IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.No.1693 of 2025
and
C.M.P.No.14821 of 2025

M/s. Om Shakthi Sea Foods
represented by its Partner
Flat No.3, 3rd Floor,
Sita Apartments, No.85,
Kasturi Avenue, MRC Nagar,
Chennai-600 028. ... Appellant

vs.

1. Joint Director,
Directorate of Enforcement,
Chennai Zonal Office,
3rd Floor, C Block, Murugesa Naicker Complex,
84, Greams Road, Thousand Lights,
Chennai - 600 006.

2. Deputy Director,
Directorate of Enforcement,
Chennai Zonal Office,
3rd Floor, C Block, Murugesa Naicker Complex,
84, Greams Road, Thousand Lights,
Chennai - 600 006. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 35 of the Foreign Exchange Management Act, 1999 praying that the impugned order dated 28.11.2024 passed by the Appellate Tribunal directing the appellant to deposit the penalty, be set aside and a complete waiver be granted in favour of the appellant with regard to the entire pre-deposit penalty amount to be paid for the purpose of appeal against the order dated 26.12.2018 passed by the Joint Director, Directorate of Enforcement, Chennai.

For Appellant : Ms. R. Reena

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Civil Miscellaneous appeal has been preferred as against the order passed by the Appellate Tribunal under SAFEMA dated 28.11.2024 and to grant complete waiver with regard to the enite pre-deposit penalty amount to be paid for the purpose of appeal against the order dated 26.12.2018 passed by the Joint Director, Directorate of Enforcement, Chennai.

2. The learned counsel appearing for the appellant would submit that the appellant is the Partnership firm formed under the Indian Partnership

Act and was engaged in the business of acquiring and operating mechanized fishing vessels to catch Tuna fish or any sea foods and such lines of businesses. The appellant preferred an appeal as against the order passed by the Joint Director of Directorate of Enforcement, Chennai dated 26.12.2018 before the Appellate Authority under SAFEMA, New Delhi, wherein they filed an application under Section 19 of the Foreign Exchange Management Act, 1999 seeking waiver of pre-deposit of penalty. The Proviso to Section 19(1) permits the Appellate Tribunal to dispense with such deposit of penalty if in its opinion, the same would cause undue hardship to the person seeking such appeal. While so, the Appellate Tribunal without considering the facts and surrounding circumstances, directed the appellant to pre-deposit of penalty of Rs.60 lakhs. In fact, parner of the appellant Mr. N. Sreenivas who has been steering the appellant from its inception is having undue financial hardship as he is a retired senior citizen with meagre income. Therefore, he is unable to pay such huge amount of pre-deposit and thereby, he filed an application, but the Appellate Tribunal failed to consider the poor condition of the appellant and directed to deposit a sum of Rs.60 lakhs. Therefore, the above said order passed by the Tribunal is liable to be set aside.

3. Considering the limited prayer sought for in this appeal, this

Court, without even issuing notice to the respondent, is inclined to pass order in the admission stage itself.

4. This Court heard the appellant's side and perused the entire records.

5. On a perusal of records, they revealed that the Joint Director, Directorate of Enforcement, Chennai passed an order against the Appellant by imposing penalty of Rs.6,72,57,520/- and the said order was challenged by the appellant before the Appellate Tribunal and also filed a waiver petition for pre-deposit of the penalty under Section 19 of the Foreign Exchange Management Act. The Appellate Authority after careful consideration, directed the appellant to pay a sum of Rs.60 lakhs i.e., 10% of the penalty amount as pre-deposit.

6. The learned counsel appearing for the appellant vehemently contented that the appellant has no money and the partnership firm is not earning through any business, but still the firm is in existence. The Appellate Authority also directed the appellant to pay 10% of the penalty imposed as pre-deposit of the penalty. Even as per Section 19(1) of the Act, the Appellate Tribunal has to dispense with such payment of penalty,

if in its opinion, the same would cause undue hardship to the appellant. Therefore, it is for the Tribunal to form the opinion that the penalty would cause undue hardship to the appellant. Therefore, taking into account all the facts and circumstances of the case, the Tribunal only directed to pay 10% of the penalty amount. Therefore, the said order is a well reasoned order. Therefore, this Court is unable to accept the contention of the appellant that the partnership firm is not earning in the business and therefore, declined to entertain this appeal and inclined to dismiss the appeal at the admission stage itself.

7. Accordingly, the Civil Miscellaneous appeal is dismissed. No costs. The connected miscellaneous petition is closed.

(R.S.K.J.) & (P.D.B.J)

16.07.2025

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

<u>R. SURESH KUMAR,J</u>
and
<u>P.DHANABAL,J</u>

(mjs)

To

1. Joint Director,
Directorate of Enforcement,
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