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W.P.No.8811 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8811 of 2024

and

W.M.P.Nos.9812 & 9814 of 2024

1.M/s.Innvol Medical India Limited,
387, Wallajah Road,
Kunnam Village,
Sriperumbudur Taluk,
Kancheepuram District,
Pin-631 604.

2.Mr.Sunil Mahesh Shastri

... Petitioners

Vs.

Directorate of Enforcement Southern Regional Office,
'Shastri Bhavan', III Block, B wing,
26, Haddows Road, Chennai – 600 006.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order dated 26.02.2024, bearing reference no.SDE/SRO/CEO-I/04/2024 issued by the respondent and to quash the same.



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For Petitioners

: Mr.Sathish Parasaran
Senior Counsel
for Mr.P.Rajkumar Jhabakh

For Respondent

: Mr.N.Ramesh
Special Public Prosecutor for ED

ORDER

The *lis* on hand has been instituted challenging the validity of the Order-in-Original passed by the Special Director, Directorate of Enforcement, Southern Regional Office in proceedings dated 26.02.2024.

2. Mr.Sathish Parasaran, learned Senior Counsel appearing on behalf of the writ petitioners would mainly contend that the show cause notice was issued to the petitioners in connection with an enquiry and adequate opportunities were not provided to the petitioners to defend their case. The Order-in-Original was passed without affording opportunity to the petitioners to defend their case. Therefore, rules of natural justice has been violated.



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3. The Order-in-Original states that on 17.01.2023, no one appeared for enquiry. Contrarily, an intimation was given to the petitioners that the enquiry was postponed and the Authorities have decided not to conduct enquiry on 17.01.2023. Since rules of natural justice has been violated, the writ petition is entertainable.

4. In support of the contention, the Judgment of the Hon'ble Supreme Court of India has been relied upon. In the case of ***Radha Krishan Industries Vs. State of Himachal Pradesh & Ors.*** reported in ***MANU/SC/0293/2021***, the Hon'ble Supreme Court held that the writ petitions are entertainable under Article 226 of the Constitution, if there has been violation of principles of natural justice. Citing, the Judgment, it is contented that the present case also there is a glaring violation of principles of natural justice. Therefore, the writ petition is entertainable.

5. Mr.N.Ramesh, learned Special Public Prosecutor, who takes notice for the respondent would oppose by stating that Section 19 of the Foreign Exchange Management Act 1999, provides an appeal to the Appellate Tribunal for foreign exchange. The appeal is to be filed within a period of 45



days from the date of Order-in-Original passed by the Authority. Therefore, the petitioners have to prefer an appeal and the writ petition is to be rejected.

6. Mr.N.Ramesh would further submit that opportunities were provided to the petitioners and the first show cause notice was issued to the petitioners on 05.02.2018. The copy of the complaint was enclosed along with the show cause notice enabling the petitioners to respond. In respect of the said show cause notice, the petitioners have submitted their explanations/objections.

7. The order impugned would reveal that a show cause notice was issued along with the copy of the complaint to the petitioners and they have submitted their reply. Thereafter personal hearing was provided. The details regarding the personal hearing are stated as follows:

“5. Personal hearing of Shri.Chandan Anchaliya and Shri.Sunil Mahesh Shastri:-

5.1 On 15.12.2022, Shri.Sunil Mahesh Shastri and Shri.Chandan Anchaliya appeared before the undersigned and Shri.Chandan Anchaliya appeared on behalf of Noticees No.1,2,4,5,6,14,19 and submitted authorization.

5.2 He mentioned that he already replied to the SCN



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and submitted the copy of the same. On being produced, it is seen that it was the response to the SCN No.T-4/CEZO-II/06/2022 (GB) dated 31.03.2022, whereas this proceeding was with regard to SCN No.T4/04/CEZO-I/SRO/2018 dated 05.02.2018.

5.3 They mentioned that they have not received the SCN No. T/04/CEZO-I/SRO/2018 dated 05.02.2018 and, hence requested the copy of the same along with the complaint and RUDs. The Adjudicating Authority directed the SRO officials to make a copy of the same and provided them by 19.12.2022. It was also mentioned that the reply of the same must be submitted on or before 15.01.2023 and the Adjudicating Authority has scheduled the next hearing dated on 17.01.2023 @ 11:00. It was also informed that no separate communication would be made regarding the personal hearing, but no one appeared or represented or reply was provided.

5.4 Call Notice dated 16.12.2022 and 20.01.2023 was issued for appearance of Noticee No.3, 7,8 to 13,15 to 18 on 17.01.2023 and 21.02.2023 respectively, but no one appeared or represented.”

8. Perusal of the above recordings would reveal that it is not a case, where rules of natural justice has not been complied with. Even if some infirmities are noticed in the matter of affording opportunity, the same can be considered by the Appellate Tribunal for foreign exchange.

9. The Appellate Tribunal for Foreign Exchange is empowered to



call for the Original Records adjudicate the issues on merits by affording opportunity to the parties. It is an efficacious alternate remedy contemplated under the Act. Merely by citing certain infirmities, during the course of hearing, an aggrieved person need not approach the Court, but such infirmities if any can be raised before the Appellate Authorities for considering the issues.

10. The Judgement of the Hon'ble Supreme Court of India is to be understood in the context of absolute violation of principles of natural justice, which caused absolute prejudice to the interest of the person aggrieved. However, in the present case, the rules of natural justice has been followed and the learned Senior Counsel for the petitioners urged this Court by stating that opportunities provided are in-sufficient and not in consonance with the statutes. Such grounds can very well be raised before the Appellate Tribunal for Foreign Exchange.

11. The very purpose and object of the constitution of such Appellate Tribunals are to ensure that the correctness of the orders passed by the Original Authority are verified. Therefore, an aggrieved person is



expected to exhaust the alternate remedy provided under the Act, which is efficacious.

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12. Therefore, it is not as if every case where certain infirmities are raised regarding rules of natural justice are to be entertained by the High Court under Article 226 of Constitution of India.

13. In the event of admitting all such writ petitions on certain minor infirmities or otherwise, the very purpose and object of providing an alternate remedy under the Act would be defeated. Therefore, this Court is of the considered opinion that the principles laid down by the Hon'ble Supreme Court is to be applied based on the facts and circumstances of each case and it is not as if that mere pointing out certain errors in following the principles of natural justice are to be interfered with by the High Court by entertaining the writ proceedings by dispensing with the alternate remedy.

14. In the present case, the order impugned reveals that opportunities were granted. But, the learned Senior Counsel points out certain alleged infirmities regarding rules of natural justice, which can be



looked in to by the Appellate Tribunal foreign exchange, if it is raised in an appropriate manner, and if caused any prejudice to any person.

15. In view of the facts and circumstances, the petitioners are at liberty to prefer an appeal under Section 19 of the Foreign Exchange Management Act, 1999 within a time limit as contemplated under Section 19 (2) of the Act.

16. With this liberty, the Writ Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

03.04.2024

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
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To

Directorate of Enforcement Southern Regional Office,
'Shastri Bhavan', III Block, B wing,
26, Haddows Road, Chennai – 600 006.

S.M.SUBRAMANIAM, J.



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