

UNION OF INDIA & ORS.

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v.

M/s. PREMIER LIMITED (FORMERLY PREMIER  
AUTOMOBILES LTD.) & ORS.

(Civil Appeal No. 3529 of 2008)

JANUARY 29, 2019

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**[ABHAY MANOHAR SAPRE AND INDIRA BANERJEE, JJ.]**

*Foreign Exchange Regulation Act, 1973 :*

*ss.9(1) (a), 9(1)(c), 16(1), 50-52 and 81 – Repeal of 1973 Act-FERA – Appeals filed thereafter against order passed u/s.51 of FERA – Proper appellate authority for deciding – Special Director (Appeals) u/s.17 of 1999 Act-FEMA (that replaced FERA) or Appellate Tribunal u/s.19 of FEMA – On 01.05.1991 show cause notice issued by the Special Director to respondent no.2 and its two directors, respondent nos.3 and 4 for allegedly contravening provisions of FERA– During the pendency of the proceedings, FERA was repealed w.e.f 01.06.2000 and replaced by FEMA – On 05.12.2003, adjudication order passed by the Deputy Director of Enforcement under FEMA r/w s.51 of FERA, in relation to the show cause notice dtd. 01.05.1991, imposing penalty of Rs.15,50,000/- on respondent nos.2 to 4 – Appeal filed by respondent nos.2 to 4 before the Special Director (Appeals) u/s.17 of FEMA, which was dismissed as not maintainable – Writ petitions filed by respondent nos.2 to 4, which were allowed – Orders of the Special Director (Appeals) were quashed by the High Court holding that the appeals filed by respondent nos.2 to 4 before the Special Director (Appeals) were maintainable – On appeal, held: Any appeal whether filed prior to 01.06.2000 or after 01.06.2000 against the order of the Adjudicating Officer passed u/s.51 of FERA in the proceedings initiated under FERA would lie before the Appellate Tribunal u/s.19 of FEMA – View taken by the High Court not concurred with – Appeal filed by respondent nos.2 to 4 against the order dtd. 05.12.2003 passed by Deputy Director of Enforcement u/s.51 of FERA will lie and was, therefore, maintainable only before the Appellate Tribunal u/s.19 of FEMA – Appeals filed by respondent nos.2 to 4 before the Special Director (Appeals) accordingly transferred to the Appellate Tribunal for disposal on merits – Foreign*

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- A *Exchange Management Act, 1999 – ss.17-19, 35 and 49 – Foreign Exchange Regulation Act, 1947 – s.23 – Interpretation of Statutes – Purposive Interpretation.*

**Allowing the appeal, the Court**

**HELD: 1.1 Section 49(5)(b) of Foreign Exchange**

- B **Management Act, 1999 (FEMA) deals with repeal and saving in relation to the action taken and to be taken under Foreign Exchange Regulation Act, 1973 (FERA). Reading of this Section shows that the legislature has equated the Appellate Board constituted under FERA with the Appellate Tribunal constituted under FEMA for disposal of the appeals filed under Section 52(2) of FERA against an order passed under Section 51 of FERA which were pending before the Appellate Board as on 01.06.2000. Such appeals stood transferred from the Appellate Board to the Appellate Tribunal for their disposal in accordance with law. The reason as to why a specific provision for transfer of such pending appeals was made for their disposal from the Appellate Board to the Appellate Tribunal was that the Appellate Board constituted under FERA stood dissolved by Section 49(1) of FEMA with effect from 01.06.2000. [Paras 19, 20][566-G-H; 567-A]**

**1.2 It is this dissolution of the Appellate Board, which**

- E **necessitated the legislature to make a corresponding provision in the new Act (FEMA) so that the consequences arising out of the dissolution of the Appellate Board constituted under FERA is taken care of by another appellate authority constituted under the FEMA and all pending appeals are automatically transferred to the Appellate Board for their disposal under FEMA. Any appeal filed after 01.06.2000 against the order of the Adjudicating Officer passed under Section 51 of FERA in the proceedings initiated under FERA would lie before the Appellate Tribunal under Section 19 of FEMA. [Paras 21, 22][567-B-D]**

**1.3 This is for more than one reason. First, if the**

- G **Adjudicating Officer had passed an order under Section 51 of FERA prior to 01.06.2000, then the appeal against such order was required to be filed before the Appellate Board under Section 52 (2) of FERA. In other words, if the Adjudicating Officer had passed the order under Section 51 of FERA prior to 01.06.2000**

when FERA was in force, the appeal against such order was maintainable only under Section 52 (2) before the Appellate Board under FERA. Second, if such appeal had remained pending before the Appellate Board on 01.06.2000, the same would have been transferred to the Appellate Tribunal constituted under FEMA in terms of Section 49 (5)(b) of FEMA for its disposal. Third, a *fortiori*, any appeal, if filed after 01.06.2000 and against the similar order, i.e., an order passed under Section 51 of FERA should also be held to lie before the Appellate Tribunal under Section 19 of FEMA alike the appeals filed prior to 01.06.2000 and which were transferred to the Appellate Tribunal by virtue of Section 49(5)(b) of FEMA. Fourth, the reason behind this simultaneous statutory transfer of pending appeals to the Appellate Tribunal under FEMA appears to be that the legislature did not intend to provide two separate Appellate Authorities under FEMA for challenging the adjudication order passed under Section 51 of the FERA, i.e., one appeal before the Special Director (Appeals) and the other appeal before the Appellate Tribunal under FEMA. [Paras 22-27][567-D-F; G; 568-A-B]

1.4 In other words, the legislature did not intend to make a distinction between the two appeals for their disposal by two different appellate authorities under FEMA only because one appeal was filed prior to 01.06.2000, therefore, it will lie before the Appellate Tribunal whereas the other appeal which was filed after 01.06.2000 though against the similar order, it will lie before the Special Director (Appeals). There does not appear to be any justifiable reason to make such distinction for filing of appeals filed against the similar order passed under FERA before two different appellate authorities under FEMA. This intention of the legislature is strengthened when one reads Section 49 (5)(b) of FEMA and Section 81(c) of FERA.[Paras 28, 29][568-C-D]

1.5 Section 49(5)(b) of FEMA specifically provides that the appeals filed under Section 52(2) of FERA against the order passed under Section 51 of FERA will be decided by the Appellate Tribunal under FEMA. Section 81(c) of FERA, 1973 deals with Repeal and Saving of FERA, 1947. Clause (c) of Section 81 specifically provides that all the appeals filed under Section 23 of FERA, 1947, whether pending on the date of Repeal or/and those

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- A filed after the repeal of FERA, 1947, shall be disposed of by the Appellate Board constituted under FERA, 1973. It is true that Section 49(5)(b) of FEMA is not worded alike Section 81(c) of FERA, yet, it shows the intention of the legislature that all such appeals have to be heard by the Appellate Board under the FERA.
- B Indeed, when similar occasion arose at the time of repealing of FERA, 1947 by a new Act- FERA, 1973 on 01.01.1974, the legislature provided in Section 81(c) of FERA, 1973 that all appeals filed under Section 23(E)(2) of FERA, 1947 and pending before the Appellate Board including those appeals which are filed against the order passed after 01.01.1974 shall be disposed of by the Appellate Board under FERA, 1973. [Paras 30-32, 35] [568-E-G; 569-C]
- C 1.6 Perusal of Scheme of FEMA would show that the Special Director (Appeals) is subordinate in hierarchy to the Appellate Tribunal prescribed under Section 49(5)(2) of FEMA. It is, therefore, not possible to hold that one appeal would be maintainable before the Appellate Tribunal and the other appeal arising out of similar order would be maintainable before the Special Director (Appeals), who is subordinate in hierarchy to the Appellate Board. Such distinction does not stand for any logic. [Para 37][569-E, F]
- D 1.7 Applying the principle of purposive interpretation, the appellate forum for deciding the appeals arising out of the order passed under Section 51 of FERA whether filed prior to 01.06.2000 or filed after 01.06.2000 must be the same, i.e., Appellate Tribunal under FEMA. The view taken by the High Court cannot be concurred with and accordingly it is held that the appeal filed by respondent nos. 2 to 4 against the order dated 05.12.2003 passed by Deputy Director of enforcement under Section 51 of FERA will lie and was, therefore, maintainable only before the Appellate Tribunal under Section 19 of FEMA. [Paras 40, 41][570-C-D]
- E 1.8 The appeals which respondent Nos.2 to 4 had filed before the Special Director (Appeals) are accordingly transferred to the concerned Appellate Tribunal constituted under FEMA for their disposal on merits in accordance with law. [Para 42][570-E]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3529 A  
of 2008.

From the Judgment and Order dated 13.07.2006 of the High Court of Judicature at Bombay in Writ Petition Nos. 2780-2782 of 2004 and Writ Petition No. 1567 of 2005 respectively.

K. Radhakrishnan, Sr. Adv., Ms. Rashmi Malhotra, Rajesh Ranjan, B  
Ms. Sunita Rani Singh, Sumit Teterwal, Chakitan Vikram Shekher Papta  
(for B. Krishna Prasad), Advs. for the Appellant.

Ajay Aggarwal, Ms. Mallika Joshi, Rajan Narain, Manish K. Bishnoi, Archit Gupta, Ms. Tanvi Sapra, Narinder K. Verma, Anurag Bhatt, Advs. for the Respondents. C

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.**

1. This appeal is filed by the Union of India against the final judgment and order dated 13.07.2006 passed by the High Court of Judicature at Bombay in Writ Petition Nos. 1567 of 2005, 2780, 2781 & D 2782 of 2004 wherein the High Court allowed the writ petitions and quashed the orders passed by the Special Director (Appeals).

2. The controversy involved in this appeal is short. However, in order to appreciate the same, few undisputed facts need mention hereinbelow. E

3. On 01.05.1991, a memorandum to show cause notice was issued by the Special Director to respondent Nos. 2, 3 and 4, namely, M/s Godrej Industries Ltd. [formerly known as Godrej Soaps Ltd. (R-2)] and its two Directors (R-3 and R-4) for allegedly committing contravention of Sections 9 (1) (a), 9(1)(c) and Section 16(1) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as "FERA") in respect of imports and exports of certain commodities made with two foreign parties, viz., M/s Fingrain, S.A., Geneva and M/s Continental Grain Export Corporation, New York during the year 1977-78. F

4. During the pendency of the proceedings, FERA was repealed with effect from 01.06.2000. It was, however, replaced by Foreign G Exchange Management Act, 1999 (hereinafter referred to as "FEMA").

5. On 05.12.2003, an adjudication order was passed by the Deputy Director of Enforcement under FEMA read with FERA in relation to the show cause notice dated 01.05.1991. By this order, penalty of H

- A Rs.15,50,000/- was imposed on M/s Godrej Industries Ltd. and its two Directors for contravening the provisions of Sections 9 (1)(a) and 9(1)(c) read with Section 16 (1) of FERA.
  - 6. On 15.01.2004, the respondent Nos. 2 to 4 felt aggrieved by the adjudication order dated 05.12.2003 and filed appeal before the Special Director (Appeals) under Section 17 of FEMA.
- B 7. On 08.09.2004 and 08.11.2004, the Special Director (Appeals) dismissed the appeals as being not maintainable. He held that the Special Director (Appeals) has no jurisdiction to hear the appeals against the adjudication order passed under Section 51 of FERA.
- C 8. Respondent Nos. 2 to 4 felt aggrieved by orders dated 08.09.2004 and 08.11.2004 and filed writ petitions before the High Court of Bombay at Mumbai. By impugned common order, the High Court allowed the writ petitions and quashed the orders of the Special Director (Appeals). The High Court held that the appeals filed by respondent Nos.2 to 4 before the Special Director (Appeals) against the adjudication order dated
- D 05.12.2003 were maintainable inasmuch as the Special Director (Appeals) possessed the jurisdiction to decide the appeals on merits.
- E 9. It is against this order of the High Court, the Revenue has felt aggrieved and filed the present appeal by way of special leave before this Court.
- F 10. Heard learned counsel for the parties.
- G 11. Learned counsel for the appellant (Union of India) while assailing the legality of the impugned order contended that on proper reading of relevant provisions of FERA and FEMA and especially Section 81 of FERA and Sections 17, 19 and 49 of FEMA in *juxtaposition*, it is clear that the appeal against the order dated 05.12.2003 passed by the Deputy Director of Enforcement (Adjudicating Officer) under Section 51 of FERA read with FEMA would lie only to the Appellate Tribunal under Section 19 of FEMA but not before the Special Director (Appeals) under Section 17 of FERA.
- H 12. It is this submission, the learned counsel elaborated in his argument by referring to various provisions of FERA and FEMA.
- I 13. In reply, learned counsel for the respondents(assessees) supported the view taken by the High Court and contended that the appeal was rightly held maintainable under Section 17 of FEMA before

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the Special Director (Appeals) against the order dated 05.12.2003 passed by Deputy Director of Enforcement as an Adjudicating Officer for its disposal. Learned counsel also referred to the provisions of FERA and FEMA to support his arguments.

14. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions, we find force in the submissions of learned counsel for the appellants-UOI.

15. The question, which arises for consideration in this appeal, is - which is the proper appellate authority for deciding the appeals filed after repeal of FERA on 01.06.2000 against the order passed under Section 51 of FERA in the proceedings initiated prior to 01.06.2000, viz., is it the "Special Director (Appeals)" under Section 17 of FEMA or is it the "Appellate Tribunal" under Section 19 of FEMA.

16. In other words, the question is, if the Adjudicating Officer has passed an order after the repeal of FERA in the proceedings initiated prior to 01.06.2000, whether an appeal against such order will lie before the "Special Director (Appeals)" under Section 17 of FEMA or before the "Appellate Tribunal" under Section 19 of FEMA.

17. In order to answer the question involved in this appeal, it is necessary to take note of some relevant provisions of FERA (since repealed) and FEMA under which the issue was dealt with. Though Rules are also framed under FEMA prescribing the manner in which the appeals are to be prosecuted but for deciding the question, it may not be necessary to examine the Rules.

18. The relevant Sections are Sections 50, 51, 52, 54 and 81 of FERA and Sections 17, 18, 19 and 49 of FEMA which read as under:

**"FERA"**

**Section 50**

**Penalty-If any person contravenes any of the provisions of this Act other than section 13, clause (a) of sub-section (1) of section 18, section 18 A and clause (a) of sub-section (1) of section 19 or of any rule, direction or order made thereunder, he shall be liable to such penalty not exceeding five times the amount or value involved in any such contravention or five thousand rupees, whichever is more as may be adjudged by the Director of Enforcement or any**

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- A other officer of Enforcement not below the rank of an Assistant Director of Enforcement specially empowered in this behalf by order of the Central Government (in either case hereinafter referred to as the adjudicating officer).

**Section 51**

- B **Power to adjudicate** - For the purpose of adjudging under section 50 whether any person has committed a contravention of any of the provisions of this Act (other than those referred to in that section) or of any rule, direction or order made thereunder, the adjudicating officer shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity for making a representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of that section.

**Section 52**

- C **Appeal to Appellate Board** - (1) The Central Government, may by notification in the Official Gazette, constitute an Appellate Board to be called the Foreign Exchange Regulation Appellate Board consisting of a Chairman [being a person who has for at least ten years held a civil judicial post or who has been a member of the Central Legal Service (not below Grade 1) for at least three years or who has been in practice as an advocate for at least ten years] and such number of other members, not exceeding four to be appointed by the Central Government for hearing appeals against the orders of the adjudicating officer made under section 51.

- D (2) Any person aggrieved by such order may, on payment of such fee as may be prescribed and after depositing the sum imposed by way of penalty under section 50 and within forty-five days from the date on which the order is served on the person committing the contravention, prefer an appeal to the Appellate Board:

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**Provided that the Appellate Board may entertain any appeal after the expiry of the said period of forty-five days, but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time:** A

**Provided further that where the Appellate Board is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, in its own discretion, dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit.** B

**(3) On receipt of an appeal under sub-section (2) the Appellate Board may, after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against and the decision of the Appellate Board shall, subject to the provisions of section 54, be final and if the sum deposited by way of penalty under sub-section (2) exceeds the amount directed to be paid by the Appellate Board, the excess amount shall be refunded.** C D

**(4) The Appellate Board may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer under section 50 read with section 51 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceeding and make such order in the case as it thinks fit.** E

**(5) No order of the adjudicating officer made under section 50 read with section 51 shall be varied by the Appellate Board so as to prejudicially affect any person without giving such person a reasonable opportunity for making a representation in the matter; and subject thereto the Appellate Board shall follow such procedure, in respect of the proceedings before it, as may be prescribed.** F

**(6) The powers and functions of the Appellate Board may be exercised and discharged by Benches consisting of two members and constituted by the Chairman of the Appellate Board:** G

- A      **Provided that if the members of the Bench differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing on such point or points and such point or points shall be decided according to the opinion of that member:**
- B      **Provided further that it shall be competent for the Chairman or any other member of the Appellate Board authorised by the Chairman in this behalf to exercise the powers and discharge the functions of the Appellate Board in respect of any appeal against an order imposing a penalty of an amount not exceeding two lakhs and fifty thousand rupees.**
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#### Section 54

- D      **Appeal to High Court - An appeal shall lie to the High Court only on questions of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52:**

**Provided that the High Court shall not entertain any appeal under this section if it is filed after the expiry of sixty days of the date of communication of the decision or order of the Appellate Board, unless the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.**

**Explanation. —In this section and in section 55, “High Court” means-**

- F      **(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and**
- G      **(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.**

#### Section 81

**Repeal and Saving - (1) The Foreign Exchange Regulation Act, 1947 (7 of 1947) is hereby repealed.**

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**(2) Notwithstanding such repeal-**

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**(a) anything done or any action taken or purported to have been done or taken (including any rule, notification, inspection, order or notice made or issued, or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given or any proceedings taken or any confiscation adjudged or any penalty or fine imposed) under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;**

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**(b) the provisions of section 60 of this Act shall apply in relation to the contravention of any of the provisions of the Act hereby repealed or of any rule, direction or order made thereunder;**

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**(c) any appeal preferred to the Foreign Exchange Regulation Appellate Board under sub-section (2) of section 23E of the Act hereby repealed but not disposed of before the commencement of this Act and any appeal that may be preferred to the said Board against any order made or to be made under section 23 of the Act hereby repealed may be disposed of by any member of the Appellate Board constituted under this Act in accordance with the provisions of sub-section (6) of section 52 of this Act;**

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**(d) every appeal from any decision or order of the Foreign Exchange Regulation Appellate Board under sub-section (3) or sub-section (4) of section 23E of the Act hereby repealed shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement:**

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**Provided that the High Court may entertain any such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.**

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**(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.**

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**FEMA****Section 17****Appeal to Special Director (Appeals).—**

- B      (1) The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.
- C      (2) Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals).
- D      (3) Every appeal under sub-section (1) shall be filed within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:
- E      Provided that the Special Director (Appeals) may entertain an appeal after the expiry of the said period of forty-five days, if he is satisfied that there was sufficient cause for not filing it within that period.
- F      (4) On receipt of an appeal under sub-section (1), the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit, confirming, modifying or setting aside the order appealed against.
- G      (5) The Special Director (Appeals) shall send a copy of every order made by him to the parties to appeal and to the concerned Adjudicating Authority.
- H      (6) The Special Director (Appeals) shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and—  
          (a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974). A

### Section 18

**Appellate Tribunal.**— The Appellate Tribunal constituted under sub-section(1) of Section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976), shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act. B

### Section 19

#### Appeal to Appellate Tribunal.—

(1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal: D

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government: E

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty. F

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed: G

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- A      **Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.**
- B      **(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.**
- C      **(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be.**
- D      **(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:**
- E      **Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.**
- F      **(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.**

### Section 35

- G      **Appeal to High Court.—Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:**

- H      **Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing**

the appeal within the said period, allow it to be filed within A  
a further period not exceeding sixty days.

**Explanation.—**In this section “High Court” means—

(a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and B

(b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain. C

#### Section 49

##### Repeal and saving.—

(1) The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved. D

(2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service. E

(3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act. F

(4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed. G

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- A       **(5) Notwithstanding such repeal,—**
- (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
- B       (b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;
- C       (c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement: Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.
- D       (6) Save as otherwise provided in sub-section (3), the mention of particular matters in sub-sections (2), (4) and (5) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal.”
- E       19. Section 49 (5)(b) of FEMA deals with repeal and saving in relation to the action taken and to be taken under FERA, 1973. Reading F of this Section shows that the legislature has equated the Appellate Board constituted under FERA with the Appellate Tribunal constituted under FEMA for disposal of the appeals filed under Section 52(2) of FERA against an order passed under Section 51 of FERA which were pending before the Appellate Board as on 01.06.2000. Such appeals stood transferred from the Appellate Board to the Appellate Tribunal for their disposal in accordance with law.

20. The reason as to why a specific provision for transfer of such pending appeals was made for their disposal from the Appellate Board to the Appellate Tribunal was that the Appellate Board constituted under FERA stood dissolved by Section 49(1) of FEMA with effect from 01.06.2000.

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21. It is this dissolution of the Appellate Board, which necessitated the legislature to make a corresponding provision in the new Act (FEMA) so that the consequences arising out of the dissolution of the Appellate Board constituted under FERA is taken care of by another appellate authority constituted under the FEMA and all pending appeals are automatically transferred to the Appellate Board for their disposal under FEMA.

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22. Having examined the relevant provisions of FERA and FEMA, we are of the considered opinion that any appeal filed after 01.06.2000 against the order of the Adjudicating Officer passed under Section 51 of FERA in the proceedings initiated under FERA would lie before the Appellate Tribunal under Section 19 of FEMA. This we say for more than one reason set out in detail hereinbelow.

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23. First, if the Adjudicating Officer had passed an order under Section 51 of FERA prior to 01.06.2000, then the appeal against such order was required to be filed before the Appellate Board under Section 52 (2) of FERA. In other words, if the Adjudicating Officer had passed the order under Section 51 of FERA prior to 01.06.2000 when FERA was in force, the appeal against such order was maintainable only under Section 52 (2) before the Appellate Board under FERA.

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24. Second, if such appeal had remained pending before the Appellate Board on 01.06.2000, the same would have been transferred to the Appellate Tribunal constituted under FEMA in terms of Section 49 (5)(b) of FEMA for its disposal.

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25. Indeed, there can be no dispute to the legal position mentioned in the First and Second reasoning *supra*.

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26. Third, a *fortiori*, any appeal, if filed after 01.06.2000 and against the similar order, i.e., an order passed under Section 51 of FERA should also be held to lie before the Appellate Tribunal under Section 19 of FEMA alike the appeals filed prior to 01.06.2000 and which were transferred to the Appellate Tribunal by virtue of Section 49(5)(b) of FEMA.

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- A        27. Fourth, the reason behind this simultaneous statutory transfer of pending appeals to the Appellate Tribunal under FEMA appears to be that the legislature did not intend to provide two separate Appellate Authorities under FEMA for challenging the adjudication order passed under Section 51 of the FERA, i.e., one appeal before the Special Director (Appeals) and the other appeal before the Appellate Tribunal under FEMA.
- B        28. In other words, the legislature did not intend to make a distinction between the two appeals for their disposal by two different appellate authorities under FEMA only because one appeal was filed prior to 01.06.2000, therefore, it will lie before the Appellate Tribunal whereas the other appeal which was filed after 01.06.2000 though against the similar order, it will lie before the Special Director (Appeals). In our view, there does not appear to be any justifiable reason to make such distinction for filing of appeals filed against the similar order passed under FERA before two different appellate authorities under FEMA.
- C        29. In our opinion, this intention of the legislature is strengthened when we read Section 49 (5)(b) of FEMA and Section 81(c) of FERA.
- D        30. So far as Section 49(5)(b) of FEMA is concerned, as mentioned above, it specifically provides that the appeals filed under Section 52 (2) of FERA against the order passed under Section 51 of FERA will be decided by the Appellate Tribunal under FEMA.
- E        31. So far as Section 81(c) of FERA, 1973 is concerned, it deals with Repeal and Saving of FERA, 1947. Clause (c) of Section 81 specifically provides that all the appeals filed under Section 23 of FERA, 1947, whether pending on the date of Repeal or/and those filed after the repeal of FERA, 1947, shall be disposed of by the Appellate Board constituted under FERA, 1973.
- F        32. It is true that Section 49 (5)(b) of FEMA is not worded alike Section 81 (c) of FERA, yet, in our view, it shows the intention of the legislature that all such appeals have to be heard by the Appellate Board under the FERA. The legislative intent contained in Section 81 (c) can be taken into account for interpreting the relevant provisions of FERA and FEMA for deciding the question which is the subject matter of this appeal.
- G        33. We cannot, therefore, accept the submission of learned counsel for the respondents(assessees) that since Section 49(5)(b) of FEMA is not identically worded on the pattern of Section 81(c) of FERA, that

itself would justify that the legislature intended to provide two appellate authorities in FEMA for filing two types of appeals arising out of a similar order.

34. In other words, it is not possible to accept the submission of learned counsel for the respondents(assessees) that by interpretative process this Court can uphold creation of another appellate authority for the disposal of the appeals filed against the order passed under Section 51 of FERA after 01.06.2000 which do not fall under Section 49 (5)(2) of FEMA.

35. Indeed, as mentioned above, when similar occasion arose at the time of repealing of FERA, 1947 by a new Act- FERA, 1973 on 01.01.1974, the legislature provided in Section 81(c) of FERA, 1973 that all appeals filed under Section 23 (E)(2) of FERA, 1947 and pending before the Appellate Board including those appeals which are filed against the order passed after 01.01.1974 shall be disposed of by the Appellate Board under FERA, 1973.

36. Keeping in view this legislative intent, we are of the view that there is no reason as to why the same legislative intent while interpreting the provisions of FERA, 1973 and FEMA, 1999 is applied for deciding the identical question now arising in the case.

37. The aforementioned submission is not acceptable for yet another reason. Perusal of Scheme of FEMA would show that the Special Director (Appeals) is subordinate in hierarchy to the Appellate Tribunal prescribed under Section 49(5)(2) of FEMA. It is, therefore, not possible to hold that one appeal would be maintainable before the Appellate Tribunal and the other appeal arising out of similar order would be maintainable before the Special Director (Appeals), who is subordinate in hierarchy to the Appellate Board. Such distinction does not stand for any logic.

38. This question can be examined from another angle also. If the submission of the learned counsel for the respondents is accepted that the appellate forum in this case for filing appeal is - “Special Director (Appeals)” and not the “Appellate Tribunal” under FEMA then it will result in anomalous situations which will again be incongruous.

39. The anomalous situation would be, the orders passed by the Appellate Tribunal in the appeals, which stood transferred to the Appellate Tribunal by virtue of Section 49 (5)(b), are appealable to the High Court under Section 35 of FEMA whereas the orders passed by the Special

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- A Director (Appeals) in the appeals filed after 01.06.2000 are not appealable to the High Court under Section 35 of FEMA. So, against the same order, one appellant has a right of appeal to the High Court but the other appellant has no such right of appeal because he suffered dismissal of his appeal from Special Director (Appeals) against whose order appeal does not lie under Section 35 to the High Court. In our view, such anomalous situation while interpreting the provisions of the Act should always be avoided.

40. Applying the principle of purposive interpretation, we are of the view that the appellate forum for deciding the appeals arising out of the order passed under Section 51 of FERA whether filed prior to

- C 01.06.2000 or filed after 01.06.2000 must be the same, i.e., Appellate Tribunal under FEMA.

41. In view of the foregoing discussion, we cannot concur with the view taken by the High Court and accordingly hold that the appeal filed by respondent Nos. 2 to 4 against the order dated 05.12.2003 passed

- D by Deputy Director of enforcement under Section 51 of FERA will lie and was, therefore, maintainable only before the Appellate Tribunal under Section 19 of FEMA.

42. The appeals bearing Nos. SD/A/MUM/04-05/38,39,40 and SD/A/MUM/03-04/22 which respondent Nos. 2 to 4 had filed before the

- E Special Director (Appeals) are accordingly transferred to the concerned Appellate Tribunal constituted under Section 18 of FEMA for their disposal on merits in accordance with law.

43. The appeal is accordingly allowed. The impugned order is set aside.

Divya Pandey

Appeal allowed.