IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-525-2020
Reserved on: 03.11.2023
Pronounced on: 26.02.2024

M/s Sachdeva and Sons Industries (P) Ltd. and Another

….Appellants

Versus

Special Director, Zonal Office Directorate of Enforcement, Jalandhar and Another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Deepak Sabherwal, Advocate for the appellants.

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VIKRAM AGGARWAL, J.

1. The instant appeal assails the order dated 06.06.2019, passed by the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PBPT (hereinafter referred to as 'Appellate Tribunal') vide which the review petition preferred by the appellants and the proforma respondent seeking review of the order dated 14.07.2009 passed by the Appellate Tribunal was dismissed.

2. Appellant No.1 i.e. M/s Sachdeva and Sons Industries (P) Ltd. effected shipment of goods valued at US $29,83,943 during the period:1998 to 2000 under the cover of 64 GR forms. Appellant No.2 is the Managing Director of Appellant No.1. A memorandum dated 26.02.2002 (Annexure A-1) was issued to the appellants and the proforma respondent under Rule 3 of the Adjudication Proceedings and Appeal Rules, 1974 read with Sub-Sections 3 and 4 of Section 49 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as 'FEMA'), calling upon the appellants and proforma respondent to show cause in writing, within 30 days of the receipt of the memorandum, as to why adjudication proceedings as contemplated under Section 51 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred

to as 'FERA') (subsequently repealed and replaced by FEMA in 1999) should not be initiated against them. It was alleged that without any permission from the Reserve Bank of India, Appellant No.1 took or refrained from taking action, which had the effect of securing the export value to the tune of $29,83,943 in respect of the goods, shipment of which had been effected, but had not so far been received in India, within the prescribed period or the time extended by the Reserve Bank of India in the prescribed manner. It was alleged that taking or refraining from taking action which had the effect of securing receipt of the full export value of the goods exported from the country of final destination had been delayed beyond the prescribed period in contravention of Section 18 (2) of the FERA read with notification dated 01.01.1974 issued by the Central Government. It was alleged that on account of the violation of the provisions of Section 18 (2) of the FERA, the appellants and proforma respondent had rendered themselves liable to be proceeded against under Section 50 of the FERA.

3. The aforesaid memorandum culminated into the passing of order dated 20.06.2008 (Annexure A-2), vide which a penalty of ₹6,00,00,000/- was imposed upon the appellant No.1 under Section 50 of the FERA and under the same provision, penalty of ₹3,00,00,000/- each was imposed upon appellant No.2 and the proforma respondent.

4. The order dated 20.06.2008 passed by the Special Director, Directorate of Enforcement, was called into question before the Appellate Tribunal but the same was disposed of on 11.12.2008 as the pre-deposit of the amount, as ordered in the original order, was not made.

5. The matter came to this Court by way of FAO-1043-2009. This appeal was disposed of by way of order dated 08.05.2009 (Annexure A-3). The order dated 11.12.2008 passed by the Appellate Tribunal was set aside and the matter was remanded to it for deciding the appeal afresh keeping in view the fact that the penalty imposed on appellant No.1 was ₹6,00,00,000/- and that imposed on appellant No.2

and the proforma respondent was ₹3,00,00,000/- each whereas it had been noted by the Appellate Authority that the penalty imposed upon the appellant No.1 was ₹12,00,00,000/- and against appellant No.2 and proforma respondent was ₹6,00,00,000/- each. The Appellate Tribunal was directed to take a decision within a period of 60 days from the date of appearance of the parties before it and the receipt of certified copy of the order of this Court.

6. The Appellate Tribunal decided the appeal afresh and dispensed with 90% of the penalty imposed upon the appellants and the proforma respondent vide order dated 14.07.2009 (Annexure A-4), they were directed to make a pre-deposit of 10% of the amount of penalty within a period of 30 days, failing which, it was ordered, that the prospective appeal would be dismissed only on account of non-making of the pre-deposit. Said order was challenged in FAO No.4573 of 2009, which was dismissed on 22.07.2011.

7. Still unsatisfied, an SLP was filed before the Hon'ble Apex Court which was dismissed on 30.09.2011 (Annexure A-5).

8. After the dismissal of the SLP, a review application (Annexure A-8) was preferred before the Appellate Tribunal, which has now been dismissed by way of the impugned order, leading to the filing of the present appeal.

9. We have heard learned counsel for the appellants and have also perused the paper book.

10. It was submitted by learned counsel for the appellants that the appellants did not have the financial capacity to deposit even 10% of the penalty on account of acute financial constraints since all accounts had been declared NPA and all assets had been attached. It was contended that the penalty was arbitrary and excessive and, therefore, complete waiver should have been granted for filing of the appeal.

11. We have considered the submissions made by learned counsel for the appellants. Section 19 of FEMA deals with appeals to the Appellate Tribunal and provides that any person appealing against the order of the Adjudicating Authority

levying any penalty shall, while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government. The proviso lays down that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship, the Appellate Tribunal may dispense with such deposits, subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty. Section 19 (1) is reproduced herein below:-

> *"Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:*
>
> *Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:*
>
> *Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty."*

12. Vide order dated 20.06.2008, the Adjudicating Authority imposed a penalty of ₹6,00,00,000/- on appellant No.1 and ₹3,00,00,000/- each on appellant No.2 and the proforma respondent. The appeal filed against order dated 20.06.2008 was initially disposed of on 11.12.2008, since the pre-deposit had not been made. This order was challenged before the High Court in FAO No.1043 of 2009 which remanded the matter vide order dated 08.05.2009 (Annexure A-3) in pursuance of which the appeal was decided afresh vide order dated 14.07.2009 (Annexure A-4) and the appellants and proforma respondent were called upon to make a pre-deposit

of 10% of the penalty and pre-deposit of 90% of the penalty was dispensed with. Against this decision, the appellants again approached to the High Court in FAO No.4573 of 2009 but the appeal was dismissed on 22.07.2011. The appellants have not annexed this order for reasons best known to them. This decision was assailed before the Hon'ble Apex Court by way of SLP No.26493-2011 which was also dismissed on 30.09.2011 (Annexure A-5). The counsel appearing for the appellants then prayed for some time to deposit the amount upon which the Hon'ble Apex Court granted two weeks time to deposit the same and observed that no further time would be granted.

13. Strangely enough, after the dismissal of the SLP, instead of complying with the order and depositing the 10% amount, the appellants and the proforma respondent filed a review petition before the Appellate Tribunal. It was pleaded before the Appellate Tribunal that the appellant company was willing to tender the amount and that in case the order was not reviewed, the delay in depositing the amount be condoned. The review petition was, however, dismissed vide order dated 24.06.2015 (Annexure A-6).

14. Thereafter, the proforma respondent filed ***CWP-20399-2015*** before this Court, which was decided on 09.08.2017 and the condition of pre-deposit of the 10% of the penalty amount was set aside. This judgment is on record as Annexure A-7. The stand taken before the Co-ordinate Bench in the writ petition (IBID) was that the proforma respondent had never been the Director of the company and that she was only a Director in M/s Sachdeva and Sons Rice Mills Ltd. which was a separate legal entity. This stand was accepted and the writ petition was allowed. It would be essential to notice that all this while, the matter having gone up to the Apex Court was concealed.

15. After the aforesaid decision, the appellants filed a review petition before the Appellate Tribunal which was dismissed by way of order dated 06.06.2019, leading to the filing of the present appeal. The Appellate Tribunal dismissed the

review petition by observing that repeated petitions were being filed and one such review petition had already been dismissed on 24.06.2015. Here also, it appears that the Tribunal was not apprised that the matter had already been decided by the Apex Court.

16. Undeterred by all proceedings which had gone against the appellants, the appellants preferred the present appeal. In the considered opinion of this Court, the present appeal is nothing but a gross abuse of the process of law. The appellants have misled the Courts at every step and despite the matter having been finalized by the Apex Court, the appellants have raked up the same in subsequent petitions. The conduct of the appellants is highly deprecated. Once the matter had gone up to the Hon'ble Apex Court and the SLP had been dismissed, no further proceeding would lie. In the present appeal, the appellants have selectively filed documents and have also made attempts to mislead this court.

Be that as it may, in view of the discussion in the preceding paragraphs, the appeal is found to be totally bereft of merit and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 03.11.2023
Pronounced on: 26.02.2024
Prince Chawla

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*