24.10.96 admitted to have transferred and utilized about US\$ 2 million generated out of counter trade benefit towards Bukhara settlements in USA; It also transpired that M/s ITC Ltd (IBD) otherwise accounted US\$ 2.66 million by way of counter trade business in respect of export of Agro-product commodities and sale of leaf tobacco by way of counter trade business through Chitalias and others and transferred funds generated by way of a counter trade benefit to Chitalia companies in USA and ITC's subsidiaries in Singapore, a portion of which used i.e US\$ 1.614 million was by them for making payment towards Bukhara settlement to the NRIs in USA and the balance amount of US\$ 1 million approx. was retained with M/s ITC Ltd subsidiaries in Singapore and or with Chitalias instead of bring back into India without any general or special permission/ exemption of RBI;	And whereas it appears from the statement Para dated 9.10.96 S/Shri Suresh Chitalia and Devang Chitalia of USA and also the subsequent documents sent by them with their letter dated 15.10.96 and Dr E Ravindranath arranged US\$ 244,000 through EST A/c of Chitalia for Bukhara settlement out of the counter trade benefit and that US\$ 1.37 million used for Bukhara settlement by M/s ITC Ltd appears to have been generated out of counter trade benefit as Sri GKP Reddy viz. statements dated 23.10.96 and 24.10.96 admitted to have transferred and utilized about US\$ 2 million generated out of counter trade benefit towards Bukhara settlements in USA; And whereas it appears that M/s ITC Ltd (IBD) otherwise accounted US\$ 2.66 million by way of counter trade business in respect of export of Agro-product commodities and sale of leaf tobacco by way of counter trade business through Chitalias and others and transferred funds generated by way of a counter trade benefit to Chitalia companies in USA and ITC's subsidiaries in Singapore, a portion of which used i.e US\$ 1.614 million was by them for making payment towards Bukhara settlement to the NRIs in USA and the balance amount of US\$ 1 million approx. was retained with M/s ITC Ltd subsidiaries in Singapore and or with Chitalias instead of bring back into India without any general or special permission/ exemption of RBI;	Para 11 of SCM XV Para 12 of SCM XV
Para 14	That by otherwise acquiring and frastering of US\$ 2.66 million of EST Group of companies of Chitalias in USA and ITC's subsidiaries in Singapore and by making payment of US\$ 1.614 million to NRIs and other towards Bukhara pay off settlement in USA and also by their failure to repatriate US\$ 1.046 million into India in the manner as aforesaid without any general or special exemption from the RBI, the said M/s ITC Ltd, appeared to have contravened the provision of Section 8(1), 9(1) (a) and 16	And whereas by otherwise acquiring and transferring of US\$ 2.66 million of EST Group of companies of Chitalias in USA and ITC's subsidiaries in Singapore and by making payment of US\$ 1.614 million to NRIs and other towards Bukhara pay off settlement in USA and also by their failure to repatriate US\$ 1.046 million into India in the manner as aforesaid without any general or special exemption from the RBI, the said M/s ITC Ltd, appeared to have contravened the provision of Section 8(1), 9(1) (a) and 16 (1)(b) of the FERA 1973, and thereby rendered	Para 16 of SCM XV

	(1)(b) of the FERA 1973, and thereby rendered themselves liable to be proceeded against under Section 56 of the FERA 1973;	themselves liable to be proceeded against under Section 50 of the FERA 1973;	
Para 15	It also transpired that Shri RK Kutty, Director of M/s ITC Ltd, Sri GKP Reddy, Line Director of IBD, M/s ITC Ltd, Dr E Ravindranath, Vice President (Operations), Sri KK Rao, Manager (Export) and Sri M Rao Export Executive and Sri Lakshminarayan, Finance Controller, IBD M/s ITC Ltd were responsible for the control and conduct of the day to day business activities of the said company, accused no 1 during the relevant time and therefore appeared to have contravened the provisions of Section 8(1), 9(1) (a) and 16(1)(b) of the FERA 1973, and in terms of Section 68(1) and 68(2) ibid and thereby rendered themselves liable to be proceeded under Section 56 of the FERA, 1973.	And whereas it appears that Shri J N Sapru, K L Chugh Ex-Chairman, Sri Y C Deveshwar, Chairman, GKP Reddy, Line Director of IBD, ITC Ltd., Ashok Bhatia, R P Agarwal, B Mitter, N Sitaraman, Sourabh Mishra, RK Kutty, F R Vevaina, C C Appaya, J Narayan, Directors, and Shri E Ravindranath, Vice President (Operation) of IBD, ITC, K K Rao Manager (Exports), M B Rao (Export Executive), K Vaidyanath Vice President (Finance), N Lakshminarayan Financial Controller, IBD of ITC Ltd were either directly involved in the aforesaid transactions or the same were in their knowledge and were/are responsible for control or conduct of the business of the said company during the relevant time when this transaction had taken place and therefore, appears to have contravened the provisions of Section 8(1), 9(1) (a) and 16(1)(b) of the FERA 1973, and in terms of Section 68(1) and 68(2) ibid and thereby rendered themselves liable to be proceeded under Section 50 of the FERA, 1973.	Para 17 of SCM XV

Learned senior advocate in order to substantiate his argument relied upon Radheshyam Kejriwal -Vs. --State of West Bengal & Anr. reported in (2011) 3 SCC 581. Emphasis was laid on paragraphs 19, 32, 33, 38 and 47 which are as follows:

“19. However, in a case like the present one in which the penalty proceeding under Section 51 of the Act and the prosecution under Section 56 of the Act though launched together but the penalty proceeding culminated earlier exonerating the person, the question would arise as to whether continuance of the prosecution would be permissible or not. In other words, the question with which we are concerned is the impact of the findings which are recorded on the culmination of adjudication proceedings on criminal proceeding and in

case in the adjudication proceedings the person concerned is exonerated can he ask for dropping of the criminal proceeding on that ground alone.

32. There are authorities of this Court in relation to the Income Tax Act in this regard. The first in the series is the judgment of this Court in *Uttam Chand v. ITO* [(1982) 2 SCC 543 : 1982 SCC (Tax) 150] in which registration of the firm was cancelled on the ground that it was not genuine and prosecution initiated for filing false return. However, in appeal, the Income Tax Appellate Tribunal reversed the finding and held the firm to be genuine. Relying on that, this Court quashed the prosecution inter alia observing as follows: (*Uttam Chand case* [(1982) 2 SCC 543 : 1982 SCC (Tax) 150] , SCC p. 543, paras 1 & 2)

“1. Heard the counsel, special leave granted. In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record and Shrimati Janak Rani was a partner of the assessee firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution.

2. There will be no order as to costs.”

33. In *G.L. Didwania v. ITO* [1995 Supp (2) SCC 724] on setting aside the order of the assessing authority which led to the prosecution of the assessee by the Income Tax Appellate Tribunal, this Court held the prosecution not permissible and while doing so observed as follows: (SCC p. 725, para 4)

“4. In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the Tribunal. As noted above, the assessing authority held that the appellant assessee made a false statement in respect of income of M/s Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position then

we are unable to see as to how criminal proceedings can be sustained.”

38. *The ratio which can be culled out from these decisions can broadly be stated as follows:*

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;*
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and*
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.*

47. *Bearing in mind the principles aforesaid we proceed to consider the case of the appellant. In the adjudication proceedings on merit the adjudicating authority has categorically held that “the charges against Shri Radheshyam Kejriwal for contravening the provisions of Section*

9(1)(f)(i) and Section 8(2) read with Section 64(2) of the Foreign Exchange Regulation Act, 1973 cannot be sustained”. In the face of the aforesaid finding by the Enforcement Directorate in the adjudication proceedings that there is no contravention of any of the provisions of the Act, it would be unjust and an abuse of the process of the court to permit the Enforcement Directorate to continue with the criminal prosecution.”

Learned senior advocate appearing for the petitioner by referring to Videocon Industries Limited & Ors. –Vs. – State of Maharashtra & Ors. reported in (2016) 12 SCC 315, drew the attention of the Court to paragraph 17 which categorically observed as follows:

“17. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

In order to draw the attention of the Court to the changed circumstances which took place in course of pendency of the revisional application before the High Court, reference was made to Joseph Salvaraj A. –Vs. – State of Gujarat & Ors., (2011) 7 SCC 59; Anand Kumar Hohatta & Anr. –Vs. – State (NCT of Delhi), Department of Home & Anr., (2019) 11 SCC 706 and Mamta Shailesh Chandra –Vs. – State of Uttarkhand & Ors., 2024 SCC OnLine SC 136. In the aforesaid decisions the Hon’ble Supreme Court was consistently of the view that even if the charge-sheet has been filed the High Court should have examined whether the offences alleged to have been committed by the accused

were prima facie made out from the complainant's FIR, charge-sheet, documents etc. or not.

Mr. Ghosh, learned senior advocate as such has prayed for quashing of the proceedings being complaint case No. C-2482/2002 pending before the learned Metropolitan Magistrate, 9th Court, Calcutta.

Mr. Kundalia, learned advocate appearing on behalf of the Enforcement Directorate resisted the submissions advanced on behalf of the petitioner and submitted that the adjudication order dated 20th August, 2015 reflects inherent contradiction in the finding of the adjudicating authority and the adjudicating authority failed to consider the relevant materials before arriving at its final decision with regard to the memorandum of charges dated 2nd January, 1998. To that effect learned advocate has referred to the relevant part of the adjudicating order as follows:

(a) The adjudication order states that *"The statement of Shri N. Lakshminarayan mentioned at sl. No. 16 of relied upon documents in no way shows any link of the above letters with the charges made against ITC Ltd. in fact, Shri Lakshminarayan says that in the books of accounts, there is no provision on account of any counter trade premium receivable. This relied upon document would in no way substantiate the charges in the Memorandum."*

(b) The adjudication order states that *"the statements of Shri N. Lakshminarayan do not show any relation to the allegations in the Memorandum in any manner."*

Learned advocate then pointed out that there were contradictions in respect of the earlier observations of the same order in the subsequent part and to that effect drew the attention of the Court to the following paragraphs of the order of the adjudicating authority:

- (i) In the 3rd paragraph of page 14 of the adjudication order it is stated that *"In his statement, Shri Lakshminarayan stated that he was told by Dr. E. Ravindranath, Vice-President (Operation) that IBD Agro was getting certain percentage of counter trade benefit of export deals but the same was not accounted for in the books of accounts."*
- (ii) In the 3rd paragraph of page 14 of the adjudication order it is stated that *"On carefully going through the above relied upon documents, the reply to the SC Memorandum submitted, the documents furnished in defence by the Noticee, it may be seen that as far as the cited relied upon documents are concerned, what is relevant and directly related to the allegations in the Memorandum are the ..."* It is manifestly clear from a bare perusal of this paragraph that the adjudicating authority did not deem the statement of Shri N. Lakshminarayan contained in Sl. No. 16 of relied upon documents to be *"relevant and directly related to the allegations in the Memorandum"*

According to the Enforcement Directorate the adjudicating authority committed an error in arriving at its finding that the statement of Shri N.

Lakshminarayan who was Financial Controller, IBD, ITC Ltd, was not relevant or directly related to the allegations in the memorandum which is an inherent contradiction and it is evident that Shri N. Lakshminarayan possessed relevant information relating to counter trade premium which is basis of the criminal proceedings against the petitioner. The adjudication authority as such erred in analysing the version/statement of Shri N. Lakshminarayan as contained in serial number 16 of the relied upon documents.

The criminal complaint against the petitioner according to the complainant/opposite party is based on the statement of Shri N. Lakshminarayan which is paragraph 10 of the complaint and as such the criminal proceedings fall within the exception dealt with in Radheshyam Kejriwal (supra) as distinguished in the case of Air Customs Officer –Vs. – Pramod Kumar Dhamija reported in (2016) 4 SCC 153. According to the complainant/opposite party in Pramod Kumar Dhamija (supra) the Hon'ble Supreme Court of India dealt with similar circumstances and held that since the finding returned by the adjudicating authority did not take into account certain relevant information, being the statement of the brother of the accused, the High Court erred in quashing the criminal proceedings based on the judgment of Radheshyam Kejriwal (supra). It was pointed out that in Pramod Kumar Dhamija (supra) though the adjudicating authority exonerated the accused on merits the Hon'ble Supreme Court held that the entire relevant materials were not considered by the adjudicating authority and thus there was no bar in continuance of the criminal proceedings.

It was emphasised that the principles in Pramod Kumar Dhamija (supra) in splitting the nature of merits, apply squarely to the facts and circumstances of the instant case as the adjudicating authority erred in not considering the statement of Shri N. Lakshminarayan which is relevant in respect of the allegations against the petitioner and therefore there is no bar to proceed with the complaint based on the judgment of Radheshyam Kejriwal (supra). The learned advocate for the Enforcement Directorate as such, prayed for dismissing the revisional application.

In reply to the arguments advanced on behalf of the Enforcement Directorate petitioner reiterated its submission and further added that the plea of the complainant that certain statement which is relevant was not considered by the adjudicating authority in its order dated 20th August, 2015, should be accepted and considered as an order not on merits, falling within the exception enumerated in paragraph 38(vi) of Radheshyam Kejriwal (supra) cannot be accepted, as the foundation of the contention is on the basis of the statement of Mr. N. Lakshminarayan. According to the petitioner the adjudicating order itself reflects that so far as the allegations of the investigating agency to the extent that *“M/s ITC Limited exported various agro product commodities viz, cashew and coffee to the extent of Rs.130 crores during the period 1991-93 against counter trade agreement with an understanding between ITC Ltd., EST Group of Chitalia of USA and various other ultimate overseas buyers that ITC would receive 3 to 4% counter trade premium on the total volume of business”* was based upon the statement of Mr. GKP Reddy, Dr. E Ravindranath, Mr.

M.B. Rao and Mr. N. Lakshminarayan. The other instance where Mr. N. Lakshminarayan's involvement was concerned were in respect of certain documents which were letters signed by him addressed to various executives of the petitioners. The contents of the said letters were carefully examined by the adjudicating authority and it was held that the same could not be linked with the charges made against the petitioner in the Show Cause Memorandum No. XV dated 2nd January, 1998. The next observation in the adjudicating authority's order relating to Mr. N. Lakshminarayan referred to relied upon document 6 which were the minutes of the meeting between Dr. E. Ravindranath, Mr. N. Lakshminarayan, Mr. A. Garg and Mr. T. Gandhi. The adjudicating authority after considering the contents of the RUD 6, coupled with the statement of Mr. N. Lakshminarayan was of opinion that the same do not show any relation to the allegation made in the Show Cause Memorandum XV. The last instance which the adjudicating authority dealt with in respect of Mr. N. Lakshminarayan is with regard to RUD 16 which is his own statement, *"In his statement, Shri Lakshminarayan stated that he was told by Dr. E. Ravindranath, Vice-President (Operation) that IBD Agro was getting certain percentage of counter trade benefit of export deals but the same was not accounted for in the books of accounts."* Referring to the aforesaid instances which were dealt with by the adjudicating authority so far as Mr. N. Lakshminarayan is concerned it was contended that RUD 16 was duly discussed, considered, weighed while passing the adjudicating order. According to the adjudicating authority RUD 16 was hearsay in nature and the statement

of Dr. E. Ravindranath which was the very foundation of the case, was held general and vague and could not be relied upon was a specific finding of the adjudicating authority, thus there were cogent reasons which were recorded for arriving at its conclusion. Accordingly the ratio laid down in Pramod Kumar Dhamija (supra), has no manner of application so far as the present case and the petitioner is concerned.

I have taken into account the order of the adjudicating authority dated 20th August, 2015 passed by the Special Director (ER) wherein he has taken into account the gist of the complaint, the issues relating to the Show Cause Memorandum along with its reply and has based his finding on 24 Relied Upon Documents (RUDs). So far as the RUD 16 is concerned it has been categorically recorded as follows:

“In his statement, Shri Lakshminarayan stated that he was told by Dr. E. Ravindranath, Vice-President(Operation) that IBD Agro was getting certain percentage of counter trade benefit of export deals but the same was not accounted for in the books of accounts.”

The adjudicating authority also took into account the statement of Dr. E. Ravindranath, Mr. G.K.P. Reddy, Mr. Suresh Chitalia, Mr. Devang Dhitalia, Mr. Ashutosh Garg and that there was a categorical finding by the adjudicating authority that:

“Shri E. Ravindranath in his statement has not admitted any direct knowledge of the counter trade premium but he has stated what was told by Chitalias.”

The adjudicating authority after assessing whole of the circumstances, the relevant RBI Guidelines, arrived at its finding as follows:

“Considering all the points discussed above, it is difficult to place any reliance on the statement of Shri G.K. P Reddy, Shri E. Ravindranath or Shri Ashutosh Garg as they do not find support in any other documents and the statements are also general and vague with no mention of specific contracts and parties involved. The Noticee has also pointed out RBI guidelines regarding limit for commission of export sales and there is indeed logic behind the defence that if they had to make adjustments for any losses overseas, it would have been easier to do it through commission in export sales rather than any adjustment in counter trade premium as alleged. The SCM is also silent on the calculation of US\$ 2 million CP allegedly not brought into India and the contracts against the same, counter parties involved, terms of contract, manner of execution of contract etc. which shows that the complaint has been made in a casual manner. The Noticee company has also produced details of all counter trade contracts and premium received, which are duly accounted for in their Books of Accounts.

As the facts alleged in the complaint itself are not proved, I do not wish to go into the other questions of law raised by the Noticees, which are relevant only if atleast the facts can be reasonably established from the evidence adduced.

Considering all the above facts, it is clear that the allegations made against M/s. ITC Ltd., the Noticee company and other 18 Noticees in Memorandum No. T-4/18-C/07(SCN-XV) dated 02.01.1998 that they have violated the provisions of Sections 8(1), 9(1)(a), 16(1)(b) of Foreign Exchange Regulation Act, 1973 are not proved.”

I have considered the reasons arrived by the complainant/opposite party and the principles laid down in the judgment of Pramod Kumar Dhamija (supra) which was based on the facts stated in paragraph 6 of the said judgment that :

“6. vide his order dated 25-1-2008 set aside the penalty imposed on the respondent. The appellate authority was of the view that there were two persons having the same name i.e. Pramod Kumar, one in Dubai and the second being the respondent and”

It was further held by the appellate authority in the aforesaid judgment that:

“If the investment was made by Shri Pramod Kumar of Dubai, then it cannot be linked to the appellant. The Department has not made Shri Pramod Kumar of Dubai a party in the case and nothing is on record to suggest that efforts were made to trace and identify Shri Pramod Kumar of Dubai and how the telephone number in Dubai i.e. 531228 is linked to the appellant.”

The exoneration of Pramod Kumar in the judgment relied upon by the complainant/opposite party by the Commissioner of Customs (Appeal) was on a different set of parameters wherein the main issue relating to evasion of revenue was never considered. In the present case adjudicating authority decided the issue relating to the Show Cause on merits, including the statement and the materials placed before the adjudicating authority.

Having considered the same, I am of the view that the exception enumerated in paragraph 38 (vi) of Radheshyam Kejriwal (supra) is not application to the facts of the present case, rather the case of the petitioner falls within the ambit of paragraph 38(vii) of Radheshyam Kejriwal (supra) case which states as follows:

“38. (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

In view of the aforesaid, I am of the opinion that further continuance of the complaint case being Case No. C-2482/2002 pending before the learned Metropolitan Magistrate, 9th Court, Calcutta would be an abuse of the process of the Court and as such the same is hereby quashed.

Consequently, CRR 1175 of 2004 is allowed.

Pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities. .

(Tirthankar Ghosh, J.)