

**S Bhaskar Vs. Enforcement Directorate Foreign Exchange Management Act
Rep. by the Dy. Director, Bangalore**

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Court : Karnataka

Decided On : Mar-17-2011

Reported in : 2011ILR(Kar)2129; 2011(3)KCCR339(DB)(SC); 2011(4)KantLJ621

Judge : N.K. Patil & H.G. Ramesh

Appeal No. : M.F.A. No.4546 of 2004 (FEMA)

Appellant : S Bhaskar

Respondent : Enforcement Directorate Foreign Exchange Management Act Rep.
by the Dy. Director, Bangalore

Advocate for Pet/Ap. : For the Petitioner: V.V. Gunjal, Advocate for P.V. Gunjal
and V.S. Gunjal, Advocates. For the Respondent: Urval N. Ramanand, CGSC.

Judgement :

RAMESH, J

1. This appeal filed under Section 35 of the Foreign Exchange Management Act, 1999 ('the Act' for short) is directed against the order dated 16.2.2004 passed by the Appellate Tribunal for Foreign Exchange, New Delhi, in Revision Petition No. 165/2003. By the said order, the Appellate Tribunal has allowed the Revision Petition filed by the respondent-Enforcement Directorate against the order dated

29.01.2003 passed by the Deputy Director, Enforcement Directorate (Foreign Exchange Management Act), Bangalore.

2. The facts in brief leading to filing of this appeal are as follows:

On 9.10.2002, the appellant was found in illegal possession of US Dollar 20,000/-. The Deputy Director, Enforcement Directorate after holding an enquiry found the appellant guilty of contravening Section 3(a) of the Act and accordingly passed the order dated 29.01.2003 referred to above by imposing a penalty of Rs.50,000/- on the appellant under Section 13(1) of the Act: the penalty of Rs.50,000/- imposed was directed to be adjusted from the seized US Dollar 20,000/- and the balance amount was ordered to be released to the appellant. The Deputy Director thought it fit not to exercise the power under Section 13(2) of the Act to confiscate the foreign currency involved in the offence.

Being aggrieved by the aforesaid order, the respondent-Enforcement Directorate carried the matter to the Appellate Tribunal for Foreign Exchange, New Delhi by filing a Revision Petition under Section 19(6) of the Act. The Appellate Tribunal, on consideration of the matter, found that the power exercised by the Deputy Director was contrary to law and accordingly by the order impugned herein has set aside the order of the Deputy Director insofar as it related to release of the foreign currency by ordering confiscation of the seized currency of Us Dollar 20,000/- after adjustment of the penalty of Rs.50,000/- imposed by the Deputy Director, Being aggrieved by the said order of the Appellate Tribunal, the appellant has filed this appeal.

3. We have heard the Learned Counsel appearing for the parties, perused the order of the Appellate Tribunal dated 16.02.2004 and also the order of the Deputy Director dated 29.01.2003; copies of the order of the Deputy Director were made available to us by the Learned Counsel for the appellant at the time of hearing.

4. The fact that the appellant was found in possession of US Dollar 20,000/- in contravention of Section 3(a) of the Act is not in dispute.

5. The sole contention urged by the Learned Counsel for the appellant is that the maximum penalty that could be imposed under Section 13 of the Act cannot exceed Rs.2,00,000/- and once any penalty is imposed, question of further confiscating the currency involved in contravention of Section 3(a) of the Act is not permissible in law. Hence, according to the Counsel, the order of the Appellate Tribunal is unsustainable in law. He sought for restoration of the order of the Deputy Director, Sri Urval N. Ramanand, Learned Senior Counsel appearing for the respondent supported the impugned order.6. In the light of the contention urged by the Learned Counsel for the appellant, the only question of law that would arise for consideration is as to whether the Appellate Tribunal was justified in law in modifying the order of the Deputy Director dated 29.01.2003 by directing confiscation of the foreign currency of US Dollar 20,000/- after adjusting the penalty of Rs.50,000/- there from?

7. To examine the contention urged by the Learned Counsel for the appellant, it is relevant to refer to Section 13 of the Act.

“13. Penalties.- (1) if any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty upto thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extent to five thousand rupees for every day after the first day during which the contravention continues.

(2) Any Adjudicating Authority adjudging any contravention under sub-Section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any of the person committing the contravention or any part thereof, shall be brought back into India or shall be retained outside India in accordance which the directions

made in this behalf.

Explanation.- For the purposes of this sub-Section "Property" in respect of which contravention has taken place, shall include.-

(a) Deposits in a bank, where the said property is converted into such deposits;

(b) Indian currency, where the said property is converted into that currency; and

Any other property which has resulted out of the conversion of that property."

8. Section 13 of the Act speaks of penalties, both the sub-sections provide for imposition of different kinds of penalty. A plain reading of the Section would show that imposition of a penalty under sub-Section (1) will not bar exercise of power under sub-Section (2) to confiscate any currency in respect of which the contravention has taken place. The power of confiscation conferred under sub-Section (2) is in addition to the power to impose penalty under sub-Section (1). Therefore, it is perfectly open to the Adjudicating Authority to exercise power under sub-Section (2) in addition to exercise of power under sub-Section (1). In other words, it is open to the Adjudicating Authority to impose any penalty as provided under sub-Section (1) as well as directing confiscation of currency/security/money or property in respect of which the contravention has taken place. In that view of the matter, the contention of the Learned Counsel for the appellant is rejected. We may state that the contention of the Learned Counsel is totally opposed to the plain language of Section 13 of the Act. 9. In our opinion, the Appellate Tribunal was right in law in interfering with the order of the Deputy Director. On the facts of the case, the Deputy Director was not right in exercising his discretion in ordering release of the seized foreign currency. It is relevant to state that possession of the foreign currency of US Dollar 20,000/- by the appellant was admittedly illegal, he had not traced his possession of the foreign currency to any legitimate source of acquisition. We find no legal infirmity in the impugned order passed by the Appellate Tribunal to warrant interference. The appeal is devoid of merit and is accordingly dismissed but with no order as to costs.

Appeal dismissed.

