

Union of India (Uoi) Vs. Raj Paul Gupta and anr.

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Court : Punjab and Haryana

Decided On : Aug-13-1985

Reported in : 1986(9)ECC334

Judge : D.V. Sehgal, J.

Appeal No. : Civil Second Appeal Order No. 37 of 1984

Appellant : Union of India (Uoi)

Respondent : Raj Paul Gupta and anr.

Disposition : Appeal dismissed

Judgement :

D.V. Sehgal, J.

1. This appeal under Section 54 of the Foreign Exchange Regulation Act, 1973 (hereinafter called the Act), by the Deputy Director, Enforcement Directorate, Jalandhar City, is directed against the order dated 17th May, 1984 passed by the Foreign Exchange Regulation Appellate Board (hereinafter called the Board), whereby the order dated 19th October, 1983 of the Assistant Director, Enforcement imposing penalty of Rs. 2500 on Shri Raj Paul Gupta respondent has been set aside.

2. The respondent Raj Paul Gupta is a legal practitioner at Ludhiana. He and his wife went for a short visit to Bangkok, Hong Kong, and Singapore, etc., in the year 1979. The brother of the wife of the respondent, Shri Amrit L. Goel, who was residing in U.S.A. remitted US \$2500 when the respondent and his wife were in Hong Kong. It is not in dispute that the remittance was made through banking channels as a gesture of love and affection for purchasing articles of gift, and the amount was so utilised. The articles purchased, treated as gifts from Amrit L. Goel, were brought to India and customs duty to the tune of Rs. 4800 was paid by the said respondent at the time of landing at the Delhi Airport.

3. A show cause notice was issued to the respondent Raj Paul Gupta by the Assistant Director, Enforcement on 17th July, 1983 alleging that during the year 1979 he acquired foreign exchange US \$2500 and failed to surrender the same to an authorised dealer in contravention of the provisions of Section 8(1) of the Act. The facts stated above were narrated in reply by the respondent Raj Paul Gupta. The Assistant Director, however, held the said respondent guilty of contravention of the provisions of Section 8(1) of the Act for having acquired foreign exchange and utilising the same without surrendering it to an authorized dealer as required by Section 8(1) of the Act, and consequently imposed a penalty of Rs. 2500 on him.

4. Raj Paul Gupta, respondent, preferred an appeal before the Foreign Exchange Regulation Appellate Board from the order dated 19th October, 1983 of the Assistant Director Enforcement imposing the said penalty. The Board allowed the appeal of the said respondent and held that the factum of receipt of foreign exchange of US \$2500 by Raj Paul Gupta respondent when he was in Hong Kong from his brother-in-law residing in USA

had to be taken along with the circumstance that the said remittance of foreign exchange was received by the said respondent in Hong Kong for purchasing articles of gift and not for utilising the same in any other manner as he liked. So, for all intents and purposes this was a case where the foreign exchange was not received in specie but in the form of articles of gift.

5. The learned Counsel for the appellant has contended before me that the Board has not properly interpreted the provisions of Section 8(1) of the Act. It is not in dispute that Raj Paul Gupta, respondent, was a person resident in India on a short visit to Hong Kong and other places and that since he received the remittance of the foreign exchange in Hong Kong, the counsel contends, he ought to have surrendered the said amount of foreign exchange to an authorised dealer. I am afraid, this contention of the learned Counsel for the appellant does not hold water.

6. Section 8(1) of the Act places restrictions on dealings in foreign exchange and provides that except with the previous general or special permission of the Reserve Bank of India no person other than an authorised dealer shall in India, and no person resident in India other than an authorised dealer shall outside India, purchase or otherwise acquire or borrow from, or sell, or otherwise transfer or lend to or exchange with, any person not being an authorised dealer any foreign exchange.

7. When respondent No. 1 received the remittance of US \$2500 from his brother-in-law Amrit L. Goel, he did not purchase or otherwise acquired or borrowed the said remittance of US \$2500. In essence, respondent No. 1 merely acted as an agent of his brother-in-law Amrit L. Goel for purchasing articles with the said remittance, which articles were then received by respondent No. 1 as gifts from Amrit L. Goel and brought the same to India on which he paid the customs duty on landing at the Delhi Airport. Thus, what respondent No. 1 acquired were the articles of gift and not the foreign exchange. So long as the amount of foreign exchange, i.e., US \$2500, was not spent on the purchase of articles of gift, the amount continued to belong to Amrit L. Goel, brother-in-law of respondent No. 1. It was neither acquired nor borrowed, purchased or exchanged by respondent No. 1. In view of the above, the provisions of Section 8(1) of the Act were not attracted and the Board was right in its conclusion that respondent No. 1 had not committed any violation of the aforesaid provisions of the Act. As a result of the foregoing discussion, I find no merit in this appeal and the same is accordingly dismissed with no order as to costs.

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