

D/L1

06.03.2025
Rohit
ct.no.238

C.R.A. (DB) 168 of 2024
With
CRAN 1 of 2024

Partha Chakraborti & Ors.
Vs
Directorate of Enforcement, Kolkata

Mr. Ayan Bhattacharjee, Sr. Adv.
Mr. Sidhartha Sharma
Mr. Md. Danish Taslim
Mr. Arjun Asthana
Mr. Arpit Choudhury

...for the Appellants

Mr. Arijit Chakraborti
Ms. Swati Kumari Singh

...for the E.D.

1. The appeal is directed against an order dated 09.04.2024 passed by the Appellate Tribunal setting aside the order dated 23.09.2022 passed by the adjudicating authority confirming the provisional attachment order dated 31st March, 2022 and remanded the matter before the adjudicating authority for fresh adjudication.
2. The short compass of challenge is that the adjudicating authority lacks jurisdiction to remand the case for fresh adjudication after

setting aside the order passed by the Appellate authority.

3. Section 26(4) of PMLA lays down the power of the Appellate Tribunal.

“(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.”

4. Mr. Bhattacharjee contends the Appellate Tribunal is a creature of statute and can only exercise powers conferred upon it. The aforesaid provision does not confer the power of remand.

5. *Per contra* Mr. Chakraborti contends the words “*may.....pass such order as it deemed fit*” are of the widest amplitude and would vest powers of remand as consequential to the power to set aside the order appealed against.

6. The aforesaid provision is *pari materia* to unamended Section 128-A of the Customs Act, 1962.

7. In ***Union of India-Vs- Umesh Dhaimode***¹ the Apex Court while interpreting Section 128-A of the Customs Act, 1962, *inter alia*, held as follows:-

¹ (1997) 10 SCC 223

“2. As the order under appeal itself notes, the aforesaid provision vested the appellate authority with powers to pass such order as it deemed fit confirming, modifying or annulling the decision appealed against. An order of remand necessarily annuls the decision which is under appeal before the appellate authority. The appellate authority is also invested with the power to pass such order as it deems fit. Both these portions of the aforesaid provision, read together, necessarily imply that the appellate authority has the power to set aside the decisions which is under appeal before it and to remand the matter to the authority below for fresh decision.”

8. The words used in Section 26 (4) of PMLA are similar to that in Section 128-A of the Customs Act, 1962.
9. Section 26(4) of the PMLA empowers the Appellate Tribunal to pass such orders as it thinks fit including conforming, modifying or setting aside the order appealed against. The wide amplitude of the expression *“such orders as it deems fit”* and the word *‘setting aside’* clearly confers jurisdiction in the Tribunal to remand the matter as an order of remand would imply setting aside the order appealed against. Any other interpretation would give rise to a paradoxical situation where the Tribunal after setting aside an order on the ground of procedural error (i.e. breach of

natural justice) as in the present case, would be rendered powerless to remand and direct fresh consideration on merits.

10. Mr. Bhattacharjee also argues once the confirmation order is set aside the provisional attachment would not automatically revive. There is no embargo on his clients to deal with the property as they deem fit and proper.
11. The provisional attachment as per Section 5(3), has a limited life span and would lose its force by efflux of time.
12. In *Kaushalya Infrastructure Development Corporation Limited-Vs-Union of India & Another*² the Apex Court held the adjudication proceedings may continue notwithstanding expiration of provisional attachment order.
13. It is nobody's case that the confirmation order has lapsed by efflux of time.
14. Accordingly, the Appellate Tribunal was justified to set aside the confirmation order and remand the matter for fresh consideration in accordance with law.
15. It has been rightly argued on behalf of the respondent pending remand if third party interest is created it would frustrate the

² (2022) SCC OnLine SC 531

purpose and object of the remand proceeding before the Adjudicating authority.

16. In *Vijay MadanLal Choudhary and Others –Vs- Union of India and Others*³ the Apex Court while interpreting Sections 5(4) and 8(4) of the PMLA Act, *inter alia*, held till possession of the property is taken over in terms of Section 8(4) of the Act, any transfer creating civil consequences in favour of third parties ought to be avoided.
17. In view of the aforesaid enunciation of law and to ensure the effective adjudication by the authority is not frustrated by transfer of the properties in question we injunct the appellant from creating any third party interest in the said properties till the disposal of the proceeding before the adjudicating authority as persons interested would be entitled to enjoy the property themselves as per law.
18. Adjudicating authority is requested to dispose of the adjudication at the earliest without granting unnecessary adjournment to the parties.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

³ (2023) 12 SCC 1 (Paras 179,180)