

WEB COPY

W.A.Nos.12 and 57 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|               |            |
|---------------|------------|
| Reserved on   | 08.09.2025 |
| Pronounced on | 26.09.2025 |

CORAM :

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**  
and  
**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.A.Nos.12 and 57 of 2023  
and  
C.M.P.Nos.139 and 533 of 2023

W.A.No.12 of 2023

P.Balasubramaniam,  
Managing Director,  
City Knitting Company Private Limited,  
No.7-B, Duraisamy Puram,  
2<sup>nd</sup> Street, Tiruppur.

... Appellant / Petitioner

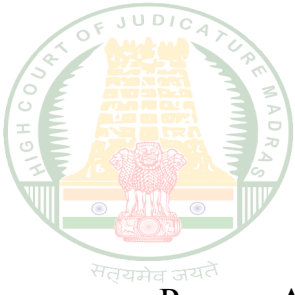
Vs.

1.The Appellate Tribunal for Foreign Exchange,  
4<sup>th</sup> Floor, B-Wing, Janpath Bhavan,  
Janpath, New Delhi.

2.The Special Director of Enforcement,  
Enforcement Directorate,  
Government of India, New Delhi.

3.The General Manager,  
Reserve Bank of India,  
Exchange Control Department,  
Fort Glacis, Rajaji Salai,  
Chennai.

... Respondents / Respondents



W.A.Nos.12 and 57 of 2023

**Prayer:** Appeal under Clause 15 of the Letters Patent, against the Order dated 24.08.2022 passed in W.P.No.14300 of 2009.

W.A.No.57 of 2023

City Mills Private Limited,  
(Successor-in-Interest of Erstwhile  
M/s.City Knitting Company Private Limited)  
Represented by its Managing Director  
P.Balasubramaniam,  
No.7-B, Duraisamy Puram,  
2<sup>nd</sup> Street, Tiruppur – 641 602.

... Appellant / Petitioner

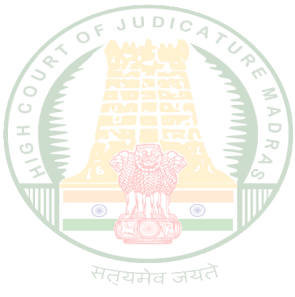
(Accepted the Long and Short Cause Title vide  
Order dated 24.11.2022 in C.M.P.No.20135 of 2022  
in W.A.SR.No.124627 of 2022)

Vs.

- 1.The Appellate Tribunal for Foreign Exchange,  
4<sup>th</sup> Floor, B-Wing, Janpath Bhavan,  
Janpath, New Delhi.
- 2.The Special Director of Enforcement,  
Enforcement Directorate,  
Government of India, New Delhi.
- 3.The General Manager,  
Reserve Bank of India,  
Exchange Control Department,  
Fort Glacis, Rajaji Salai,  
Chennai.

... Respondents / Respondents

**Prayer:** Appeal under Clause 15 of the Letters Patent, against the Order dated 24.08.2022 passed in W.P.No.14301 of 2009.



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W.A.Nos.12 and 57 of 2023

For Appellants : Mr.Karthik Ranganathan  
(In both W.As)

For Respondents :  
(In both W.As)

For R1 and R2 : Mr.N.Ramesh  
Special Public Prosecutor

For R3 : No Appearance

### **COMMON JUDGMENT**

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

By this Common Order, both the Writ Appeals are being disposed of.

2. These Intra Court Appeals are filed against the Impugned Common Order dated 24.08.2022 in W.P.Nos.14300 and 14301 of 2009.

3. By the aforesaid Common Order, Writ Court had dismissed the above Writ Petitions.

4. Before the Writ Court, the respective Appellants who are the Managing Director of the Exporter and the Exporter had challenged the order of the 1<sup>st</sup> Respondent Appellate Tribunal passed under the provisions of the Foreign



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Exchange Regulation Act, 1973 whereby, the order of the 2<sup>nd</sup> Respondent

Special Director of Enforcement, Enforcement Directorate, New Delhi dated

25.11.2003 in Order No. SDE (SSB) IV/58/2003 was affirmed.

5. They had also prayed for a consequential direction to the 3<sup>rd</sup> Respondent, namely, Reserve Bank of India to pass orders on their application dated 06.11.2003 for write-off of unrealised export proceeds.

6. The brief facts of the case are that the Appellant in W.A.No. 57 of 2023, exported consignments of goods to various countries. However, a part of the export proceeds for a sum of Rs.1,09,74,431.20/- on the exports made was not recovered by the said appellant. Details of the export made and the shortfall/deficit in recovering the export proceeds are below:-

| Year      | Value of Exported Goods (In Rs.) | Amount Realized (In Rs.) | Amount to be realized (In Rs.) |
|-----------|----------------------------------|--------------------------|--------------------------------|
| 1991-1992 | 3,88,87,315.00                   | 3,51,18,419.00           | 37,68,896.00                   |
| 1992-1993 | 7,79,04,810.00                   | 7,10,85,010.00           | 68,19,800.00                   |
| 1993-1994 | 1,43,27,996.00                   | 1,43,09,996.00           | 18,000.00                      |
| 1994-1995 | 59,46,098.00                     | 55,78,362.80             | 3,67,735.20                    |
| Total     | 13,70,66,219.00                  | 12,60,91,787.80          | 1,09,74,431.20                 |



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**WEB COPY** 7. The Appellant/Exporter had availed the benefit of Duty Drawback under Section 75 of the Customs Act, 1962 read with Customs and Central Excise Duties Drawback Rules, 1971.

8. Since, a part of the export proceeds was not realized by the Appellants/Exporters, the Appellant in W.A.No. 57 of 2023 has paid back the Duty Drawback to an extent of Rs.5,28,630/- pursuant to a Demand Notice dated 10.04.2003 and Letter dated 07.04.2003 bearing Ref.No.S3/XOS/33/2003/EDI/DBK of the Commissioner of Customs, Chennai.

9. The specific case of the Appellants is that although the order of the First Appellate Tribunal is appealable by way of Civil Miscellaneous Appeal under Section 54 of the Foreign Exchange Regulation Act, 1973 (since repealed), the Appellants filed W.P.Nos.14300 and 14301 of 2009 as the jurisdiction of the Court under Section 54 of the Foreign Exchange Regulation Act, 1973 is confined only on substantial questions of law.

10. It is submitted that since no substantial question was involved, the appellants decided to approach this Court under Art.226 of the Constitution



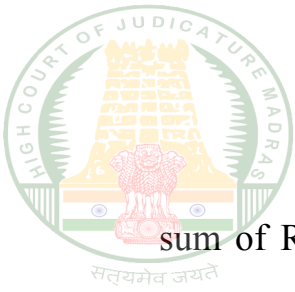
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instead its appellate jurisdiction under Section 54 of the Foreign Exchange Regulation Act, 1973.

11. The facts on record indicate that the Appellants/Exporters were issued with Show Cause Notice dated 03.05.2002 whereby they were called upon to show cause as to why adjudication proceedings as is contemplated under Section 51 of the Foreign Exchange Regulation Act, 1973 read with Sub-Section (3) and Sub-Section (4) to Section 49 of the Foreign Exchange Management Act, 1999.

12. The allegations in the Show Cause Notice was that the Appellants/Exporters had not taken reasonable steps to recover export proceeds of the goods exported from the Country to final destination of the goods in the prescribed manner within the prescribed time limit without the permission of the Reserve Bank of India and was in contravention of Section 18(2) of the Foreign Exchange Regulation Act, 1973 read with Government Notifications No.F-1/67/EC/73-1&3 both dated 01.01.1974.

13. The arguments of the Appellants/Exporters was that the Appellants/Exporters had exported goods during 1991-1992 to 1994-1995 for a



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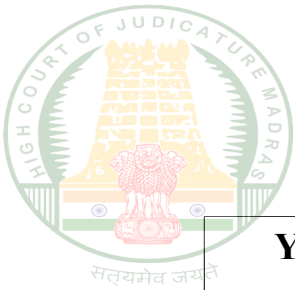
sum of Rs.13,70,66,219.00/- and a sum of Rs.12,60,91,787.80/- was realized,

leaving balance of Rs.1,09,74,431.20/- which could not be recovered despite best of the efforts of the Appellants.

14. It is the case of the Appellants/Exporters that the proceedings under the provisions of the Foreign Exchange Regulation Act, 1973 was without jurisdiction as the short fall was below 10% which ought to have been considered by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and that the Appellants had also requested the Reserve Bank of India to write-off of the unrealised amount for the aforesaid sum as per the AP (DIR Series) Circular No.61 dated 14.12.2002, which has not been considered by the Reserve Bank of India.

15. It is submitted that despite efforts taken to realize the aforesaid export proceeds, the Appellants/Exporters were unable to realize the same and that the Show Cause Notice was issued in respect of the exports made during 1991-1992 to 1994-1995 as detailed below:-

| <b>Year</b> | <b>Value of<br/>Exported Goods<br/>(In Rs.)</b> | <b>Amount<br/>Realized<br/>(In Rs.)</b> | <b>Amount to be<br/>realized<br/>(In Rs.)</b> |
|-------------|---|---|---|
| 1989-1990   | 1,12,32,733.00                                  | 1,12,32,733.00                          | Nil   |
| 1990-1991   | 4,62,00,125.00                                  | 4,62,00,125.00                          | Nil   |



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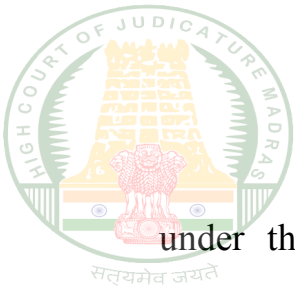
| Year      | Value of<br>Exported Goods<br>(In Rs.) | Amount<br>Realized<br>(In Rs.) | Amount to be<br>realized<br>(In Rs.) |
|-----------|--|--------------------------------|--------------------------------------|
| 1991-1992 | 3,88,87,315.00                         | 3,51,18,419.00                 | 37,68,896.00                         |
| 1992-1993 | 7,79,04,810.00                         | 7,10,85,010.00                 | 68,19,800.00                         |
| 1993-1994 | 1,43,27,996.00                         | 1,43,27,996.00                 | Nil                                  |
| 1994-1995 | 59,46,098.00                           | 55,78,362.80                   | 3,67,735.20                          |
| 1995-1996 | 63,79,290.00                           | 63,79,290.00                   | Nil                                  |
| Total     | 20,08,78,367.00                        | 18,99,21,935.80                | 1,09,56,431.20                       |

16. It is submitted that some of the buyers were untraceable in Germany and UK and the addresses of the other three foreign buyers were untraceable and that a request was sent to the Indian Embassy both in Germany and in UK to locate them. However, the respective Embassy could not locate them and therefore, the Appellants were unable to initiate legal proceeding against them.

17. It is submitted that the Appellants/Exporters were entitled to write-off unrealised export proceeds for a sum of Rs.1,09,74,431.20/- in terms of AP (DIR Series) Circular No.61 dated 14.12.2002 which was not considered by the Reserve Bank of India.

18. It is further submitted that the request of the Appellants were also considered by the Authorized Dealers namely, Indian Overseas Bank, Tiruppur





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under the Reserve Bank of India Act, 1934, wherein vide Letters dated

12.08.2003 and 25.08.2003 and that they had also recommended for write-off

of the unrealised export proceeds vide their communication dated 06.11.2003.

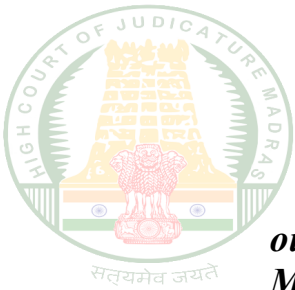
In letter dated 06.11.2003, it was stated as follows:-

***(A) We recommend write-off of these unrealized bills totaling Rs.1,06,06,696 on the following grounds:***

- (1) The value of unrealized bills to the total export performance has not exceeded 10% during any year.***
- (2) As the unrealized bills related to the period from 1991 to 1995, the possibility of further realization is remote.***
- (3) The company has informed us that they have been unable to initiate legal action against the buyers for recovery because the buyers could not be traced even after the Managing Director made personal visits to their countries.***
- (4) Rs.18,000/- outstanding for the year 1993 relate to trade samples for which no payments will be forthcoming.***
- (5) The company has already paid an amount of Rs.5,28,630/- to Customs towards refund of drawback/export incentives received by them relating to the unrealized bills.***

***(B) In terms of AP DIR circular No:30 dt. 4.4.2001 write of outstanding export bills is permitted upto an annual limit of 5% of their average annual realizations during the preceding 3 calender years, which is available in a year cumulatively.***

***Accordingly average realisations of the firm comes to Rs.2.71 crores and 5% of which is Rs.13.56 lacs and for seven years it works out to Rs.94.95 lacs. Though the exporter has requested for writing off Rs.1,06,06,696.00, a little more of Rs.11,06,696, than the ceiling fixed by the Circular, we recommend that the unrealized export bills as detailed in the annexure may be permitted to be written of as a special case in view of the all out efforts taken by the Managing director to realize the***



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*outstandings and the age of the transactions. Moreover the Managing Director had sincerely refunded the export incentives availed to the Customs and had produced documentary evidence for the same.*

19. Thus, it is submitted that the order that was passed by the 2<sup>nd</sup> Respondent, Special Director of Enforcement, Enforcement Directorate, New Delhi on 25.11.2003, against the respective Appellants/Exporters was unsustainable seeking to levy a penalty of Rs.8,00,000/- and Rs.2,00,000/- respectively on the respective Appellants/Exporters.

20. Learned counsel for the Appellants placed reliance on a recent decision of the Hon'ble Supreme Court in “**Union of India and another Vs. Citi Bank, N.A.**”, 2022 SCC OnLine SC 1073 wherein dealing with a somewhat identical situation, Show Cause Notice issued by the 2<sup>nd</sup> Respondent Special Director of Enforcement, Enforcement Directorate, New Delhi just before the repeal of Foreign Exchange Regulation Act, 1973 and that implementation of Foreign Exchange Management Act, 1999 on 01.06.2002, the Hon'ble Supreme Court had quashed the proceedings with the following observation:-

***“23. Admittedly, in the present cases, the alleged transactions had taken place during the financial years 1992 and 1993. Show cause notices for the said***



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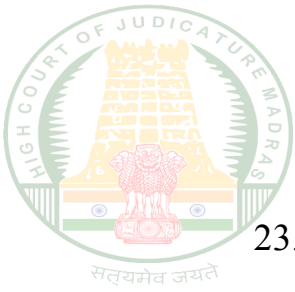
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*transactions were issued in the year 2002 and that too just before the sunset period of FERA was to expire, i.e., on 1<sup>st</sup> June 2002. We are therefore of the considered view that show cause notices and the proceedings continued thereunder are liable to be set aside on this short ground."*

21. Learned counsel for the Appellants had also placed reliance on the following decisions of the Hon'ble Supreme Court and that of other High Courts:-

- i. **Bharat Carpets Vs. Director, Enforcement Directorate,** (2008) 8 SCC 142.
- ii. **Allana Sons Private Limited Vs. Foreign Exchange Regulation Appellate Board and others,** 1993 Mh. L.J. 1085.
- iii. **M/s.Hira Lal Ramesh Chand Mahanth Shivala, Mirzapur and others Vs. Union of India through Chief Secretary, Ministry of Finance, New Delhi and another,** 2006 SCC OnLine All 783.
- iv. **Overseas Textiles Corporation and others Vs. Special Director, Enforcement Directorate and another,** 2012 SCC OnLine Bom 1297.
- v. **M/s.Ganesh Polytex Limited and others Vs. Union of India and others,** 2010 SCC OnLine Del 3355.
- vi. **M/s.Rajasthan Udhyog Vs. Assistant Director (Enforcement) Agr. and Another,** 2011 SCC OnLine Raj 2813.

22. On the other hand, learned Special Public Prosecutor for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents would submit that the Impugned Common Order of the Writ Court, dismissing the respective Writ Petitions filed by the Appellant herein does not merit any interference.



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23. It is submitted that these Writ Appeals are liable to be dismissed in view of Section 54 of the Foreign Exchange Regulation Act, 1973 and Section 35 of the Foreign Exchange Management Act, 1999.

24. It is submitted that since no question of law was involved, the Appellants/Exporters have not filed Civil Miscellaneous Appeal against the order of the 1<sup>st</sup> Respondent Appellate Tribunal.

25. That apart, it is submitted that there are no documents produced by the Appellants/Exporters to show that they have taken effective steps under Section 18 of the Foreign Exchange Regulation Act, 1973 and therefore penalty under Section 50 of the Foreign Exchange Regulation Act, 1973 was correctly awarded by the 2<sup>nd</sup> Respondent Special Director of Enforcement, Enforcement Directorate, New Delhi.

26. It is submitted that as per Section 18(3) of the Foreign Exchange Regulation Act, 1973, where in relation to any goods to which a notification under Clause (a) of Sub-Section (1) applies, the prescribed period has expired and payment thereof has not been made as aforesaid, it shall be presumed, unless the contrary is proved by the person who has sold or is entitled to sell the



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goods or to procure the sale thereof, that such person has not taken all

reasonable steps to receive or recover the payment for the goods as aforesaid

and he shall accordingly be presumed to have contravened the provisions of Sub-Section (2).

27. It is submitted that there are no indication that any meaningful steps have been taken by the Appellants/Exporters for realising the export proceeds. Therefore, order passed by the 2<sup>nd</sup> Respondent Special Director of Enforcement, Enforcement Directorate, New Delhi and the Impugned Order of the 1<sup>st</sup> Respondent Appellate Tribunal as well as the order passed by the Writ Court does deserve any interference and therefore prays for dismissal of the present Writ Appeals.

28. We have considered the arguments advanced by the learned counsel for the Appellants and the learned Special Public Prosecutor for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. We have perused the provisions of the Foreign Exchange Regulation Act, 1973 and the Rules made thereunder and the Notifications issued thereunder.



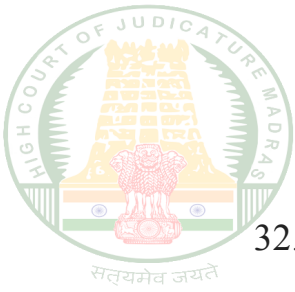
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**WEB (Brief History of Foreign Exchange Control in India:**

29. Before proceeding further it will be useful to refer to have a brief history relating to laws relevant to foreign exchange and its control in India. A system of exchange control was set up in India after the outbreak of 2<sup>nd</sup> World War in September 1939 for conserving Foreign Exchange and for regulating best uses of limited supplies of goods available in India. The control was made effective through a series of Rules under the Defence of India Act, 1939.

30. Since, the shortage of foreign exchange was likely to continue in view of the disruption of the internal economy of many other countries and the interruption of established channels of trade, it was deemed necessary that a system of exchange control should be continued in the general interests of the country.

31. The Defence of India Act, 1935 and the Rules made thereunder remained in force during the continuance of the emergency and for a period of six months thereafter. This period expired on 30<sup>th</sup> September 1946.



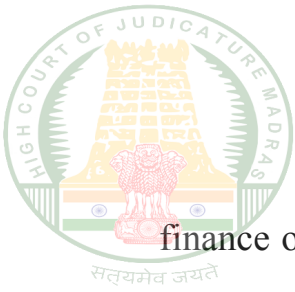
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32. However, under the Emergency Provisions (Continuance) Ordinance, 1946 (Central Ordinance XX of 1946), the aforesaid provisions of the Defence of India Rules which dealt with restrictions on import of gold, purchase of foreign exchange, blocked accounts and other analogous provisions continued in force till 25<sup>th</sup> March 1947, on which date the Foreign Exchange Regulation Act, 1947 was temporarily enacted and came into operation. Foreign Exchange Regulation Act, 1947 was to be in force for a period of ten years.

33. The Foreign Exchange Regulation Act, 1947 embodied the financial provisions of the Defence of India Rules relating to exchange control with certain modifications and amendments which was shown to be desirable in the interests of clarity and effectiveness, and also certain additions such as the section relating to the import of currency and gold and the control over the proceeds of exports which are essentially exchange control matters, although administered by collectors of Customs for practical convenience.

34. The provisions of the Foreign Exchange Regulation Act, 1947 was drafted in such a manner that a degree of restriction on foreign exchange transactions could be relaxed or increased by executive orders, either generally or for particular foreign currencies, in accordance with the needs of trade and



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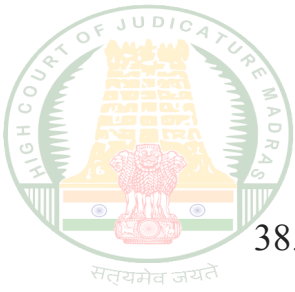
finance or international agreements thus ensuring that flights of capital or wild speculation, which proved so injurious to foreign trade in the period between the two wars, can be immediately controlled.

35. When Foreign Exchange Regulation Act, 1947 was enacted, it was hoped that the world trade and economic conditions would stabilise themselves after the initial post-war period, which was however not fulfilled. The country still continued to be short of foreign exchange and therefore it was fully necessary to ensure that foreign exchange resources were conserved in the national interest.

36. The trend of events in other countries indicated that the shortage was likely to continue for an indefinite period. It is difficult to visualize in any foreseeable future to dispense with the exchange control altogether.

37. The experience gained in the working of the Foreign Exchange Regulation Act, 1947 threw up the lacuna which hampered proper administration of the Foreign Exchange Regulation Act, 1947 and the investigations and legal proceedings initiated thereunder.





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38. Therefore, certain other amendments were made in the said Act with a view to remove these defects. The most important of these amendments was provision for departmental inquiry and adjudication of foreign exchange offences by an authority constituted by Government on the lines of the Sea Customs Act, 1878.

39. Though, Foreign Exchange Regulation Act, 1947 was enacted in the backdrop of World War II and the immediate post-independence foreign exchange crisis was to be a temporary legislation upto 1957. However, in 1957 it was felt that it is necessary to continue it, on Foreign Exchange crisis continued. From the year 1970, India's economy had grown more complex, with increasing international trade, foreign investment, and multinational company participation. Since the Foreign Exchange Regulation Act, 1947 did not provide adequate tools to regulate these developments, Foreign Exchange Regulation Act, 1973 was enacted to consolidate and amend the law relating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency which necessary for the conservation of foreign exchange resources of the country and the proper utilisation thereof in the interests of the economic development of the country. Then the Foreign Exchange Regulation Act, 1973



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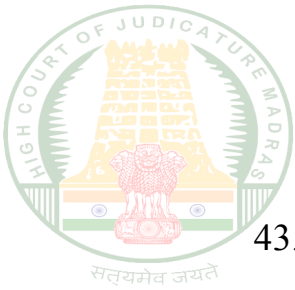
was eventually replaced by the Foreign Exchange Management Act, 1999 with effect from 1<sup>st</sup> June 2000.

**Discussion:**

40. With the above background we shall now proceed to examine the issue with the light of the provisions of Foreign Exchange Regulation Act, 1973.

41. As far as the present case is concerned, the respective Appellants have been imposed with penalty under Section 50 of the Foreign Exchange Regulation Act, 1973. Allegation against the Appellants are that they have violated Section 18(2) of the said Act in as much as they have failed to realize the export proceeds for value of **Rs.1,09,74,431.20/-**.

42. As per Section 50 of the Foreign Exchange Regulation Act, 1973, a person contravening the provisions of the Act or any rule, direction or order made thereunder shall be liable to such penalty not exceeding five times of the amount of the value involved in any such contravention or five thousand rupees, whichever is more.



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43. However, penalty under Section 50 of the Act is not applicable for

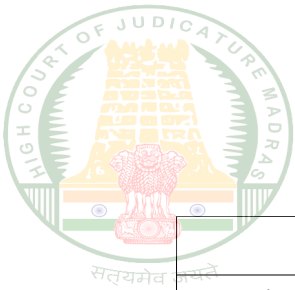
contraventions of Section 13, Section 18(1)(a), Section 18A and Section

19(1)(a) of Foreign Exchange Regulation Act, 1973. For the sake of

convenience, Section 18(2) and Section 50 of the Foreign Exchange Regulation

Act, 1973 are reproduced below:-

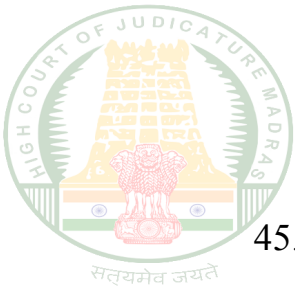
| Section 18(2)  | Section 50. Penalty   |
|--|---|
| <p>Where any export of goods, to which a notification under clause (a) of sub-section (1) applies, has been made, no person shall, except with the permission of the Reserve Bank, do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing-</p> <p>(A) in a case falling under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1),-</p> <p>(a) that payment for the goods-</p> <p>(i) is made otherwise than in the prescribed manner, or</p> <p>(ii) is delayed beyond the period prescribed under clause (a) of sub-section (1), or</p> <p>(b) that the proceeds of sale of the goods exported do not represent the full export value of the goods subject to such deductions, if any, as may be allowed by the Reserve Bank; and</p> <p>(B) in a case falling under sub-clause (ii) of clause (a) of sub-section (1), also that the sale of the goods is delayed to an extent which is unreasonable having</p> | <p>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 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 Adjudication Officer).</p> |



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| Section 18(2)  | Section 50. Penalty |
|--|---------------------|
| regard to the ordinary course of trade.<br><br>Provided that no proceedings in respect of any contravention of the provisions of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full export value has not been made in the prescribed manner within the prescribed period. |                     |

44. To decide the *lis* as to whether penalty under Section 50 of the Foreign Exchange Regulation Act, 1973 was justified or not, a reference has to be made under Section 18(1)(a) of the Foreign Exchange Regulation Act, 1973. It is relevant. Section 18(1)(a) of the Foreign Exchange Regulation Act, 1973 contemplates issuance of a Notification by the Central Government to prohibit the taking or sending out by land, by sea or air (export) of all goods or of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified, unless the exported furnishes to the prescribed authority, a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars which, among others, shall include the amount representing the export value of such goods.



45. For the sake of clarity, Sections 18 (1)(a) of the Foreign Exchange Regulation Act, 1973 is reproduced below:-

**Section 18. Payment for exported goods:-**

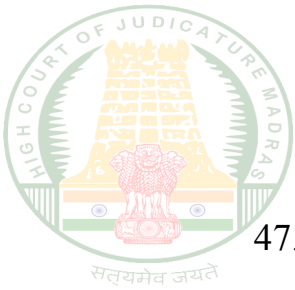
(1)(a) *The Central Government may, by notification in the Official Gazette, prohibit the taking or sending out by land, sea or air (hereinafter in this Section referred to as export) of all goods or of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified unless the exporter furnishes to the prescribed authority a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars which, among others, shall include the amount representing-*

*(i) the full export value of the goods; or*

*(ii) if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the overseas market,*

*and affirms in the said declaration that the full export value of the goods (whether ascertainable at the time of export or not) has been, or will within the prescribed period be, paid in the prescribed manner.”*

46. Under the powers conferred under Section 18(1)(a) of the Foreign Exchange Regulation Act, 1973, the Central Government had also issued Notification No. G.S.R. 78 dated 01.01.1974. Text of the said Notification is an exact reproduction of Section 18(1)(a) of the Foreign Exchange Regulation Act, 1973 with *Proviso*.



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47. Under *Proviso* to the aforesaid Notification No. G.S.R. 78 dated

01.01.1974, certain exceptions have been provided with which are not concerned in these cases. However, sake of record, the said *Proviso* is reproduced below:-

- (a) trade samples supplied free of payment;
- (b) personal effects of travellers, whether accompanied or unaccompanied;
- (c) ships, stores, transhipment cargo and goods shipped under the order of the Central Government or of such officers as may be appointed by the Central Government in this behalf or of the military, naval or air force authorities in India for Military, naval or air force requirements;
- (d) goods despatched by air freight and accompanied by a declaration by the sender that they are less than fifty rupees in value and that their despatch does not involve any transaction in foreign exchange;
- (e) goods, despatched by air freight and covered by a certificate issued by the authorized dealer that their export does not involve any transaction in foreign exchange;
- (f) goods, the export of which in the opinion of the Reserve Bank do not involve any transaction in foreign exchange, and which the Reserve Bank has by a general or special order, permitted to be exported without furnishing a declaration as provided for therein.
- (g) The following goods which are permitted by the Development Commissioner of the Santacruz Electronics Export Processing Zone, the Kundla Free Trade Zone, the Noida Free Trade Zone, the Falta Free Trade Zone, the Madras Free Trade Zone or the Cochin Export-Processing Zone, as the case may be, to be exported without furnishing a declaration as provided for herein namely:
  - (i) imported goods found defective, for the purpose of replacement by the foreign supplier or collaborator;



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- (ii) imported goods which were imported from foreign collaborators on loan basis;
- (iii) surplus goods which were earlier imported from foreign suppliers or collaborators free of cost, after production operations.

48. However, no proceedings in respect of any contravention of Section 18(2) shall be instituted, unless the prescribed period has expired and payment for the goods representing the full export value has not been made in the prescribed manner within the prescribed period.

49. As per Section 18(2) of the Foreign Exchange Regulation Act, 1973, no person shall, except with the permission of the Reserve Bank, do or refrain from doing anything, or take or refrain from taking any action in relation to goods in respect of any notification under Section 18(1)(a) Foreign Exchange Regulation Act, 1973 has been issued, which has the effect of securing:-

| Part                    | A  |   | B  |
|-------------------------|--|---|--|
| Clause (for securing)   | (a) the payment for the goods-<br>i. is made otherwise than in a prescribed manner, or<br>ii. is delayed beyond the period prescribed under Sub-Section (1)(a) | (b) the proceeds of sale of the goods exported do not represent the full export value of the goods subject to such deductions, if any, as may be allowed by the Reserve Bank. | the sale of goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade. |
| in a case falling under | <b>18(1)(a)(i)</b><br>18(1)(a)(ii)   | 18(1)(a)(i)<br>18(1)(a)(ii)   | 18(1)(a)(ii)   |

50. However, Section 18(2) cannot be read in isolation. It has to be read



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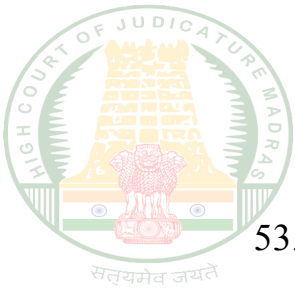
along other provisions of the Act and the notification and the Rules. Violation

of provision to Section 18(2) flows from a violation of contravention in Section 18(1)(a) of Foreign Exchange Regulation Act, 1973 and notification issued thereunder.

51. This is evident that the Appellants have failed to realize the export proceeds as is contemplated under Section 18(2)(A)(a)(ii) of Foreign Exchange Regulation Act, 1973 read with the above notification. However, some amount of business lossess are expected particularly, when exporters have business with strangers from abroad.

52. As per Section 18(3) of the Foreign Exchange Regulation Act, 1973, where in relation to any goods to which a notification under Clause (a) of Sub-Section (1) applies the prescribed period has expired and payment therefor has not been made as aforesaid, it shall be presumed, unless the contrary is proved by the person who has sold or is entitled to sell the goods or to procure the sale thereof, that such person has not taken all reasonable steps to receive or recover the payment for the goods as aforesaid and he shall accordingly be presumed to have contravened the provisions of Sub-Section (2).





53. The economy has been liberalized since 1994. Thus, the Foreign Exchange Regulation Act, 1973 was replaced with Foreign Exchange Management Act, 1999. It is precisely for this reason, write-off of the unrealised export bills has been recognized by the Reserve Bank of India vide its A.P (DIR Series) Circular No.61 dated 14.12.2002. The text of the said Circular is reproduced below:-

Surrender of export incentives

Attention of authorised dealers is invited to paragraph C.18 of A.P (DIR Series) Circular No.12 dated September 9, 2000 in terms of which they have been permitted to allow “write-off” of unrealised export dues and A.P. (DIR Series) Circular No.30 dated April 4, 2001 in terms of which authorised dealers have been granted powers to permit “write-off” annually upto 5% of average annual realisation to status holder exporters subject to certain conditions.

2. While permitting “write-off” one of the conditions specified is that the export benefits, if any, availed of by the exporter are surrendered. It has, however, been brought to our notice that there were instances where exporters had not surrendered export incentives in respect of export bills for which “write-offs” were permitted by their bankers.

3. With a view to ensuring that exporters invariably surrender the export incentives in respect of export bills for which they seek “write-off”, authorised dealers should obtain document/s evidencing surrender of export incentives availed of before permitting “write-off” for the relevant outstanding bills.

4. The authorised dealers are advised to put in a place a system under which their internal inspectors or auditors (including external auditors appointed by authorised dealers) should carry out random sample check/percentage check of “write-off” outstanding export bills.

5. The authorised dealers may please note that the terms and conditions stipulated in the circulars referred to above remain unchanged.

6. Authorised dealers may bring the contents of the circular to the notice of their constituents concerned.

7. The directions contained in this circular have been issued under



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Section 10(4) and Section 11(1) of the FEMA, 1999 (42 of 1999).”

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54. As per the above Circular, authorised dealers were granted powers to permit “write-off” annually upto 5% of average annual realisation to status holder exporters subject to certain conditions. The above circular is the continuation of A.P (DIR Series) Circular No.12 dated September 9, 2000, and A.P (DIR Series) Circular No. 30 dated April 4, 2001.

55. Subsequently, the Reserve Bank of India has further simplified and liberalized the procedure for Write-off of unrealized export bills by issuing **A.P. (DIR Series) Circular No. 88 dated 12.03.2013**. No doubt it is a *post facto*, relaxation, it is relevant to the facts of the case. The text of the aforesaid circular in **A.P. (DIR Series) Circular No. 88 dated 12.03.2013** is also reproduced below:-

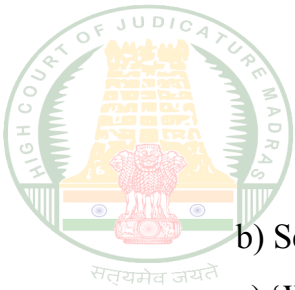
**“Write-off” of unrealized export bills – Export of Goods and**

**Services – Simplification of procedure**

It has now been decided to effect, subject to the stipulations regarding surrender of incentives prior to “write-off” adduced in the A.P. (DIR Series) Circular No. 03 dated 22 July 2010, the following liberalization in the limits of “write-offs” of unrealized export bills:

a) Self “write-off” by an exporter

(Other than Status Holder Exporter) ----- 5%\*



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b) Self “write-off” by Status Holder Exporters----- 10%\*

c) ‘Write-off’ by Authorized Dealer bank----- 10%\*

\*of the total export proceeds realized during the previous calendar year.

3. The above limits will be related to total export proceeds realized during the previous calendar year and will be cumulatively available in a year.

4. The above “write-off” will be subject to the following conditions:

(a) The relevant amount has remained outstanding for more than one year;  
RESERVE BANK OF INDIA Foreign Exchange Department Central Office  
Mumbai - 400 001 -2-

(b) Satisfactory documentary evidence is furnished in support of the exporter having made all efforts to realize the dues;

(c) The case falls under any of the undernoted categories :

(i) The overseas buyer has been declared insolvent and a certificate from the official liquidator indicating that there is no possibility of recovery of export proceeds has been produced.

**(ii) The overseas buyer is not traceable over a reasonably long period of time.**

(iii) The goods exported have been auctioned or destroyed by the Port / Customs / Health authorities in the importing country.

(iv) The unrealized amount represents the balance due in a case settled through the intervention of the Indian Embassy, Foreign Chamber of Commerce or similar Organization;

(v) The unrealized amount represents the undrawn balance of an export bill (not exceeding 10% of the invoice value) remaining outstanding and turned out to be unrealizable despite all efforts made by the exporter;

(vi) The cost of resorting to legal action would be disproportionate to the unrealized amount of the export bill or where the exporter even after winning the Court case against the overseas buyer could



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not execute the Court decree due to reasons beyond his control;

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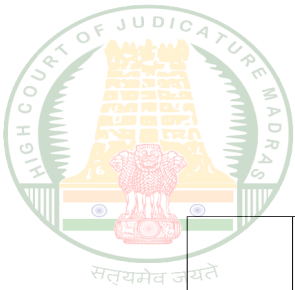
(vii) Bills were drawn for the difference between the letter of credit value and actual export value or between the provisional and the actual freight charges but the amount has remained unrealized consequent on dishonour of the bills by the overseas buyer and there are no prospects of realization.

(d) The exporter has surrendered proportionate export incentives (for the cases not covered under A. P. (DIR. Series) Circular No.03 dated July 22, 2010), if any, availed of in respect of the relative shipments. The AD Category – I banks should obtain documents evidencing surrender of export incentives availed of before permitting the relevant bills to be written off.

(e) In case of self write-off, the exporter should submit to the concerned AD bank, a Chartered Accountant's certificate, indicating the export realization in the preceding calendar year and also the amount of write-off already availed of during the year, if any, the relevant GR / SDF Nos. to be written off, Bill No., invoice value, commodity exported, country of export. The CA certificate may also indicate that the export benefits, if any, availed of by the exporter have been surrendered.

56. This was also reiterated in **C.23 “Write-off” of unrealised export bills of FED Master Direction No. 16/2015-16 dated January 1, 2016** which has been updated as on **March 17, 2025**. We are of the view, the benefit of write-off of unrealised export bills in **FED Master Direction No. 16/2015-16 dated January 1, 2016** can be extended to the Appellants/Exporters as the percentage of short fall in export realization is negligible. The percentage wise short fall in the export realization by the Appellants/Exporters for each of the years during which export were made are as under:-

| Year | Value of Exported | Amount | Amount to be | Write-off | Shortage |
|------|-------------------|--------|--------------|-----------|----------|
|------|-------------------|--------|--------------|-----------|----------|



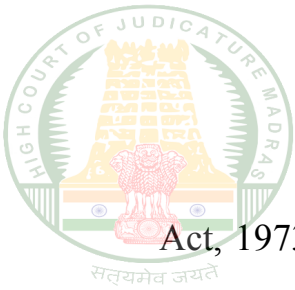
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|           | <b>Goods<br/>(In Rs.)</b> | <b>Realized<br/>(In Rs.)</b> | <b>realized<br/>(In Rs.)</b> | <b>10%<br/>(In Rs.)</b> |                        |
|-----------|---------------------------|------------------------------|------------------------------|-------------------------|------------------------|
| 1991-1992 | 3,88,87,315.00            | 3,51,18,419.00               | 37,68,896.00                 | 35,11,841.90            | 2,57,054.10<br>(0.66%) |
| 1992-1993 | 7,79,04,810.00            | 7,10,85,010.00               | 68,19,800.00                 | 71,08,501.00            | Nil                    |
| 1993-1994 | 1,43,27,996.00            | 1,43,09,996.00               | 18,000.00                    | 14,30,999.00            | Nil                    |
| 1994-1995 | 59,46,098.00              | 55,78,362.80                 | 3,67,735.20                  | 5,57,836.20             | Nil                    |
| Total     | 13,70,66,219.00           | 12,60,91,787.80              | 1,09,74,431.20               | 12,609,178.10           | Nil                    |

57. That apart, even though the Authorized Dealer, namely, the Indian Overseas Bank, Tiruppur had also sent a communication to the 3<sup>rd</sup> Respondent to write-off the unrealised amount, the 3<sup>rd</sup> Respondent has not responded to the same.

58. That apart, the 3<sup>rd</sup> Respondent Reserve Bank of India has also failed to implement the contentions of the above mentioned Circular No.61 dated 14.12.2002. After the Show Cause Notice was issued on 03.05.2002, the above Circular has been issued.

59. Even if there was a violation of contravention of Section 18(1)(a)(i) read with Section 18(2) and Section 18(3) of the Foreign Exchange Regulation



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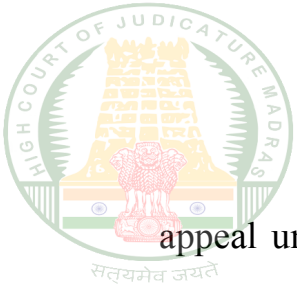
Act, 1973, the Appellants/Exporters are entitled for write-off of the unrealised

export bills. Even otherwise, since Section 18(1)(a) of the Foreign Exchange Regulation Act is to be read along with Section 18(2) and Section 18(3) of the Foreign Exchange Regulation Act, penalty under Section 50 of the Foreign Exchange Regulation Act is not applicable to the facts and circumstances of the case as admittedly the Appellants/Exporters had failed to realize approximately 5.45% of the export proceeds (Rs.1,09,56,431.20/20,08,78,367.00 x 100 = 5.4782155%).

60. Further, the Appellants/Exporters have also reversed the proportionate Duty Drawback that was paid to the Appellants/Exporters by the Customs Authority as has been captured in Paragraph No.8 of this order. Thus, the Appellants/Exporters have not misused the export incentives.

61. Therefore, the Impugned Order of the 1<sup>st</sup> Respondent Appellate Tribunal affirming the Order of the 2<sup>nd</sup> Respondent is liable to be quashed with consequential relief.

62. Therefore, the present Writ Appeals are deserves to be allowed and are accordingly allowed although the Appellants/Exporters could have filed an



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appeal under Section 54 of the Foreign Exchange Regulation Act, 1973. No

costs. Connected Civil Miscellaneous Petitions are closed.

[S.M.S., J.]

[C.S.N., J.]

26.09.2025

Neutral Citation : Yes / No

arb

To:

- 1.The Appellate Tribunal for Foreign Exchange,  
4<sup>th</sup> Floor, B-Wing, Janpath Bhavan,  
Janpath, New Delhi.
- 2.The Special Director of Enforcement,  
Enforcement Directorate,  
Government of India, New Delhi.
- 3.The General Manager,  
Reserve Bank of India,  
Exchange Control Department,  
Fort Glacis, Rajaji Salai,  
Chennai.



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**S.M.SUBRAMANIAM, J.**  
**and**  
**C.SARAVANAN, J.**

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**W.A.Nos.12 and 57 of 2023**  
**and**  
**C.M.P.Nos.139 and 533 of 2023**

26.09.2025