

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-1561 of 2023

Date	Order with signature of Judge
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FRESH CASE.

1. For orders on CMA No.11424/2023.
2. For orders on CMA No.11425/2023.
3. For orders on CMA No.11426/2023.
4. For hearing of main case.

29.08.2023.

Mr. Muhammad Azam Memon, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the judgment rendered on 25.01.2023 by the Foreign Exchange Regulation Appellate Board, at Karachi, dismissing Appeal No.04/2021 filed by the Petitioner against the judgment dated 15.01.2021 passed by the learned Additional Director of Adjudication, State Bank of Pakistan, Karachi in F.E.R Case No.212, 213, 302/2009, 424 and 489/2011, whereby a penalty of Rs.10,860,000/- was imposed under Section 12 (1) of the Foreign Exchange Regulation Act, 1947 read with Section 23-B (4) of the said Act for a failure to repatriate the proceeds of goods exported against five E-forms from the years 2009 to 2011.

The backdrop to the matter is that the Petitioner admittedly made the exports in question against the particular E-Forms, undertaking that the proceeds would be realized within the stipulated time period. In the wake of its failure to do so, Show Cause Notices were issued accordingly, with the ensuing proceedings culminating in the Order of the Adjudicating Court, followed by dismissal of the Petitioner's Appeal, with the relevant excerpt of the Judgment of the Appellate Board reading as follows:

“Appellants exported good subject-matter of the appeal. As mandated in Section 12(1) of the FERA, 1947 they filed a declaration in Form-E to the effect that they shall repatriate the sale proceeds of the exported goods in question within a period of six months. They failed to honour the undertaking given where after they were proceeded against under the Act and the Adjudicating Officer of the State Bank of Pakistan imposed penalty in each case. Impugned order shows that the appellants made no efforts to have the sale proceeds repatriated to Pakistan in terms of declaration that they shall bring back to sale proceeds within the time stipulated.

Neither before the Adjudicating Officer nor before this Court the appellants have produced any sale proceed realization certificates issued by the concerned Bank evidencing repatriation of sale proceeds of the exported goods. In so far as the argument that the appellants had been making bonafide efforts for repatriation of sale proceeds is concerned this is a question of fact for which the appellants should have produced some evidence before the Adjudicating Officer. In absence of any material on record indicating bonafides as claimed this Court sitting in appeal cannot raise presumption to bonafides in favour of the appellants against the record.

The appellants as required by section 12(1) gave an undertaking on Form ‘E’ that they shall deliver to the bank to whom the said form was submitted, the Foreign Exchange proceeds of the goods exported within six months from the date of the shipment/dispatch. It was a simple and straightforward promise made by the appellants to do a certain act i.e. to deliver the value of the exported goods in Foreign Exchange to the bank. The fulfillment of the promise of delivery of Foreign Exchange is a unilateral act. To prove the contravention of the undertaking, it is not necessary for SBP to prove any complicity of the appellants with any other person. The failure to fulfill the undertaking, which is not denied, by itself is a clear-cut proof of the contravention of the promise. The argument advanced by the learned counsel for the appellant is misconceived and is accordingly rejected.

In view of the above discussion, there is no doubt that the appellants contravened the provisions of Section 12(1), FERA, 1947 and were rightly proceeded against and penalized under section 23(B), FERA, 1947. After going through the record of the cases and in view of the clear provisions of the law, I am of the opinion that the instant appeal filed and the pleas, taken therein by the appellants are meritless consequently dismissed alongwith all pending applications whatsoever on above grounds.”

On query posed to learned counsel for the Petitioner as to what perversity or illegality afflicted the Orders of the fora below, he merely sought to argue that certain amounts realized against exports made by the Petitioner had not been factored in for purpose of the adjudication.

However, upon examination of the Memo of Petition and even the Memo of Appeal in the underlying proceedings initiated before the Appellate Board, it transpires that no particulars of such transactions have been mentioned. Nor has any amount been quantified. Furthermore, it falls to be considered that the proceedings against the Petitioner relate to exports against specific E-forms and to the realization of their proceeds, hence cannot be conflated with other transactions.

As such, the Petition is found to be devoid of force and stands dismissed accordingly along with the pending miscellaneous applications.

JUDGE

JUDGE

MUBASHIR