BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.23776 of 2018

N.P.Haroun Rasheed ... Petitioner

/vs./

1.The Director,
Enforcement Directorate,
Lok Nayak Bhavan,
6^{th} Floor, Khan Market,
New Delhi.

2.The Joint Director,
Directorate of Enforcement,
Chennai Zonal Office,
Greams Road,
Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to pay the interest accrued from the deposit of the petitioner's amount a sum of Rs.9,00,000 by the respondents in the Nationalized Bank and pay interest for Rs.2,00,000/- deposited by the petitioner as penalty amount in terms of Section 42(3) of the Foreign exchange Regulation Act, 1973, and in terms of Rule 8(i) of the foreign Exchange

Management (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rule 2000, and in the light of the order passed in Appellate Tribunal for Foreign Exchange in Appeal No.397/2003 by an order dated 19.10.2016 and by considering the petitioner's representation dated 10.07.2018 within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar for
M/S.Ajmal Associates

For Respondents : Mr.R.Vijayarajan

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus directing the respondents to pay the interest accrued from the deposit of the petitioner's amount of Rs.9,00,000/- by the respondents in the Nationalized Bank and pay interest for Rs.2,00,000/- deposited by the petitioner as penalty amount, in terms of Section 42(3) of the Foreign Exchange Regulation Act, 1973 and in terms of Rule 8(i) of the Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of Interest), Rules, 2000 and in the light of the order dated 19.10.2016 passed by the Appellate Tribunal for Foreign Exchange in Appeal No.397/2003, by considering the petitioner's representation dated 10.07.2018.

2.The petitioner was aged about 65 years at the time of filing of this Writ Petition. A sum of Rs.9,00,000/- in cash was recovered from the petitioner on 02.07.1997 pursuant to the search conducted under Section 37 of the Foreign Exchange Regulation Act, 1973 by Enforcement Directorate, Madurai. Pursuant to the aforesaid search, a notice was issued to the petitioner which culminated in the Adjudication Order No.SDE(SSB)IV/19 & 20/2003 dated 29.08.2003 passed by Special Director, Enforcement Directorate, New Delhi.

3.By the aforesaid Adjudication Order dated 29.08.2003, the Special Director, Enforcement Directorate, New Delhi imposed penalty of Rs.10,00,000/- on the petitioner on the alleged contravention of Sections 9(1)(b) and 9(1)(d) of the Foreign Exchange Regulation Act, 1973 and also ordered for confiscation of Rs.9,00,000/- seized from the custody of the petitioner's premises in terms of Section 63 of the said Act.

4.Aggrieved by the Adjudication Order, the petitioner preferred an appeal before the Appellate Tribunal for Foreign Exchange in Appeal No.397 of 2003. It appears that there were certain directions during the interregnum as the petitioner had approached the Court. At the stage of appeal before the Tribunal, the petitioner had originally deposited a sum of Rs.2,00,000/- . The Tribunal by its order dated 19.10.2016 allowed the appeal and ordered for refund of confiscated amount of Rs.9,00,000/- and the amount of Rs.2,00,000/- deposited by the petitioner for penalty, within a period of 45 days of receipt of the said order.

5.It appears that the aforesaid amount was also returned to the petitioner on 28.05.2018. The petitioner now seeks interest on the amount that were lying with the respondent.

6.The learned counsel for the petitioner would rely on Rule 8 of the Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of Interest), Rules, 2000. It is submitted that as per Sub-Rule (i) to Rule 8 of the Rules, after completion of investigation, if it is found that there is no contravention, currency is to be returned together with interest at the rate of 6% per annum from the date of seizure till the date of payment.

7.It is submitted that as per Sub-Rule (ii) to Rule 8 of the Rules, during the course of adjudication, if it is found that the seized Indian currency is not relevant for such adjudication, the Adjudication Authority may pass order for return of such Indian currency together with interest at the rate of 6% per annum to such person.

8.The learned counsel for the petitioner would submit that although the aforesaid Rules has been framed under Section 46 of the Foreign Exchange Management Act, 1999 with effect from 01.06.2000, there was no embargo to pay the interest in terms of Section 42(3) of the Foreign Exchange Regulation Act, 1973 which reads as under:-

> "***Section 42 – Encashment of cheque, draft, etc.***
> *(1) ....*
> *(2) ....*
> *(3) Where a direction is made under section 63, or an order has been made under the Customs Act, 1962 (52 of 1962), to confiscate any draft, cheque (including traveller's cheque) or other instrument the proceeds of which have been realised under sub-section (1), such proceeds shall vest in the Central Government and in all other cases such proceeds shall be paid to such person as may appear to the officer or the Court, who or which made the direction under sub-section (1), to be entitled thereto in such currency and in such*

manner as he or it deems just together with interest at the rate of six per cent. per annum from the date on which such draft, cheque (including traveller's cheque) or other instrument came into his or its custody till the date of payment:
Provided that nothing in this sub-section shall affect the liability of any person, who may receive the whole or any part of the proceeds, to pay the same to the person lawfully entitled thereto."

9.It is further submitted that the amount was lying with the Department almost for 21 years from the date of seizure on 02.07.1997 and therefore, it is legitimate right of the petitioner to receive interest on the amount that were lying with the Department. It is submitted that if the amount was not seized, it would have atleast earned some interest from the Bank under Fixed Deposit or in the alternative, it would have been used to purchase property to enhance savings in the business. It is therefore submitted that the petitioner is entitled for interest at bank rates that prevailed during the period or alteast 6% per annum as is recognized under Rule 8(i) of the Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of Interest), Rules, 2000.

10.The learned counsel for the petitioner has placed reliance on the decision of the Bombay High Court in **M/s.R.K.Jewellers and another** Vs. **Union of India and others**, dated 04.05.2010, in W.P.No.2777 of 2003.

11.The learned counsel for the respondents, on the other hand, would submit that the order of the Appellate Tribunal in A.No.397 of 2003 dated 19.10.2016 has not directed payment of interest. It is submitted that Section 53 of the Foreign Exchange Regulation Act, 1973, gives the power of the Civil Court to the Appellate Tribunal and therefore, the interest can be paid only where there is a specific direction by the Appellate Tribunal.

12.It is submitted that as per Section 34(2) of CPC, where such a decree is silent with respect to payment of interest on such principal sum from the date of the decree to the date of payment, the Court shall be deemed to have refused to such interest and a separate suit therefore will be lie. In this connection, the learned counsel for the respondents has relied on Section 34 of CPC, which reads as under:

> *"34. **Interest:-** (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree,order interest at such rate as the Court deems reasonable to be paid on the principal sum*

adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I:- In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (5 of 1970).

Explanation II:-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie."

13.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

14.In my view, there is no justification in the stand of the respondents in denying the interest, as Section 42 of the Foreign Exchange Regulation Act, 1973, makes it clear that in all other cases, such proceeds shall be paid to such person as may appear to other cases, such proceeds shall be paid to such person as may appear to the officer or the Court, who or which made the direction under sub-section (1) to be entitled thereto in such currency and in such manner as he or it deems just together with interest at the rate of six per cent. per annum from the date on which such draft, cheque (including traveller's cheque) or other instrument came into his or its custody till the date of payment.

15.By confiscating the amount, the respondents have made no favour to the petitioner. By returning the amount belatedly pursuant to the directions of this Court, the respondents have done no favour to the petitioner. The petitioner cannot be rubbed of the interest, which the petitioner would have earned, had the petitioner invested the amount in Fixed Deposit. All that the respondents have done is to comply with the order by refunding the amount that was illegally confiscated from the petitioner. There has to be a restitution and therefore, the interest is to be paid to the petitioner.

16.Under these circumstances, this Writ Petition is disposed of by directing the respondents to pay the interest to the petitioner on the confiscated amount from the date of confiscation up to the date of refund at the prevailing bank interest within a period of 3 months from the date of receipt of a copy of this order. No costs.

11.07.2024

Index : Yes / No
Internet : Yes / No
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C.SARAVANAN, J.

jen/mm

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11.07.2024