

Director of Enforcement

Vs

New Central Jute Mills Co. Ltd.

Civil Appeal No.1771 of 1981

(CJI Ranganath Misra, M.H. Kania, Kuldip Singh JJ)

06.11.1990

JUDGMENT

1. The appeal is by special leave and 'Is directed against the order of the Division Bench of the Calcutta High Court disposing of an appeal u/ S. 54 of the Foreign Exchange Regulation Act, 1947, dated 28-478. The order being very brief is extracted below:--

"Having taken into consideration the relevant facts and the circumstances of this case, we are of opinion that there has been a violation of S. 5(1)(a) of the Foreign Exchange Regulation Act, 1947, but in view of the extenuating circumstances on records, we reduce the amount of penalty payable by the appellant to the respondent to the sum of Rs. 25,000/- (Rupees Twenty five thousand) only. The refund to the appellant the balance of the penalty, namely, a sum of Rupees 2,25,000/- (Rupees two lakhs and twenty five thousand) only already deposited, by a cheque drawn in favour of M' s Khaitan & Co. Advocate-on-Record for the appellant. The cheque is to be made over to the said.

The appellant is to pay the respondent the cost copy minutes of this order upon the usual undertaking of the said Advocates-on- Record for the appellant to have this order to be drawn up, completed and filed."

2. It appears from this order that the conclusion reached for imposing the penalty was affirmed by the High Court but the quantum of penalty which was Rs. 2 50,0001 (Rupees Two lakhs and fifty thousand) in the special facts of the case. Though at the time leave was granted the point on which such leave was given has not been indicated, Counsel for the appellant tells us that it was for the consideration of the correctness of the submission that when u/ S. 54 of the Act an appeal lies to the High Court on a question of law, would it be open to the High Court while agreeing with the merit of the matter to reduce the fine. Conceding that this submission is correct we are not prepared to accept the position that a statutory appeal of the type in question would bar the jurisdiction of the High Court while dealing with it to examine the justification for the quantum of penalty. The main matter along with the penalty fused into one and the entire matter became the subject-matter of appeal. Obviously the Appellate Court would be entitled to deal with both these aspects in accordance with law.

3. S. 52(3) confers on the First Appellate Authority which is the Appellate Board jurisdiction to modify orders which are subjected to appeal. The High Court being the Second Appellate Authority

u./ S. 54 must be assumed to have the same powers as conferred on the First Appellate Authority in the absence of any specific bar.

4. The appeal is dismissed. No costs.

Appeal dismissed.

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