

SUPREME COURT OF INDIA

Maars Software International Ltd.

Vs.

Union of India

C.A.No.4023-4025 of 2019

(Abhay Manohar Sapre and Dinesh Maheshwari,JJ.,)

22.04.2019

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C) No.32177-32179 of 2017

1. Leave granted.
2. These appeals are filed against the final judgment and order dated 18.04.2017 passed by Signature-Net Verified the High Court of Judicature at Madras in Civil Petition No.15793 of 2010 whereby the High Court allowed the Civil Miscellaneous Appeals filed by the respondents herein and dismissed the writ petition filed by the appellants herein.
3. A few facts need mention hereinbelow for the disposal of these appeals, which involve a short point.
4. Appellant No.1 herein is a Limited company having its registered office at Chennai and Appellant No.2 is its Managing Director. The appellant- Company is engaged in the business of software exports. The appellant-Company has also specialized in the area of Enterprises Resources Planning (ERP) implementation. The appellant- Company is offering their services to domestic and overseas customers.
5. The Enforcement Directorate, Mumbai through its Assistant Director filed a complaint, being complaint No.T-3/536-B/2002, under Section 16 (3) of the Foreign Exchange Management Act, 1999 (for short “FEMA”) against the appellant-Company before the Special Director of Enforcement Mumbai (Adjudicating Authority).
6. The complaint was founded on the material collected during the course of detailed investigation made in the affairs and the dealings of the appellant-Company in their business operations. It was done pursuant to the directive issued by the competent authority on 23.11.2001 to the appellant-Company under FEMA.

7. The aforesaid directive was issued to examine the genuineness of the internal affairs of the appellant-Company and also with a view to verify various international dealings and business operations which the appellant had executed during the relevant period with their overseas customers involving huge foreign exchequer.

8. The investigation also centered around the details of the Directors and Promoters; their holdings; how many groups and associates companies were formed by the appellants in India and abroad for doing business; details of the share transactions between the promoters of the appellant-Company and OCB/FIIs/Sub-accounts/NRI; the details of the appellant's brokers appointed in the trade for execution of their business contracts; and lastly, the details of loans raised by the appellant-Company for their business purpose etc.

9. The complainant, i.e., the Enforcement Directorate prayed in the complaint that the investigation carried out has clearly made out a case of violation of Section 8 of FEMA read with Regulation 3 of the Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2000 read with Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 and also violation of Section 42 (1) of FEMA by the appellant- Company. The complainant, therefore, prayed that action, as contemplated under FEMA, be taken against the appellant-Company for such violations as provided under FEMA.

10. It is this issue, which was adjudicated by the Special Director. By order dated 13.03.2008, the Special Director allowed the complaint and held that the appellant-Company has contravened the provisions of FEMA as prayed in the complaint and accordingly imposed a penalty of Rs.4 crores on the appellant No.1-Company and Rs.1 crore on appellant No.2-Managing Director-Shri Varadharajan as provided under FEMA.

11. The appellants felt aggrieved by the aforementioned order and hence filed two appeals under Section 13 of FEMA in the Tribunal. By order dated 07.01.2010, the Tribunal allowed the appeals and set aside the order dated 13.03.2008 and directed the authorities to refund the amount which was deposited by the appellants in these proceedings for filing the appeals.

12. The Union of India felt aggrieved by the order of the Tribunal and filed appeals in the High Court under Section 35 of the FEMA whereas the appellants herein filed a writ petition in the High Court against the Union of India and sought therein a writ of mandamus claiming refund of the pre-deposit amount.

13. By impugned order, the High Court allowed the appeals, set aside the order of the Tribunal and restored the order of the Adjudicating Authority. As a consequence thereof, the appellants' writ petition was dismissed.

14. It is against this common impugned order of the High Court, the appellant-Company and its Managing Director have filed these appeals by way of special leave in this Court.

15. So, the short question, which arises for consideration in these appeals, is whether the

High Court was justified in allowing the appeals filed by the Union of India.

16. Heard Mr. Gopal Shankarnaraynan, learned senior counsel for the appellants and Mr. B.K. Satija, learned counsel for the respondents.

17. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow these appeals and while setting aside the impugned order remand the case to the High Court for deciding the appeals afresh on merits in accordance with law.

18. The need to remand the case (appeals) to the High Court is called for because of the observations made by the High Court in Para 15, which reads as under:

“ No material has been produced before this Court as to what steps have been taken to realize the amount within the stipulated period. The company was not able to place any material to show the reason for the failure to realize the said amount within the stipulated period or any permission for extension of period has been obtained from the RBI as contemplated under Section 42 of the FEMA”

19. It was, however, brought to our notice from Para 29 of the Tribunal's order, which was impugned before the High Court in the appeals filed by the Union of India, that the appellants had filed material, which were marked as (Annexures A-15 to A-38) in the case, with a view to show as to what steps they had taken to realize and repatriate the dues in question.

20. In our considered view, keeping in view the observations made by the High Court in Para 15, it is clear that the High Court did not examine the case of the parties in the context of material placed by the appellants, though the Tribunal in Para 29 of its order has considered the said material.

21. In our view, the High Court should have taken into consideration the said material with a view to decide as to whether it was relevant or/and sufficient, and whether it could justify the appellants' case as contemplated under Section 8 of FEMA.

22. Instead, the High Court seemed to have proceeded on wrong assumption that since the appellants did not file any material, a case was made out against them. This observation of the High Court, in our view, was contrary to the record of the case and hence, interference in the impugned order is called for.

23. In view of the foregoing discussion, we are of the view that the proper course in such a case would be to remand the case to the High Court and request the High Court to decide the appeal afresh on merits in accordance with law.

24. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for deciding the appeals afresh on merits in accordance with law keeping in view the observations made

above.

25. We, however, make it clear that we have not expressed any opinion on the merits of the controversy having formed an opinion to remand the case to the High Court on the grounds mentioned above.

26. The High Court will decide the appeals uninfluenced by any observation made in the impugned order and in this order.