

A.B. Controls Ltd Verusdirector of Enforcement

A.B. Controls Ltd Verusdirector of Enforcement

SooperKanoon Citation : sooperkanoon.com/1114730

Court : Appellate Tribunal for foreign Exchange New Delhi

Decided On : Nov-22-2005

Judge : O.P. Nahar, Chairperson

Appeal No. : APPEAL NO. 495 OF 1992

Advocate for Pet/Ap. : M. Venkatraman and Uchit Bhandari for the Appellant.
A.C. Singh for the Respondent.

Judgement :

1. This is an appeal against Adjudication Order No. DE (R) III/19-26/92, dated 16-9-1992 passed by Special Director, Enforcement Directorate imposing a penalty of Rs. 2,50,000 on the appellant for failure to utilize a part of the amount of remitted foreign exchange acquired for the purpose of import of goods in contravention of sections 8(3) and 8(4) of Foreign Exchange Regulation Act, 1973. The appellant has pre-deposited the amount of penalty of Rs. 2,50,000 whereafter presently this appeal is taken up for final disposal on merits. The respondent has filed written submissions which are taken on record.

2. A Show-Cause Notice No. T-4/38-D/87(SCN), dated 31-3-1987 was issued to the appellant asking it to show cause why adjudication proceedings should not be held against the appellant on the reason that while purchasing Functional Test Jig (consisting of 39 components) from M/s. Allen Bradley, U.K. though shown to have paid higher quoted price of US \$ 27745.50 but instead of this amount another quoted price of US \$ 11045.20 by the same seller is factually paid; thus actually

imported goods worth of US \$ 11045.20 against acquired foreign currency of US \$ 27745.50 in contravention of provisions of section 8(3) read with section 8(4) of FER Act, 1973. In reply the appellant controverted the allegations but not agreeing the adjudication proceedings were held and impugned order is passed imposing a penalty of Rs. 2,50,000. As per the admitted position search was conducted of the appellant when two separate lists showing 39 components of the Functional Test Jig were recovered. In one out of the two lists which is typed in full, the total price is described as US \$ 27745.50 but the other list where 7 items at the end are described in hand-writing but other items are typed, the price of the goods is stated as US \$ 11045.20.

3. Learned counsel Shri M. Venkatraman argued that the appellant received two quotations of the goods needed by appellant for purchase from U.K. firm M/s Allen Bradley. These two quotations are of same date i.e., 4-10-1984, but in one quotation with a price of US dollar 11045.20 (hereinafter called the first quotation) the typed items are 32 and 7 items are added to the list by the appellant in the continuing seriatim by hand-writing in pencil. The other quotation (hereinafter called the second quotation) also of dated 4-10-1984 has listed in typing 39 items with price of US \$ 27745. The appellant imported the items listed in first quotation, on payment of the price recorded per second quotation which is the higher amount, i.e., US \$ 27,745 than what is quoted in the first quotation as US \$ 11,045. Further, it is contended that items were imported from UK Firm which are allegedly over-invoiced as per conclusion of impugned order. But in the fact and circumstances of this appeal, the appellant is wrongly held guilty of mis-utilizing the part of the foreign currency remitted to him for import of the goods. The allegations are that the amount of difference between the aforesaid two prices is neither utilized for the purpose it was obtained nor returned back to authorized dealer or money changer in contravention of the provisions of section 8(3) and 8(4) of Foreign Exchange Regulation Act, 1973.

4. The first and second quotations bear the same date, i.e., 4-10-1984. It is admitted position that these quotations are issued by M/s. Allen Bradley, U.K. According to the appellant the authenticated price is described in the second quotation where 39 items are typed by way of description. On the other hand the

respondent argued that first quotation, containing 32 typed items but 7 items are added by hand-writing in continuing seriatim with a description of price of US \$ 11045.20 is the correct projection of the price. It is pleaded in the memo of appeal that first quotation should not be taken as correct so far as price listed is concerned because this listed price does not contain the value of 7 items added by hand-writing. On the other hand typed list of 39 items bears the price of US \$ 27745.50.

5. Though arguments by Learned Counsel for the appellant are attractive at first blush, but such arguments need further confirmation at least by totalling the price of 7 items. Thereafter, if the price comes to one and same amount then the argument of appellant can be accepted but not otherwise. As this aspect of the matter is not demonstrated with mathematical counting so the arguments advanced here have to be rejected bearing no merit. At best, this can be termed as bald-statement. It is not known how the bald statement of the appellant can be accepted when all these internal things are known to the appellant who is required to discharge the burden of proof as per the provisions of section 106 of the Indian Evidence Act, 1879. This is an item which is specifically known to the appellant and none else. Though a letter written by the foreign seller is produced which says that the price of US \$ 27745.20 is correct but this letter does not disprove what is already available unless the lesser quoted price is revised by a latter date quotation. There is nothing to say that higher price is correct and why not the lower quotation when both are quoted by same seller.

6. It is argued that quotation bearing higher price bears seal of receipt of the office of appellant but other quotation with lower price does not bear such seal of receipt from the office of appellant and this factor alone is sufficient to disregard the lower quotation in comparison to the higher quotation. We are not impressed with this argument. The endorsement of the receipt of letter in the office of the appellant does not take this Tribunal anywhere. Rather, the lower price if raised to the higher price needs some better document. No doubt the seller can revise the lower quotation price but such revision must come through a letter dated correspondence. It is well-settled under law of contract that an offer can be revised but such revision can only be achieved through an express statement. This is not

available on the scene. Therefore, this argument of the appellant is liable to be rejected having no merits. There are no other reasons advanced by the appellant which can go to the root of the adjudication order so as to dismantle what is stated therein. Therefore, the adjudication order is liable to be upheld and maintained. There is no merit in this appeal.

7. For the reasons stated hereinabove, this appeal is dismissed. It does not contain any merit and adjudication order is upheld. The respondent may appropriate the pre-deposited amount of Rs. 2,50,000.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com