

## **P. & S. Export Corporation vs Deputy Director Of Enforcement on 2 September, 1986**

**Equivalent citations: AIR 1986 SC 2017, 1986(34) BLJR 717, [1987] 61 COMPCAS 485(SC), 1987 CRILJ 539, 1986(3) CRIMES 466(SC), 1987(11) ECC 285, 1986(26) ELT 292(SC), JT 1986(1) SC 319, 1986(2) SCALE 376, (1986) 4 SCC 190, AIR 1986 SUPREME COURT 2017, 1986 (4) SCC 190, 1986 BLJR 717, 1987 CHANDCRIC 3, 1986 CURCRIJ 293, 1986 CRIAPPR(SC) 254, 1986 (3) CRIMES 466, 1986 CALCRILR 160, 1986 SCC(CRI) 418, 1986 JT 319, (1986) 26 ELT 292, (1986) EASTCRIC 724, (1987) 11 ECC 285, (1987) 61 COMCAS 485, (1986) SC CR R 329, (1986) 3 SCJ 520, (1986) ALLCRIC 445**

**Author: K.N. Singh**

**Bench: K.N. Singh, M.P. Thakkar**

### **JUDGMENT**

K.N. Singh, J.

1. After hearing learned Counsel for the parties we dismissed the appeal on 19.8.86 and directed that the reasons shall follow later on. Accordingly we are giving the reasons for our decision.

2. This appeal by special leave is directed against the order of the High Court of Delhi dismissing the appellant's appeal made under Section 23EE of the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the Act). Briefly facts giving rise to this appeal are that the 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 States valued at U.S. \$ 5976, out of which the appellant repatriated U.S. \$ 2931. 42 leaving a balance of U.S. \$ 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 23 D 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's 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 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, except 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 the goods is delayed to and 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 -buyer 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 U.S.A. and sold the same by private sale in a surreptitious manner disregarding the directions of the Reserve Bank of India and keeping it in 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% 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 appellant's submission. The appeal fails, is accordingly dismissed.