17.11.2026
Ct. no.10
Sl. No.05
b.r.

WPA 11000 of 2026

M/s. Mercury Exports &
Manufacturing Private Limited & Anr.

Vs.

Special Director, Eastern Region,
Enforcement Directorate & Ors.

Mr. Anurag Roy
Mr. Dhirodatta Chaudhuri
.... For the petitioner

Mr. Arijit Chakraborti
Mr. Debsoumya Basak
Ms. Swati Kumari Singh
.... For the Respondent nos. 1 and 2.

1. The affidavit of service filed in Court, is taken on record.

2. The present writ petition assails, inter alia, the legality, validity and the sustainability of the adjudication order dated 29.10.2025 passed by the respondent no.2, whereby penalty to the tune of Rs. 75,00,000/- and Rs.25,00,000/- has been imposed upon the petitioner nos. 1 and 2 respectively, for the period 2007-2009, for belated realisation of the export proceeds.

3. The facts of the case are in brief are as follows:

i. The petitioner nos. 1 and 2 are engaged for manufacturing exporting of leather goods/garments with major thrust in American market.

ii. The petitioner no.1 exported goods, inter alia, during the relevant period 2007-2009, but failed to realise export proceeds from 28 export bills amounting to Rs.14,76,78,236/- within the stipulated period. After investigation by the Enforcement Directorate (E.D.), a complaint was filed under Section 10 (3) of the Foreign Export Management Act, 1999 (hereinafter referred to FEMA Act, 1999 for the sake of brevity and convenience).

iii. Thereafter, a show cause was issued, which was duly replied to. Thereafter, the respondent no.2 upon considering the reply of the petitioners, passed an order of adjudication by imposing a penalty of Rs. 75,00,000/- and Rs.25,00,000/- upon the petitioner no.1 and 2 respectively.

4. The core issue involved in the present writ petition is whether a penalty can be imposed despite the export proceeds having been realised and repatriated to India beyond the period of 9 months from the date of export, where there was reasonable cause for the delay for realising the same at a belated stage.

5. Learned counsel appearing for the petitioners submits that both petitioner nos. 1 and 2 are 100 percent export oriented units having only export turnover of Rs.80,00,0000,00/-. Till 2008 there was no irregularity in any of the accounts. All the export bills were realized in time. However, with the onslaught of the global recession, more particularly in the USA, the export bills could not be realised

in time and in 2009-2010, the accounts of the petitioner nos. 1 and 2 turned NPA in both the banks, namely, Federal Bank and Punjab National Bank.

6. Thereafter, in the year 2023, the petitioner was able to realize the export proceeds in respect of 32 shipping bills, on piecemeal basis. Accordingly, the banking authorities also issued 'No Due Certificate' and got the charges vacated from Registrar of Companies.

7. It is further submitted that the adjudicating authority, upon considering the entire facts of the case, has given clean-chit to the petitioners, save and except for the delay in realisation of the export proceeds. The adjudicating officer has, however, imposed a penalty of Rs.75,00,000/- and Rs.25,00,000/- upon the respective petitioners, which is arbitrary, illegal, and in excess of jurisdiction and in utter disregard of the principles of natural justice,

8. Despite such realization of the export proceeds, the penalty imposed upon the petitioners vide order dated 29.10.2025 suffers from unreasonableness, arbitrariness and is liable to be set aside and quashed.

9. On this score, learned counsel for the petitioner relied upon a decision reported in **2023 SCC Online CAL 1412**, in the case of **Hooghly Mills Co. Ltd. and Others versus Union of India and others,** the relevant paragraphs nos.18 and 19, are quoted hereunder below:-

> *"18. In the facts of the present case, the key phrase in Section 18(3) of the Act of 1993 is 'all reasonable steps*

to receive or recover the payment for the goods'. In fact, the key words are 'all reasonable steps'.

19. Section 18(3) of the Act of 1973 requires an exporter to take steps to receive or recover the payment of the goods. The word 'steps' is qualified with the word 'reasonable'. Therefore, an exporter is required to take such steps as are fair, practicable and sensible to receive or recover the payment for the goods exported. The words 'reasonable steps' are preceded by the word 'all'. The word 'all' in Section 18(3) of the Act of 1973 is used as a determiner. Therefore, an exporter is required to take all fair, practicable and sensible steps to receive or recover the payment of the exported goods. As to whether or not, an exporter took all reasonable steps to receive or recover the payment for the exported goods is a question of fact which is required to be determined in each case. At times, mere filing of the suit and obtaining of decree thereon without taking any further steps may not be construed to be 'all reasonable steps' as contemplated under Section 18(3) of the Act of 1973. However, in a given set of facts filing of a suit and obtaining a decree thereon may constitute all reasonable steps within the meaning of Section 18(3) of the Act of 1973. In a given situation, the quantum of the balance payment may be such and the importer may be located at a place where, further steps to enforce a decree passed by a Civil Court in India at a place where the importer is situated may not be cost effective. It may not otherwise be possible to execute the decree of a Civil Court of India in a foreign country. These impediments must be factored in to consider as to whether the steps taken by the exporter to receive or recover the payment of the goods exported constitutes 'all reasonable steps' within the meaning of Section 18(3) of the Act of 1973 or not."

10. *Per contra*, Mr. Arijit Chakraborti, learned counsel appearing for the respondents authorities, vehemently opposes the contention of the petitioners and submits that the order passed by the adjudicating authority is appealable in nature and an alternative statutory remedy is available before the Appellate Tribunal under Section 19 of the said FEMA Act, upon deposit of the amount of penalty levied by the authority within a period of 45 days from the date of receipt of a copy of the order by the aggrieved person.

11. It is further submitted that the order passed by the adjudicating authority does not suffer from any infirmity and/or illegality and has been correctly passed by imposing penalty upon the petitioners for the enormous delay of 15 to 16 years in realising the export proceeds from the foreign importers.

12. After hearing the rival contentions and upon perusing the records made available on this record, including the documents annexed to the writ petition, this court is of the considered view that the order passed by the respondent no.2 is an appealable order, and the writ petition cannot be entertained when there is an efficacious alternative remedy available to the petitioners, since the moot question involved herein is with regard to the waiver of the penal amount imposed by the adjudicating authority. The Appellate Tribunal is the appropriate forum before whom the petitioners shall ventilate their grievances for proper and effective adjudication.

13. In view of the above, the petitioners are directed to prefer an appeal under Section 19 of the FEMA Act, 1999 within a period of four weeks from date before the Appellate Tribunal, and shall consider and dispose of the same within a reasonable period of time preferably within six weeks from the date of filing the appeal, along with a miscellaneous application for waiver of the pre-deposit amount as contemplated under second proviso to Section 19 sub-section (1) of the said FEMA Act, 1999.

14. The Appellate Tribunal shall consider and dispose of the waiver application within a period of two weeks from the date of filing the appeal and if the same succeeds, shall proceed to dispose of the appeal within a period of four weeks thereafter, on merit, by passing a reasonable and speaking order in accordance with law upon affording an opportunity of hearing to the petitioners and communicate such decision accordingly.

15. However, it is made clear that the Appellate Tribunal shall take an independent decision in deciding the issue involved herein without being influenced with the above observations made herein above. The petitioner shall not seek unnecessary adjournment before the Appellate Tribunal.

16. In view of the above, the order dated 29.10.2025 is hereby quashed and set aside. The delay in filing the appeal stand condoned. The petitioners are directed to file the appeal along with the application as directed above.

17. However, it is made clear that the entire proceeding shall be peremptorily completed on or before 31st January, 2027.

18. In the light of the judgment cited above and considering the merits of the case, this writ petition, WPA **WPA 11000 of 2026** stands disposed of without going into the merits of the case.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Smita Das De,J.)