IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR

C.M.A.Nos.3042 and 3047 of 2025

K.Sharavanan	..	Appellant in C.M.A.No.3042 of 2025
M/s.Sree Chankra Forex Pvt. Ltd. Rep. By its Director, K.Sharavanan No.1, Binny Road, Mount Road Opp. Taj Vivanta Chennai – 600 002.	..	Appellant in C.M.A.No.3047 of 2025

Vs.

The Additional Director Directorate of Enforcement Chennai Zonal Office, 3rd Floor C-Block, Murugesa Naicker Complex 84, Greams Road, Thousand Lights Chennai – 600 006.	..	Respondent in both CMAs

Prayer in C.M.A.No.3042 of 2025: Appeal filed under Section 35 of the Foreign Exchange Management Act, 1999, to set aside the impugned order dated 29.11.2023 in MP-FE-680/CHN/2020(Misc.) in FPA-FE-25/CHN/2020 the Appellate Tribunal under SAFEMA at New Delhi Circuit Bench at Chennai and to direct the Tribunal to proceed with the appeal without paying the pre-deposit amount; and

Prayer in C.M.A.No.3047 of 2025: Appeal filed under Section 35 of the Foreign Exchange Management Act, 1999, to set aside the impugned order dated 29.11.2023 in MP-FE-678/CHN/2020(Misc.) in FPA-FE-24/CHN/2020 the Appellate Tribunal under SAFEMA at New Delhi Circuit Bench at Chennai and to direct the Tribunal to proceed with the appeal without paying the pre-deposit amount.

For the Appellants in both CMAs	:	Mr.S.Elang Suriyan
For the Respondent in both CMAs	:	Mr.N.Ramesh Special Public Prosecutor (ED)

COMMON JUDGMENT

(Judgment of the Court was made by R.SURESH KUMAR, J.)

Since both these appeals arise out of a common order passed by the Appellate Tribunal under SAFEMA at New Delhi, Circuit Bench, Chennai, by the order dated 29.11.2023 made in MP-FE-680/CHN/2020 (Misc.) in FPA-FE-25/CHN/2020 and MP-FE-678/CHN/2020 (Misc.) in FPA-FE-24/CHN/2020, we heard *Mr.S.Elang Suriyan*, learned counsel for the appellants and *Mr.N.Ramesh*, learned Special Public Prosecutor (ED) for the respondent in both the cases and with their consent, we dispose of these appeals by this common order.

2. As against the imposition of penalty, that is 1% of the contravention amount under the FEMA Act, the appellants approached the Tribunal, seeking pre-deposit waiver of the penalty. Having considered the plea raised by them, in fact, the Tribunal has only given a direction to pay 25% of the penalty amount as pre-deposit in respect of the appellant in C.M.A.No.3047 of 2025, namely, *M/s. Sree Chakra Forex Private Limited* and 10% in respect of the appellant in C.M.A.No.3042 of 2025, namely, *K.Sharavanan*.

The amount would be Rs.2 lakhs and 40 thousand respectively. That order has been under challenge in these appeals.

3. Heard *Mr.S.Elang Suriyan*, learned counsel for the appellants and *Mr.N.Ramesh*, learned Special Public Prosecutor (ED) for the respondent.

4. The learned Special Public Prosecutor (ED) has submitted that, under the same adjudication, out of the five noticees, already noticee 1 and 2, namely, *M/s.Thomas Cook India Limited* and *Shri Amit Bhatia*, have filed similar appeals in C.M.A.Nos.2802 and 2815 of 2024. Those appeals, along with connected appeals, were heard and disposed of by a common order passed by a Coordinate Bench of this Court, wherein, one of us (RSKJ) is a party, by order dated 17.04.2025. In those cases, only one fifth of the penalty amount, that is 20% of the penalty amount was directed to be paid by the noticees, as directed by the SAFEMA Tribunal and when that was questioned, a detailed order has been passed by the said Division Bench by the order dated 17.04.2025. Relevant portion of the order of the Division Bench reads thus:-

> *12. The only question to be considered here is that, whether the Tribunal has exercised its discretion in the context of second proviso to Section 19(1) of the Act. The language used in*

the first proviso to Section 19(1) reads as follows:

"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."

13. Here, the word "shall" has been used by the legislature. Thereby, it has become mandatory that, whenever such appeals are filed against the levying of penalty, the penalty amount shall be deposited as directed by the authority.

14. However, the language used by the legislature in the second proviso states that,

" 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. "

15. Only in that context, the Delhi High Court judgment also has to be looked into. If we look at the judgment of the Delhi High Court cited supra, it in fact promotes the case of the respondent Enforcement Directorate and not the case of the appellants. The two ingredients, which have been mentioned in the second proviso as stated in the said judgment is (i) undue hardship and (ii) so as to safeguard the realization of penalty. Here, in order to safeguard the realization of penalty, the discretion to be used has to be restricted to that extent that too only on the basis of undue hardship, which must be in the opinion of the Tribunal. In the order impugned here, it has been clearly stated that, considering the facts and circumstances of the case the Tribunal, by exercising its discretion has reduced the pre~deposit of penalty to only 20%

ie., 1/5th of the penalty amount. That itself is a great relief that has been given by way of exercise of discretion under the second proviso to Section 19(1) of the Act.

16. It is further to be noted that, once the legislature fixes the discretion to any authority, it is to the satisfaction of that authority it should exercise such discretion. Moreover, the words used in the second proviso to Section 19(1) also states that -the appellate Tribunal is of the opinion-. It means, if the Tribunal forms an opinion that some discretion has to be exercised in a particular case, then only such a discretion has to be used.

17. Therefore, with regard the question of forming an opinion, it is fully left to the discretion of the Tribunal. Whether such opinion that the Tribunal had formed was based on the merits of case, cannot be gone into by sitting over on appeal by this Court and therefore, ultimately such kind of discretion if it is exercised by the original authority to whom such power of discretion is vested, it normally would not be touched upon by the appellate forums.

18. Here in the case in hand, in fact the Tribunal has exercised its discretion by reducing the pre~deposit of penalty only to 20%. Therefore, it is a case where the Tribunal, after having formed an opinion based on the facts and circumstances of the case, has reduced the pre~deposit of penalty to only 20%. Hence, it cannot be stated that the Tribunal has not exercised its discretion under Second proviso to Section 19(1) of the Act.

19. Moreover, the imposition of penalty is also for the purpose of safeguarding the realization of penalty as, that also has to be taken into account. Therefore, by striking a balance between -undue hardship- and -safeguarding the realization of penalty-, in between the two, the discretion of the Tribunal has to be exercised. Such a

> *discretion cannot be exercised in the manner expected by the litigant in any lis. Since the discretionary power vested under the second proviso to Section 19(1) of the Act to the Tribunal has been exercised properly in this case, we do not find any reason to interfere with the same.*
>
> *20. Resultantly, all these appeals are liable to be dismissed and accordingly the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."*

Relying upon this decision, the learned Special Public Prosecutor (ED) appearing for the respondent would submit that, the issue is fully covered by the said decision dated 17.04.2025 of the Division Bench.

5. The said position cannot be controverted by the learned counsel appearing for the appellants, however, the learned counsel appearing for the appellants would make a request before this Court that, since the main appeals itself have been dismissed, in order to restore the same, liberty may be given to the appellants, provided, if they pay a part of the penalty as directed by the Tribunal through the order impugned within a time frame to be stipulated by this Court.

6. Having regard to the said submissions made by the learned counsel appearing for both sides, as the issue has already been covered by the decision of the Division Bench dated

17.04.2025 in the matter of ***M/s.Thomas Cook India Limited vs. The Additional Director, Adjudicating Authority, Directorate of Enforcement, Chennai Zone – 1 and Anr.***, cited *supra*, we are inclined to dispose of these appeals with the following order:-

(i) That the order impugned since has to be sustained, it is sustained. Resultantly, both the appeals are liable to be dismissed, accordingly, they are dismissed. However, it is open to the appellants to deposit the amount as directed by the Tribunal through the order impugned by both the appellants within a period of two weeks from the date of receipt of a copy of this order and based on which, if they file any necessary petition before the Tribunal to restore the appeals which have already been dismissed for non-compliance of the order through the order impugned, the said applications shall be considered on merits and be decided by the Tribunal.

7. With these observations and liberty to the appellants, both these appeals are dismissed. However, there shall be no order as to costs. Consequently, C.M.P.Nos.26342 and 25565 of 2025 are closed.

(R.S.K., J.)　　　　(H.C., J.)
17.11.2025

Speaking Order/Non-Speaking Order
Neutral Citation:Yes/No
Internet:Yes/No
Index:Yes/No

Note: Issue Order Copy on 20.11.2025.

(drm)

To:

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

2. The Appellate Tribunal
   Under SAFEMA at New Delhi
   Circuit Bench, Chennai.

R. SURESH KUMAR, J.
AND
HEMANT CHANDANGOUDAR, J.

(drm)

C.M.A.Nos.3042 and 3047 of 2025

17.11.2025