

M/s. P. & S. Export Corporation

Vs

Deputy Director of Enforcement

Criminal Appeal No. 86 of 1978

(M. P. Thakkar, K. N. Singh JJ)

02.09.1986

JUDGMENT

SINGH J. -

1. After hearing learned counsel for the parties we dismissed the appeal on August 19, 1986 and directed that the reasons shall follow later on. According we are giving the reasons for our decision.
2. The appeal by special leave is directed against the order of the High Court of Delhi dismissing the appellant's appeal made under Section 23-EE of the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the Act). Briefly facts giving rise to this appeal are that appellant has been carrying the business of exporting goods to the various parts of the world. During the year 1966 it effected shipment of brassware goods to a foreign buyer in the United State valued at US \$ 5976, out of which the appellant repatriated US \$ 2931.42 leaving a balance of US \$ 3044.58. Since the appellant failed to repatriate the entire value of the exported goods a show cause notice was issued under Section 12(2) of the Act initiating adjudication proceedings contemplated by Section 23D of the Act against the appellant and its partners. In reply to the notice the appellant submitted that the goods had been exported to M/s Oriental Imports, New York who did not pay the entire amount instead the buyer set up a counter-claim against the appellant on account of devaluation of Indian rupee. The appellant further asserted that since the consignee had not paid, full export value of goods could not be repatriated. The Deputy Director, Enforcement Directorate, by his order dated November 20, 1975 rejected the defence set up by the appellant, on the findings that there was no evidence to show that the foreign buyer had raised counter-claim against the appellant. The Reserve Bank of India had advised the appellant to get the goods returned to India and to approach the Indian Embassy at Washington for its intervention. The appellant made no attempt to adopt either of the two courses of action advised by the Reserve Bank of India. The National and Grindlays Bank who were the appellant's bankers informed that the goods were privately disposed of by Mr Sarna, a partner of the appellant firm. The Deputy Director found the appellant guilty of having contravened Section 12(2) of the Act and imposed a fine of Rs. 30,000 under Section 23(1)(a). In appeal the Foreign Exchange Regulation Appellate Board confirmed the order of the Deputy Director but it reduced the amount of penalty from Rs. 30,000 to Rs. 22,824. The appellant thereafter preferred an appeal under Section 23-EE of the Act before the High Court against the appellate order. The High Court dismissed the appeal on the findings that the order of the Appellate Authority did not suffer from any error of law.
3. Learned counsel for the appellant urged that there was no contravention of sub-section (2) of Section 12 of the Act and the High Court as well as the authorities constituted under the Act

committed error in holding the appellant guilty. We find no merit in the submission. Section 12(2) is as under :

12(2) Where any export of goods has been made to which a notification under sub-section (1) applies, no person entitled to sell, or procure the sale of, the said goods shall, export with the permission of the Reserve Bank, do or refrain from doing anything or take or refrain from taking any action which has the effect of securing that -

(a) the sale of goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade, or

(b) payment for the goods is made otherwise than in the prescribed manner or does not represent the full amount payable by the foreign buyers in respect of the goods, subject to such deductions, if any, as may be allowed by the Reserve Bank, or is delayed to such extent as aforesaid :

Provided that no proceedings in respect of any contravention of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full amount as aforesaid has not been made in the prescribed manner.

4. Under the aforesaid provision an exporter who exports goods notified under sub-section (1) of Section 12 shall not do anything or refrain from doing anything which may have the effect of delaying of sale of goods to an unreasonable period or which may have the effect of ensuring payments otherwise than in the prescribed manner or it has the effect of securing the payment not representing the full amount payable by the foreign buyer. Section 12(2) ensures prompt sale of goods exported to a foreign buyer and repatriation of the full value of the goods. If an exporter sells the goods to a foreign buyer and if he fails to realise full amount payable by the foreign buyer in respect of goods so exported he would be contravening Section 12(2)(b) of the Act. The appellant exported goods to foreign buyer in the United States but he failed to repatriate the full amount payable by the foreign buyer. The findings recorded by the Deputy Director Enforcement and the Appellate Authority leave no room for doubt that the appellant took delivery of goods himself when he was in USA and sold the same by private sale in a surreptitious manner disregarding the directions of the Reserve Bank of India and keeping it in the dark about it. The appellant has not proved how much value and foreign exchange he realized by such private sale. In the first place he could not have sold the goods privately in a secretive manner contrary to the directions of the Reserve Bank of India. In the next place he should have candidly come forward to state how much he realized and ought to have repatriated the said amount. Instead the appellant resorted to manipulations to show that the importer had paid only 50 per cent of the value which fact is established to be untrue. The full export value is reflected in the transaction which was made with the foreign buyer at \$ 5976.00 but he has repatriated only \$ 2931.42. He has thus clearly violated Section 12(2). The order under appeal is unassailable.

5. There is thus no escape from the conclusion that the appellant contravened Section 12(2) of the Act. The High Court committed no error in rejecting the appellant's submission. The appeal fails, is accordingly dismissed.

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