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W.A.Nos.795 and 796 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2024
DELIVERED ON : 20.03.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE BHARATHA CHAKRAVARTHY

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AURO LOGISTICS LTD
No.9, Ranjith Road,
Kotturpuram, Chennai-600085.

.. Appellant
in WA.795/2024

R.Swarup Reddy
CEO, AURO LOGISTICS LTD
No.9, Ranjith Road,
Kotturpuram, Chennai-600085.

.. Appellant
in WA.796/2024

Vs

1. THE ASSISTANT DIRECTOR (SRO)
Directorate of Enforcement,
Southern Regional Office,
Shasthri Bhavan, III Block,
III Floor, No.26, Haddows Road,
Chennai-600006.
2. THE SPECIAL DIRECTOR
Directorate of Enforcement,
Southern Regional Office,
Shasthri Bhavan, III Block,
III Floor, No.26, Haddows Road,
Chennai-600006.



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3. THE ADDITIONAL DIRECTOR
Directorate of Enforcement,
Southern Regional Office,
Shastri Bhavan, III Block,
III Floor, No.26, Haddows Road,
Chennai-600006.

.. Respondents

Prayer: Appeals under Clause 15 of the Letters Patent against the common order dated 5.1.2024 made in W.P.Nos.13268 and 13276 of 2020 by the learned Single Judge.

For the Appellants : Mr.Jayant Mehta
Senior Counsel
for Mr.B.Thiyagarajan

COMMON JUDGMENT

THE HON'BLE CHIEF JUSTICE

Calling into question the judgment and order dated 5.1.2024 passed by the learned Single Judge, the unsuccessful writ petitioners have filed these appeals.

2.1. The facts leading to the filing of these appeals, in a nutshell, are as follows: On the basis of a complaint dated 29.1.2018 lodged under Section 16(3) of the Foreign Exchange



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Management Act, 1999 [for brevity, "*the Act of 1999*"] by the Assistant Director, Directorate of Enforcement, Hyderabad, the Special Director, Directorate of Enforcement, Southern Regional Office, Chennai, issued a show cause notice dated 23.2.2018 to the appellants under Section 7 of the Act of 1999 read with Regulations 8, 9(1) and 13 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 for non-repatriation of the export proceeds.

2.2. Subsequent to the issuance of the show cause notice, the Assistant Director (SRO), Directorate of Enforcement, Southern Regional Office, Chennai, vide letter dated 6.2.2020, directed the appellants to appear on 19.2.2020 before the Additional Director for adjudication proceedings. Thereafter, the appellants sought further time and copies of the documents relied upon by the respondents. There was exchange of communication between the parties and, ultimately, by the notice dated 9.9.2020 issued by the Assistant Director (SRO), Directorate of Enforcement, Southern Regional Office, Chennai, the appellants were required to be present for



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hearing on 23.9.2020 before the Additional Director, Directorate of Enforcement.

2.3. It is the case of the appellants that the show cause notice having been issued by the Special Director, Directorate of Enforcement, he is "*the Adjudicating Authority*" and the further proceedings are required to be conducted by him alone and not by the Additional Director. Therefore, the appellants filed writ petitions, *inter alia*, praying for issuance of a writ of certiorari and seeking quashment of the notice dated 9.9.2020.

2.4. The learned Single Judge dismissed the writ petitions holding that the case was transferred from the Special Director to the Additional Director in view of the enhancement of pecuniary jurisdiction and the same is well within the provisions of the Act of 1999. Aggrieved thereby, the present appeals.

3.1. Mr.Jayant Mehta, learned Senior Counsel appearing on behalf of Mr.B.Thiyagarajan, learned counsel for the appellants,



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eruditely canvassed his submissions. He submits that by virtue of Rule 4(3) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, [for brevity, "*the Rules of 2000*"], the authority who issues the show cause notice under Rule 4(1) of the Rules of 2000 alone is competent to adjudicate the case of the appellants. In the case on hand, the show cause notice was issued by the second respondent/Special Director and, hence, no other authority can adjudicate the case of the appellants.

3.2. Learned Senior Counsel for the appellants further submits that the notification dated 27.9.2018 issued by the Central Government exercising the power under Section 16 of the Act of 1999, revising the pecuniary jurisdiction of the Officers of the Enforcement Directorate and transferring the cases is prospective in nature, but in the case on hand the said notification is given retrospective effect. He pointed out that the Special Director issued notice way back on 23.2.2018, to wit, prior to the issuance of notification revising the pecuniary jurisdiction, and hence the savings clause contained in the notification to the effect that



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"except as respects things done or omitted to be done before such supersession..." comes to the aid of the appellants.

3.3. Learned Senior Counsel for the appellants submits that the "adjudication" under Section 13 of the Act of 1999 is by an "Adjudicating Authority" appointed under Section 16 of the Act of 1999, which speaks of "the" "Adjudicating Authority". The use of the word "the" clearly indicates specificity of the Adjudicating Authority, which, in the present case, is admittedly the second respondent/Special Director, Directorate of Enforcement. Once "the" Adjudicating Authority is fixed and issues a show cause notice, as the second respondent did in the present case, any other authority cannot adjudicate the notice. The third respondent did not issue any show cause notice to the appellants. That being so, the authority, to wit, the second respondent, who issued the show cause notice to the appellants, is "the" Adjudicating Authority who can conduct inquiry under the Rules of 2000.

3.4. Learned Senior Counsel for the appellants further submits



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that, as contemplated under Rule 4(3) of the Rules of 2000, the Adjudicating Authority can only be “the” authority who issues the show cause notice under Rule 4(1) of the Rules of 2000. The second respondent, who is the Special Director and had issued the show cause notice, is “the” Adjudicating Authority. Learned Senior Counsel relies upon the judgment of the Apex Court in the case of *Canon India Private Limited v. Commissioner of Customs, (2021) 18 SCC 563*, so also the judgments in the cases of (i) *Tata Chemicals Limited v. Commissioner of Customs (Preventive), Jamnagar, (2015) 11 SCC 628*; and (ii) *Shashank Vyankatesh Manohar v. Union of India and another, 2014 (1) Mh.L.J. 838*.

3.5. Learned Senior Counsel also submits that when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all.

4. We have considered the submissions and have also perused the judgment delivered by the learned Single Judge.



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5. It appears that on the basis of the complaint dated 29.1.2018 lodged under Section 16(3) of the Act of 1999 by the Assistant Director, Directorate of Enforcement, the Special Director, Directorate of Enforcement, issued a show cause notice dated 23.2.2018 to the appellants under Section 7 of the Act of 1999 read with Regulations 8, 9(1) and 13 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 for non-repatriation of the export proceeds. The appellants sought relied upon documents and further time.

6. On or about 6.2.2020, the Assistant Director, SRO, Directorate of Enforcement, directed the appellants to appear on 19.2.2020 before the Additional Director (Adjudicating Authority) for adjudication proceedings. During the interregnum period, i.e., from the date of issuance of show cause notice dated 23.2.2018 till the date of issuance of the letter dated 6.2.2020, directing the appellants to appear before the Additional Director, the notification dated 27.9.2018 was issued enhancing the pecuniary jurisdiction of the Adjudicating Authorities. The notification enhanced the



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pecuniary limits of the Adjudicating Authorities and empowered them to be Adjudicating Authorities to hold inquiry for the purpose of adjudicating under Section 13 of the Act of 1999. The notification dated 27.9.2018 reads thus:

"S.O.4990(E) - In exercise of the powers conferred by section 16 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Extraordinary, Part-II, section-3, sub-section (ii) vide number S.O. 2564(E), dated the 30th September, 2014, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the following officers of the Directorate of Enforcement specified in Column (2) of the Table below as adjudicating authorities to hold an inquiry for the purpose of adjudication under section 13 of the said Act, involving an amount or value as specified in column (3) of the said Table.



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TABLE

<i>Sl.No.</i>	<i>Designation of Officers</i>	<i>Monetary limit</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(1)</i>	<i>Director of Enforcement</i>	<i>Cases involving amount exceeding rupees twenty five crores</i>
<i>(2)</i>	<i>Principal Special Director of Enforcement</i>	<i>Cases involving amount exceeding rupees twenty five crores</i>
<i>(3)</i>	<i>Special Director of Enforcement</i>	<i>Cases involving amount exceeding rupees twenty five crores.</i>
<i>(4)</i>	<i>Additional Director of Enforcement</i>	<i>Cases involving amount upto rupees twenty five crores but not less than ten crores</i>
<i>(5)</i>	<i>Joint Director of Enforcement</i>	<i>Cases involving amount upto rupees ten crores but not less than five crores.</i>
<i>(6)</i>	<i>Deputy Director of Enforcement</i>	<i>Cases involving amount upto rupees five crores and not less than two crores</i>
<i>(7)</i>	<i>Assistant Director of Enforcement</i>	<i>Cases involved of amount not exceeding rupees two crores</i>

7. For cases involving amount up to Rs.25 crore, the Additional Director of Enforcement is the Adjudicating Authority. Prior to the said notification, for cases involving the amount up to Rs.25 crore, the Adjudicating Authority was the Special Director of



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Enforcement.

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8. The Adjudicating Authority is defined under Section 2(a) of the Act of 1999. “*Adjudicating Authority*” means an officer authorised under sub-section (1) of Section 16.

9. Under sub-section (1) of Section 16 of the Act of 1999, the Central Government may, for the purpose of adjudication under Section 13, by an order published in the official gazette, appoint as many officers of the Central Government as it may think fit as the Adjudicating Authorities for holding an inquiry in the manner prescribed. Sub-section (2) of Section 16 of the Act of 1999 further provides that the Central Government shall, while appoint the Adjudicating Authorities under sub-section (1), also specify in the order published in the official gazette, their respective jurisdictions.

10. The substratum of the contentions of learned Senior Counsel for the appellants is that the person issuing the show cause notice is “the” Adjudicating Authority and all proceedings pursuant



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to the show cause notice issued by him shall be continued and concluded by the person issuing the show cause notice and no other. Much emphasis was laid by learned Senior Counsel on the use of the word "the" Adjudicating Authority. According to him, the use of the word "the" specifies a particular person.

11. The Apex Court in the case of *Canon India Private Limited* (supra) observed that "A (or an)" is known as the indefinite article because it does not specifically refer to a particular person or thing. On the other hand, "the" is called the definite article because it points out and refers to a particular person or thing. The said judgment was delivered interpreting the words "the proper officer" under the Customs Act, 1962. The Apex Court in the said judgment further clarified that the proper officer need not be the very officer who cleared the goods, but may be his successor in office or any other person authorised to exercise the powers within the same office. The Apex Court in the said case further observed that where the statute confers the same power to perform an act on different officers, as in this case, the two officers, especially when they



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belong to different departments, cannot exercise their powers in the same case. Where one officer has exercised his powers of assessment, the power to order re-assessment must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank.

12. The present case is not of reassessment. Under Rule (1) of Rule 4 of the Rules of 2000, the Special Director, who as per the relevant notification was an Adjudicating Authority, issued the show cause notice, requiring the appellants to show cause why an inquiry should not be held against them. Under sub-rule (3) of Rule 4 of the Rules of 2000, after considering the cause, if any, shown by the person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him. Under sub-rule (4) of Rule 4 of the Rules of 2000, the Adjudicating Authority shall explain to the person the contravention alleged to



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have been committed by such person, indicating the provisions of the Act or Rules or Regulations. Under sub-rule (5) of Rule 4 of the Rules of 2000, the adjudicating authority gives a further opportunity to the person to produce such documents or evidence as he may consider relevant to the inquiry. Under sub-rule (8) of Rule 4 of the Rules of 2000, if, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of Section 13 of the Act of 1999.

13. The Central Government can appoint as many officers as it thinks fit as the Adjudicating Authorities. In the present case, the Adjudicating Authorities are appointed to deal with the inquiries and adjudication depending upon the quantum of the amount involved.

14. From a reading of Section 16 of the Act of 1999, so also Rule 4 of the Rules of 2000, it cannot be inferred that the adjudicating authority is a "*persona designata*". The persona



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designata is a person selected to act in his private capacity and not as a member constituting a class. The authority is constituted by designation as the Adjudicating Authority having pecuniary jurisdiction in terms of the Act. It is obvious that even though the Adjudicating Authority may get transferred or retire or may otherwise cease to hold the office, his successor in office can pick up the thread of the proceedings from the stage where it was left by his predecessor and can function as an Adjudicating Authority. The persona designata is a person who is described as an individual, as opposed to a person ascertained as a member of a class. At the first instance, the show cause notice was issued by the Adjudicating Authority. The Adjudicating Authority referred to in Rule 4 of the Rules of 2000 does not refer to a designation of an authority or a person. The Rules of 2000 do not suggest that the Adjudicating Authority shall only be the Special Director or the Principal Special Director or the Additional Director. It only says “the Adjudicating Authority” and, as such, by no stretch of imagination it can be inferred that the Adjudicating Authority is a *persona designata*. The Adjudicating Authorities exercise their



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jurisdictions and power according to the pecuniary limits as enumerated in the notification appointing them as Adjudicating Authorities. The notification issued by the Central Government empowers the Adjudicating Authority to decide the case within his/her pecuniary limits.

15. Albeit the notice is issued by the Special Director, who at the relevant and material time was the Adjudicating Authority, subsequently, because of the fresh notification issued on 27.9.2018, the Adjudicating Authority notified by the Central Government is the Additional Director and the Additional Director is empowered to conduct the adjudication proceedings. The inquiry and the adjudication proceedings has to proceed on the basis of the evidence produced. The evidence produced by the person would be considered by the Adjudicating Authority for forming an opinion to proceed further with the show cause notice.

16. In view of the aforesaid, the contention of the appellants that the person who issues the show cause notice under Rule 4(1)



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of the Rules of 2000 would alone be the Adjudicating Authority till the culmination of the proceedings cannot be comprehended and needs to be rejected.

17. Learned Senior Counsel for the appellants relied upon the phrase in the notification which reads that "... *except as respects things done or omitted to be done before such supersession...*". According to learned Senior Counsel, the same is a saving clause. Referring to the said phraseology, it is submitted that the show cause notice having already been issued to the appellants, the appellants are covered under the said saving clause and, as such, the appellants' case cannot be transferred from the second respondent to the third respondent.

18. In our opinion, the said arguments does not hold water. The phrase "*except as respects things done or omitted to be done before such supersession...*" would mean that whatever acts are done till the date of issuance of the notification superseding the earlier notification are saved. The show cause notice issued under



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Rule 4(1) of the Rules of 2000 before issuance of the said notification dated 27.9.2018 is saved. The further proceedings cannot proceed before the person who was an Adjudicating Authority under the notification already superseded. The inquiry will have to be continued by the Adjudicating Authority as per the notification in vogue and not the Adjudicating Authority under the superseded notification.

For the foregoing reasons, we are of the firm view that the learned Single Judge has not committed any error while dismissing the writ petitions. The writ appeals are, accordingly, dismissed. There shall be no order as to costs. Consequently, C.M.P.Nos.5370 and 5374 of 2024 are closed.

(S.V.G., CJ.)

(D.B.C., J.)

20.03.2024

Index : Yes
Neutral Citation : Yes
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To:

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Directorate of Enforcement,
Southern Regional Office,
Shasthri Bhavan, III Block,
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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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