

Elecon Engineering Co. Ltd. and anr. Vs. Assistant Director, Enforcement Directorate and ors.

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Court : Delhi

Decided On : Mar-14-1991

Reported in : 44(1991)DLT209

Judge : M.C. Jain, C.J. and; Arun Kumar, J.

Acts : [Constitution of India](#) - Article 226; Foreign Exchange Regulation Act, 1974 - Sections 61

Appeal No. : Civil Writ Petition No. 190 of 1991

Appellant : Elecon Engineering Co. Ltd. and anr.

Respondent : Assistant Director, Enforcement Directorate and ors.

Advocate for Pet/Ap. : T.R. Andhiyarujina,; R. Gagrati,; U.A. Rana and;

Judgement :

M.C. Jain, C.J.

(1) Rule D.B.

(2) This petition is directed against the Opportunity Notices, Annexures 'T', 'U', 'V', 'W' dated 28th November, 1990, and a threatened action on the part of the respondents to launch prosecution proceedings against the petitioner under

Section 61 of the Foreign Exchange Regulation Act, 1973. The apprehension of the petitioner is that in the adjudication proceedings, it has been found by respondent no. 1 that there was no permission available with the petitioner and against the adjudication order, the petitioners have preferred an appeal before the F.E.R.A. Board. Having recorded the findings in the adjudication proceedings. Opportunity Notices in terms of proviso to Section 61(2) have been given to the petitioner. According to the petitioner, serving of Opportunity Notices is only an empty formality and prosecution is imminent under Section 61(2)(ii) and complaint in writing is likely to be made by the Directorate of Enforcement, It may be stated that Opportunity Notices have not yet been disposed of and no decision has been taken on the Opportunity Notices served on the petitioner. We cannot foresee the outcome of the opportunity notices. It may be that the stage of cognizance of offence may not arise. Even if it arises, it would be proper that the petitioner's interest may be safeguarded by granting time to the petitioner to avail appropriate opportunity before making of any complaint in writing by the Directorate of Enforcement. The petitioner's interest in such a manner can be safeguarded before any prosecution is launched against the petitioner.

(3) Accordingly, we direct that no complaint in writing would be made against the petitioner by the Directorate of Enforcement for a period of two months in case the result of the Opportunity Notices is that the petitioner is to be prosecuted. We also hope that the F.E.R.A. Board will decide the appeal within a period of two months so that the view of the F.E.R A. Board may also be known to the prosecuting authorities. This writ petition is disposed of with the above directions.

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