



W.P.No.1784 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 17.03.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.1784 of 2023
and W.M.P.Nos.1896 & 1897 of 2023

Universal Biofuels Private Limited
Flat No.202, Diamond House
Door No.6-3-663/E
Behind Topaz Building
Panjagutta, Hyderabad.

.. **Petitioner**

Vs.

1. The Directorate of Enforcement
Through Office of the Special Director
Southern Regional Office
Shastri Bhavan, III Block, 3rd Floor
26, Haddows Road, Chennai – 600 006.

2.Reserve Bank of India
Through Manager
Foreign Exchange Department
6-1-56, Secretariat Road, Saifabad
Hyderabad – 500 004.
Also at Fort Glacis, No.16, Rajaji Salai
Chennai – 600 001.

.. **Respondents**



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Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records pertaining to letter dated 17.06.2022 bearing No.HYD.FED.FID/S331/14.66.003/2022-2023 issued by respondent No.2 returning the compounding application of the petitioner dated 31.03.2022 and the order dated 07.12.2022 bearing no.SDE/SRO/HYZO/21/2022 passed by the respondent No.1 to provide NOC to the petitioner in relation to its compounding application dated 31.03.2022 before the respondent No.2 and consequently directing the respondent No.2 to consider the compounding application of the petitioner dated 31.03.2022 expeditiously.

For the Petitioner : Mr.Satish Parasaran
Senior Counsel
for Ms.Janani Shankar

For the Respondents : Mr.Rajinish Pathiyil
Special Public Prosecutor for R1
Mr.T.Poornam for R2

ORDER

This Writ Petition challenges the letter dated 17.06.2022 issued by the Reserve Bank of India (hereinafter RBI) (the second respondent in the writ petition), which returned the petitioner's compounding application dated 31.03.2022, as well as the order dated 07.12.2022 bearing reference



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No.SDE/SRO/HYZO/21/22 issued by the Directorate of

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Enforcement(hereinafter ED) (the first respondent in the writ petition). The petitioner seeks to quash both orders and consequently direct the ED to provide a No Objection Certificate in relation to the compounding application dated 31.03.2022 before respondent No.2, and to instruct the RBI to consider the petitioner's compounding application dated 31.03.2022 expeditiously.

2. The factual context in which the Writ Petition arises is as follows:

2.1. The ED, by its communication dated 07.06.2017, commenced an investigation under Section 37 of the Foreign Exchange Management Act, 1999 (FEMA) and directed the petitioner to furnish certain records and documents related to the advance remittances received since 2010, as well as the details of exports and imports from that year. On 29.06.2017, the petitioner submitted the required information. Additionally, on 07.07.2017, the petitioner produced further documents that had been requested by the ED. Subsequently, a summons was served by the ED for a hearing on 29.05.2018, in which the petitioner

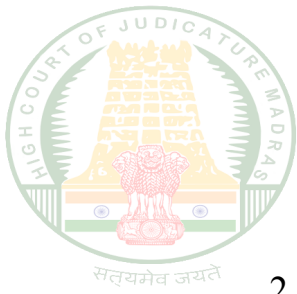


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participated. Certain questions were posed to them, and he provided reasons for the non-export of goods in relation to the trade advance remittances. On 30.08.2018, the petitioner was informed that a complaint had been filed with the adjudicating authority, namely the Special Director at the ED, Southern Region, Chennai.

2.2. It is the case of the ED that a complaint was also filed with the adjudicating authority as of 30.08.2018. On 06.02.2019, when the petitioner submitted a request to accept the concerned form – FC-GPR, concerning the allotment of shares, the second respondent highlighted irregularities in reporting the inward remittances and required the petitioner to file an application under Section 15 of the FEMA to compound the mentioned contraventions. On 06.05.2019, the RBI also appeared to have addressed the first respondent regarding the receipt of Foreign Direct Investment by the petitioner and non-compliance with FEMA.



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2.3. Thereafter, on 12.06.2019, the ED directed the RBI to keep the compounding application in abeyance. The petitioner formally filed a compounding application on 18.11.2019. The petitioner also addressed a letter to the Manager of HDFC Bank, Hyderabad, on 12.11.2019, requesting permission to refund the export advances amounting to \$62,82,000/- US Dollars received from the parent and group companies of the petitioner since, they were unable to make the exports. Subsequently, on 27.02.2020, the RBI returned the compounding application, citing the pendency of the case with the ED and the non-receipt of the No Objection Certificate from the ED.

2.4. On 24.02.2022, the petitioner submitted the compounding application before the RBI again, following their instructions. On 15.03.2022, the RBI pointed out certain defects in the compounding application. After complying with the said defects, the petitioner refiled the compounding application on 23.03.2022. Again, further defects were notified, and the petitioner rectified them on 31.03.2022.



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2.5. On 12.04.2022, the petitioner sent a letter to HDFC Bank, reiterating their request to convert the trade advances into share capital. Subsequently, on 17 June 2022, the RBI returned the compounding application, citing the case's pending status with the ED and the non-receipt of the No Objection Certificate. On 24.08.2022, the RBI also sought certain clarifications regarding the petitioner's application for converting inward remittances into share capital. Following this, additional hearings were conducted, and by communication dated 30.11.2022, the RBI granted further time to the petitioner concerning their application regarding inward remittances. At this point, the impugned order was issued on 07.12.2022 by the ED. By this impugned order, the following penalties were imposed, totalling Rs. 29,74,85,419/-; paragraph numbers 5 and 6 of the impugned order are extracted below for easy reference:

“5. In view of the above findings, I proceed to pass the following order: -

ORDER

a) Regarding late submission of Advance Remittance Form (ARF) to RBI, I hold that M/s Universal Biofuels Private Limited has contravened the provisions of Section 6(3)(b) of the FEMA, 1999 read with Para 9(1)(A) of Schedule 1 annexed to Regulation 5(1) of FEM (TISPRO) Regulations, 2000 to the extent of Rs.67,16,31,264/- and having regards to the facts and circumstances of the case, in exercise of powers conferred on me under the provisions of Section 13 (1) of FEMA, 1999, I impose a



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penalty of Rs.6,71,63,126/- (Rupees Six Crore Seventy One Lakh Sixty Three Thousand One Hundred and Twenty Six only) on M/s Universal Biofuels Private Limited for the said contravention.

b) Regarding delayed issue of shares, I hold that M/s Universal Biofuels Private Limited has contravened the provisions of Section 6(3)(b) of the FEMA, 1999 read with Para 8 of Schedule 1 annexed to Regulation 5(1) of FEM (TISPRO) Regulations, 2000 to the extent of Rs.33,80,60,297/- and having regards to the facts and circumstances of the case, in exercise of powers conferred on me under the provisions of Section 13 (1) of FEMA, 1999, I impose a penalty of Rs.3,38,06,029/- (Rupees Three Crore Thirty Eight Lakh Six Thousand and Twenty Nine Only) on M/s Universal Biofuels Private Limited for the said contravention.

c) Regarding delayed submission of FCGPR from to RBI, I hold that M/s Universal Biofuels Private Limited has contravened the provisions of Section 6(3)(b) of the FEMA, 1999 read with Para 9(1)(B) of Schedule 1 annexed to Regulation 5(1) of FEM (TISPRO) Regulations, 2000 to the extent of Rs.68,15,92,967/- and having regards to the facts and circumstances of the case, in exercise of powers conferred on me under the provisions of Section 13 (1) of FEMA, 1999, I impose a penalty of Rs.6,81,59,296/- (Rupees Six Crore Eighty One Lakh Fifty Nine Thousand Two Hundred and Ninety Six only) on M/s Universal Biofuels Private Limited for the said contravention.

d) Regarding late submission of Annual Return of Foreign Liabilities & Assets, I hold that M/s Universal Biofuels Private Limited has contravened the provisions of Provisions of Section 6(3)(b) of the FEMA, 1999 read with Para 9(2) of Schedule 1 annexed to Regulation 5(1) of FEM (TISPRO) Regulations, 2000 and Regulation 13.1(3) of FEM (TISPRO) Regulations, 2017 and having regards to the facts and circumstances of the case, and especially on this issue the contravention amount is not quantifiable, and therefore, in exercise of powers conferred on me under the provisions of Section 13 (1) of FEMA, 1999, I impose a penalty of Rs.2,00,000/- (Rupees Two Lakh Only) on M/s Universal Biofuels Private Limited for the said contravention.

e) Regarding Non-export of goods on account of advance remittances, I hold that M/s Universal Biofuels Private Limited has contravened the Provisions of Section 7(1) of the FEMA, 1999



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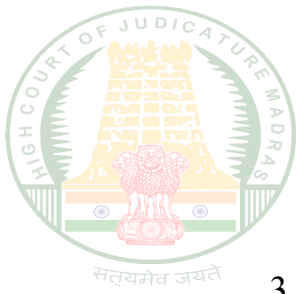
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read with Regulation 16(1)(i) of FEM (Export of Goods and Services) Regulations, 2000 and Regulation 15(1)(1) of FEM (Export of Goods and Services) Regulations, 2015 to the extent of Rs.39,07,84,840/- and having regards to the facts and circumstances of the case, in exercise of powers conferred on me under the provisions of Section 13 (1) of FEMA, 1999, I impose a penalty of Rs. 7,81,56,968/-(Rupees Seven Crore Eighty-One Lakh Fifty-Six Thousand Nine Hundred and Sixty-Eight only) on M/s Universal Biofuels Private Limited for the said contravention.

f) I hold that Shri Sanjeev Gupta is responsible for the above contraventions of Noticee No. 1 in terms of Section 42(1) of FEMA, 1999 and in exercise of the Powers conferred on me under the provisions of Section 13(1) of FEMA, 1999, I impose a penalty of Rs.5,00,00,000/- (Rupees Five Crore only) on Shri Sanjeev Gupta, Managing Director of M/s Universal Biofuels Private Limited for these contraventions

6. The above said penalties totaling ₹29,74,85,419/- (Rupees Twenty Nine Crore Seventy Four Lakh Eighty Five Thousand Four Hundred and Nineteen only) imposed on the Noticee No. 1 (Rs. 24,74,85,419/-) M/s Universal Biofuels Pvt Ltd, Hyderabad and Noticee No. 2 (Rs.5,00,00,000/-) Shri Sanjeev Gupta, Managing Director of M/s Universal Biofuels Pvt Ltd, Hyderabad, shall be paid by the concerned, by means of Demand Draft drawn in favour of "Drawing & Disbursing Officer, O/o The Additional Director, Directorate of Enforcement", payable at Hyderabad, at the Office of the Additional Director, Directorate of Enforcement, Hyderabad 500 004 within 45 days from the date of receipt of this order. While paying the penalties, the Order number and date mentioned in the first page of this order should be quoted."

Under these circumstances, the Writ Petition is filed against the impugned order.



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3. *Mr. Satish Parasaran*, the learned Senior Counsel representing the petitioner, submits that the allegations against the petitioner can be broadly classified into two categories. The first category of charges relates to reporting delays. The specific charges are outlined in paragraph No. 4.6.4 of the impugned order and are quoted hereunder:

“4.6.4. It is also noticed that UBPL had filed a Compounding Application with RBI for compounding the contraventions under FEMA, 1999 vide letter 18.11.2019 for

(a) Delay in reporting of receipt of inward remittance by submitting Advance Reporting Form;

(b) Delay in reporting of issue of equity shares by submitting Form FC-GPR;

(c) Delay in allotment of equity shares by the company; and

(d) Delay in filing of Annual Return on Foreign Liabilities and Assets by the company.”

4. According to the learned Senior Counsel, these are technical violations for which the petitioner is entitled to file a compounding application with the RBI, who is obligated to pass orders on it in accordance with the Foreign Exchange (Compounding Proceedings) Rules, 2000. Under Rule 8, the ED can withhold no objection only if the proceedings relate to serious contraventions involving suspected money laundering, terrorist financing, or affecting the sovereignty and integrity of the nation. In this case, none of the three grounds



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are established. In fact, the learned Senior Counsel points to a letter produced by the second respondent dated 31.05.2022. Paragraph No. 2 of the said letter states as follows:-

“2.In this regard, it is to inform to your office that this Directorate has initiated investigation under FEMA, 1999 against M/s Universal Bio Fuels Limited in T-3/HYZO/2017 for the same contraventions under FEMA, 1999, for which the applicant had filed compounding application with RBI. A SCN has been issued by the competent authority in this case for the purpose of adjudication. Since, the subject issue has already been taken up for investigation by this office, it is suggested not to entertain the subject compounding application. Further, it is also intimated that no proceedings under Section 37A of FEMA, 1999 are contemplated against the applicant and also that the applicant is not being probed for money laundering, terror financing or affecting sovereignty and integrity of the nation.”

(Emphasis supplied)

5. In this regard, the learned Senior Counsel submits that since those charges were not investigated for money laundering, terror financing, or impacting the nation's sovereignty and integrity, the ED should not have withheld the no objection certificate or requested the RBI to refrain from proceeding with the compounding application. Regarding the second set of charges, these relate to the failure to make exports after receiving funds from the holding companies. When the petitioner is unable to make the exports and the



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holding companies agree to convert the funds into shares, the petitioner has not filed any compounding application before the RBI. Instead, the request is simply to allow the conversion into shares, which is pending before the RBI. Consequently, based on this matter, the issuance of an adjudication order is also legally erroneous. Therefore, the learned Senior Counsel submits that the impugned order is to be set aside.

6. *Per contra*, Mr Rajinish Pathiyil, the learned Special Public Prosecutor representing the ED, would submit that the impugned order was issued after considering the relevant materials. However, when the communication dated 31.05.2022 was pointed out to the learned counsel for the ED, he would argue that, in any event, the second set of charges — that is, receiving the amount from the holding companies under the guise of export and retaining it — would adversely affect the economy of the country. When such substantial amounts are kept in the bank accounts of the petitioner company, they can be considered as impacting the nation's sovereignty; therefore, the impugned order must be upheld.



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7. *Mr Poornam*, the learned counsel representing the RBI, would submit that the original Foreign Exchange (Compounding Proceedings) Rules 2000 have been superseded by the Foreign Exchange (Compounding) Rules 2024. However, the new rules include a provision stating that if an application filed under the old rule is pending, it must be disposed of according to the old rules. According to the old rules, Rule 8 is applicable; therefore, a no-objection certificate was sought from the ED. Since the ED did not issue any no-objection certificate, the RBI did not consider the question of compounding regarding the first set of charges concerning the delay in notifying various matters outlined above in paragraph No. 3.

8. Regarding the second charge, the learned counsel submits that this is not a compounding application; instead, it is a request to allow the petitioner to convert the amounts into shares, which can be considered in accordance with the law but now adjudication has been made by the ED.



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9. I have considered the competing submissions from both sides and examined the material records of the case.

10. Regarding the first set of charges, it is undisputed before this Court that the petitioner has the right to submit a compounding application and that the RBI is entitled to evaluate it on its merits according to the law. The applicable rule for the application made in the year 2022 will be the Foreign Exchange (Compounding Proceedings) Rules, 2000. Rule 8 of these rules states as follows:-

“8. Procedure for Compounding -

(1) The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings.

(2) The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application.

Provided that with respect to any proceeding initiated under rule 4, if the Enforcement Directorate is of the view that the said proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, the Compounding Authority shall not proceed with the matter and shall remit the case to the appropriate Adjudicating Authority for adjudicating contravention under section 13.”

(Emphasis supplied)



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11. Therefore, unless the ED believes that the proceedings relate to serious contraventions of suspected money laundering, terror financing, or affecting the sovereignty and integrity of the nation, it cannot have an objection. In this case, when the learned Senior Counsel representing the petitioner referred to the communication dated 31.05.2022, this Court had granted time for the learned Special Public Prosecutor for the ED to verify the facts. The letter has indeed been confirmed as written by the ED, and nothing contrary to its contents has been presented before this Court. The Learned Counsel for the ED would concede to the fact that the said charges are not serious in nature and, as such are compoundable. Therefore, concerning the first set of charges related to the delay in notifying various inward remittances and other issues, the ED admits that the applicant is not being investigated for involvement in money laundering, terror financing , or as affecting the nation's sovereignty and integrity. In view of this, the impugned order concerning the first set of charges is not sustainable.



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12. Regarding the second set of charges, it can be observed that only if a compounding application is pending before the RBI, as specified in Rule 8, the no objection from the ED is required. The application does not pertain to compounding but seeks permission from the RBI to allow the petitioner to convert the remittances into shares. This application must be considered by the RBI on its own merits in accordance with the law. The RBI neither denied permission nor issued any adverse order.

13. As a matter of fact, the learned counsel representing the first respondent contends that the ED has the power to proceed simultaneously, and its proceedings are not dependent upon the orders passed by the RBI. There can be no quarrel over the said proposition, but, the reason mentioned in paragraph No. 4.6.5 for imposing a penalty is as follows:-

“4.6.5. It can be seen from the above, no application had been made by UBPL with RBI for remitting the funds back to the foreign entities, from which, trade advance remittances were received. Thus, it is very clear that the export advances are still being retained by the Noticee No.1 without any approval from RBI for retaining the same.”

(Emphasis supplied)

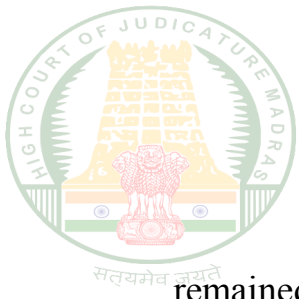


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14. Thus, it is evident that, on the one hand, both authorities acted as if a NOC is required from the ED, and the application for permission from the RBI to convert the money received as shares is still pending, and on the other hand, the entire adjudication and penalty were imposed solely on the ground that no permission was obtained from the RBI. Therefore, even though the ED may have the authority, the question remains whether, in the facts and circumstances, they are justified in issuing the impugned order or not.

15. In view thereof, I hold that when the penalty is imposed solely on the ground that no permission has been obtained from the RBI, and based on the material submitted with the Writ Petition, it is evident that since 12.11.2019, the petitioner has been seeking permission for a refund. Furthermore, a specific application was made by the petitioner to the RBI on 09.06.2022 to convert the export advance into share capital. The RBI should first assess the permissibility of this request in accordance with the law. The same is not taken up for consideration by the RBI till date. Throughout this process, both violations have been treated as serious, and due to a lack of NoC from the ED, the matters have



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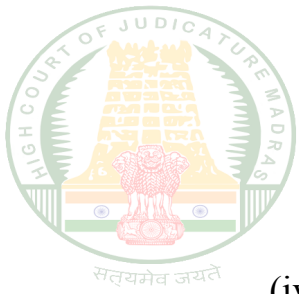
remained pending. The RBI did not choose to issue any orders until adjudication was completed. It has simply kept the matter in abeyance. Therefore, the petitioner cannot be penalised for the non-exercise of statutory powers by the authorities when the applications in respect thereof has been made. Even now, the RBI has to consider the compounding of the first set of allegations and permission to convert the advance amount received for export into shares and depending on the outcome of the orders that will be issued by the RBI, the ED will be entitled to proceed further again.

16. The Writ Petition stands allowed on the following terms:

(i) The impugned order dated 07.12.2022 shall stand quashed;

(ii) The RBI is directed to consider the application of the petitioner, filed on 31.03.2022 and subsequently refiled, on its merits in accordance with the law and to pass orders accordingly;

(iii) The RBI is also directed to consider the petitioner's application dated 09.06.2022 regarding the conversion of the export advance into share capital on its own merits in accordance with the law and to pass orders thereon;



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(iv) The exercise must be completed within sixteen weeks from the date of receipt or production of the uploaded web copy of this order without waiting for the certified copy.

(v) The ED will be at liberty to revisit the issue and issue fresh orders based on the orders that the RBI may pass.

(vi) No costs. Consequently, the connected miscellaneous petitions are closed.

17.03.2025

Neutral Citation : Yes

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To

1. The Directorate of Enforcement
Through Office of the Special Director
Southern Regional Office
Shastri Bhavan, III Block, 3rd Floor
26, Haddows Road, Chennai – 600 006.

2. The Manager
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Also at Fort Glacis, No.16, Rajaji Salai
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D.BHARATHA CHAKRAVARTHY, J.,

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