

Washeem and Bros. Vs. Assistant Director of Enforcement

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Court : Appellate Tribunal for foreign Exchange New Delhi

Decided On : Aug-27-2001

Judge : D.P. Sharma, Chairperson

Appeal No. : APPEAL NO. 198 OF 2001

Appellant : Washeem and Bros.

Respondent : Assistant Director of Enforcement

Advocate for Pet/Ap. : Alamgir for the Appellant. Dr. Shamsuddin for the Respondent.

Judgement :

1. This is an appeal against the Adjudication Order No. 02/SVI/2001 dated 16-1-2001 of Assistant Director of Enforcement in File No. T-4/81/Exp./VSI/99 whereby a penalty of Rs. 50,000 has been imposed on the Appellant firm Washeem and Brothers, Varanasi, to be disposed of by its partners as the firm has already gone into liquidation for contravention of the provisions of section 18(2) read with section 18(3) of the Foreign Exchange Regulation Act, 1973 (the Act).

2. The Appellant-firm has been charged with failure to take all reasonable steps to realise the outstanding export proceeds. It is seen that the Appellant-firm effected shipment of carpets for export to Germany under cover of GR Forms No. AH207153 for US \$ 32514.14, AH 414933 for DM 10886.88, AH 206316 for DM 10365.21 and AM 268573 for DM 15865.50 and the said export proceed remained

unrealised. In their reply to the show-cause notice, the Appellant-firm named their Banker for failure to take necessary action for realisation of export proceeds. After hearing the parties, the learned Adjudication Officer passed the impugned order which is the subject-matter of challenge in this appeal.

3. Shri Alamgir, the learned counsel of the Appellants, submitted that the Appellants are from rural background and were in carpet manufacturing business. They were not very well versed in the export business and in their wisdom have been dependent on the bank through whom the export documents were processed, for realisation of the export proceeds. They have filed their complaint with the office of Consulate General of India and Chamber of Commerce besides the offices of Ombudoman, RBI, Kanpur for the Banks slackness. Shri Alamgir further submitted that the learned Adjudication Officer was not correct when he observed that the Appellant did not approach the buyer for payment in this regard. He has drawn attention to various fax messages sent to the buyer, copies of which are annexed to the memorandum of appeal. These fax messages are addressed to Bowa Orienteppich Import GMBH, Germany, and are dated 20-3-1997, 25-3-1997, 26-12-1997, 11-2-1998, 25-11-1998 and 28-1-1999. Besides the Appellants have also taken up the matter with the Consulate General of India at Hamberg. Copies of their correspondence with the CGI, Hamberg are also enclosed with their memorandum of appeal. Shri Alamgir, therefore, submitted that it is not correct to state that the Appellant has not taken any action for the realisation of the outstanding export proceeds. Shri Alamgir conceded that the Appellant might not have taken all the reasonable steps for realisation of export proceeds but it cannot be said that they have not taken any action at all as has been observed by the learned Adjudication Officer. Their action has to be appreciated in the context of their background and if it is so done, the Appellants really deserves a lenient view. Shri Alamgir submitted that the firm has already been liquidated and not functioning since 1996-97 and the exports in question were made in 1995. The partners did not have any further source of income except the said export business. It is further submitted that the Appellants and their families are on the verge of starvation on account of heavy loss in business. Shri Alamgir has also drawn my attention to the mercy appeal dated 26-2-2001 made by the Appellants requesting for total waiver of penalty having regard to their very-very piteous

condition due to heavy loss in business. As a result of their piteous condition due to heavy loss in business, their family and children are at the verge of hunger and they are totally ruined for no fault of theirs. Shri Alamgir very passionately pleaded that the Appellants did not have necessary funds to pay the penalty even if they want to and if they are not provided with the necessary succour in this regard there would be no option to the Appellants but to go to jail. The Appellants have already lost their principal amount and the intention of the law could not have been to add to the miseries of such people as the Appellants in the present case. Shri Alamgir, therefore, pleaded that a compassionate view may be taken in the matter. Shri Alamgir reiterated that he is not contesting this on merit but would only like to make a very strong plea for a compassionate treatment to the Appellant.

4. Dr. Shamsuddin did not offer any reply as the Appellants have already admitted the alleged contravention of the provisions of the Act. The Appellants herein are only pleading for mercy and he would like to leave this matter to the judicious consideration of this Tribunal.

5. I have given my careful consideration to the submissions made by the Appellants counsel. Admittedly, the Appellants have failed to take all reasonable steps in realisation of the export proceeds. This could be attributed to their lack of knowledge of export business and its technicalities, having regard to their rural and social background. It is not a case of no action at all on the part of the Appellants. They have in fact taken some action which in their wisdom they thought right. In any case their firm has already gone into liquidation shortly after the shipment of consignments in question. It is seen that even thereafter the partners continued to write to the buyer, pleading with them for payment of the outstanding bill. They have also sought help of the Consulate General of India at Hamberg without much success.

6. In the facts and circumstances mentioned above, I am of the considered view that a token penalty would be sufficient to meet the ends of justice. On a careful consideration, I reduce the penalty of Rs. 50,000 imposed under the impugned order to Rs. 10,000. Shri Alamgir, the learned counsel of the Appellants, volunteered that he would impress upon the Appellant to arrange to pay this

amount of penalty. Accordingly, the impugned order is modified and the amount of penalty imposed thereunder stands reduced from Rs. 50,000 to Rs. 10,000.

7. In the result, this appeal is partly allowed in terms of this order.

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