



W.P.No.1011 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.10.2025

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.1011 of 2009
and M.P.No.1 of 2009

S.Hema

.. Petitioner

Vs.

1.The Appellate Tribunal for foreign exchange,
4th floor, B wing, Jan path Bhavan,
Jan path, New Delhi – 110 001.

2.The Special Director of Enforcement Directorate,
Enforcement Directorate, 6th Floor, Loknayak Bhavan,
Khan Market, New Delhi – 3.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records relating to the order of the 1st respondent in APPEAL No.69 of 2008 made in Common order in appeal No.63 to 75 of 2008 and 87-92 of 2008 dated 25.07.2008 insisting the petitioner to deposit the fifty percentage of personal penalty as against the order no.SDE (SSBE)/IV/50/2003-DT 31.10.2003 pursuant to the show cause notice in T-4/26-M/98(SCN-II) dated 21.12.1998 by the 2nd respondent and quash the same.

For Petitioner : Mr.Ramkumar
for Mr.S.Kameshwaran



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For R1 : Mr.C.Gurulingam
SCGSC
For R2 : Mr.V.Lokesh
for Mr.N.Ramesh
Special Government Pleader

ORDER

The petitioner challenges the order of conditional deposit ordered by the Appellate Forum for Foreign Exchange, New Delhi.

2.The petitioner was working in M/s.Sterling Exchange Corporation as a clerk / typist. The premises of the Corporation were searched on 22.12.1997. The search resulted in seizure of documents, as well as currency. At that time, the officials belonging to the Special Director of Enforcement Directorate recorded the statements from the writ petitioner and other directors of M/s.Good Luck Forex India Pvt. Limited.

3.On the basis of the search and subsequent statements, a show cause notice was issued to all the firms, alleging that they have violated the provisions of Sections 7(2)(v), 7(4) read with 6(4); 8(1), 8(2), 48 & 49 of the Foreign Exchange Regulation Act, 1973, read with clause 11, 22, 23, 24 and 26 of the FLM Memorandum of Instructions issued under



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Sections 73(3), apart from Sections 63(2), 64(2)(b) and 9(1)(d) of the FERA Act, 1973.

4.The adjudicating authority considered the reply of the writ petitioner and came to a conclusion that the petitioner is in contravention of the aforesaid provisions of the Act and imposed penalty on the writ petitioner. Under show cause notice No.2, a penalty of Rs.10,00,000/- was imposed on the petitioner and the other directors for having acquired and made a payment of US \$150000, equivalent to AED 551250/-, in contravention to Section 8(1) and 9(1)(a) of the FERA Act, 1973. Similarly, penalty for a sum of Rs.10,00,000/- was imposed on the petitioner under the third show cause notice, for having acquired and made payment of US \$150000, equivalent to AED 551250/-, for having contravened the provisions of Sections 8(1) & 9(1)(a) of the FERA Act, 1973.

5.The show cause notice No.V imposed a penalty of Rs.1,50,00,000/- on the writ petitioner; show cause notice No.VI imposed the penalty of Rs.2,50,00,000/- on the petitioner; show cause notice No.VII imposed a penalty of Rs.1,00,00,000/- on the writ



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petitioner. Challenging the same, several appeals were preferred before the Appellate Tribunal for Foreign Exchange. The appeals filed by the writ petitioner herein and the writ petitioner in W.P.No.1012 of 2009 viz., Mr.S.Rajendran, were clubbed together and disposed of on 25.07.2008.

6.In terms of the order, the Tribunal directed the petitioner to pay 50% of the penalty amount in the respective appeals, and 45 days time was granted for deposit, and the matter was adjourned to enable the petitioner to pay the same. Aggrieved by the said order, the present writ petition.

7.I heard Mr.Ramkumar for Mr.S.Kameshwaran representing the petitioner, Mr.C.Gurulingam, SCGSC for the 1st respondent and Mr.V.Lokesh for Mr.N.Ramesh, Special Government Pleader representing the 2nd respondent.

8.I had adjourned the matter to enable Mr.V.Lokesh to find out whether the appeals were still pending consideration before the appellate Tribunal for Foreign Exchange.



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9.On instructions, Mr.V.Lokesh reports that the appeals are still pending. The counsel for the petitioner pleads that imposing 50% of the penalty amount on each appeal is an exorbitant as the case of the petitioner had not been analyzed in detail by the Appellate Authority. He further adds that pending this writ petition, the writ petitioner had undergone the ordeal of trial and had been acquitted of all the charges framed against her in EOCC.No.450 of 2002 on 05.11.2009. Hence, he pleads for the conditional pre-deposit to be waived in its entirety.

10.I have carefully considered the submissions of both sides and I have gone through the records in detail.

11.The scope of the writ petition is extremely limited. It is whether the power of waiver, had been exercised as a power of discretion, which has been vested with the Appellate Board, taking into consideration the plea of the petitioner. An appeal to the appellate authority is permissible under Section 52 of the FERA Act, 1973. Section 52 demands that the amount imposed by way of penalty would have to be deposited before the appeal is taken up for hearing. The second proviso to Sub-Section (2) to Section 52 enables the Appellate Board to dispense with the deposit



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totally, or subject to such conditions as may be imposed by it. This proviso is attracted when the Appellate Board is of the opinion that such deposit will cause hardship to the petitioner.

12.The Appellate Authority has come to a conclusion that the impugned order is not *prima facie* bad for it to have exercised waiver in its entirety. However, it has come to a conclusion, that as the penalty imposed is enormous, 50% be deposited by the writ petitioner. Taking into consideration the subsequent acquittal of the petitioner within few months of filing of the writ petition, I am inclined to modify the order directing to deposit 50% of penalty amount, to that of 25% of the penalty amount imposed by the adjudicating authority.

13.With the above modification, the writ petition is partly allowed. Consequently, the connected miscellaneous petition is closed. No costs.

27.10.2025
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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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V.LAKSHMINARAYANAN, J.

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