

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date	Order with signature of the Judge
------	-----------------------------------

Present:

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Muhammad Abdul Rehman.

C.P.No.D-1099 of 2023

M/s Sana Enterprises	Petitioner
	Vs.	
Foreign Exchange Operations Department, State Bank of Pakistan & others	Respondents.

26.08.2025.

Mr. Darvesh K. Mandhan, advocate for Petitioner.
Mr. Manzoor ul Haq, advocate for respondents a/w Faraz Khan
Jadoon, Deputy Legal Adviser SBP, Zafar A.D. FEOD.

ORDER

=

MUHAMMAD IQBAL KALHORO J: This petition impugns two judgments dated 08.12.2022 and 04.02.2023, first passed by Adjudicating Officer in F.E.R. Case No.2885/2018 and the second by Foreign Exchange Regulation Appellate Board deciding complaints filed by Foreign Exchange Operations Department, the State Bank of Pakistan, through its authorized officer against petitioner for contravention of provisions contained in section 12(1) of Foreign Exchange Regulation Act, 1947 (F.E.R. Act, 1947) r/w Foreign Exchange Rules 1952 (Rules, 1952) and Notification No.F.E.3/2001-SB dated 28.09.2001.

2. It was alleged in the complaint that petitioner had exported goods against "E" forms (53 E forms) (details of which is duly mentioned in the complaint) but petitioner failed to repatriate export proceeds within stipulated time of six months from the date of shipment as per undertaking given by it in form "E" submitted at the time of export of goods. This failure was considered as a violation of relevant provisions of law, as noted above, hence showcause notices and summons were issued to the petitioner to either explain such failure or to pay penalty upto five times of the value of goods exported in terms of subsection 4 of section 23-B of F.E.R. Act, 1947.

3. The petitioner submitted a reply but the same was found unsatisfactory hence a charge was framed against him to which it pleaded not guilty. In the proceedings before Adjudicating Officer, the record reveals, the petitioner kept on seeking adjournments on one pretext or the other mainly seeking time

to make good of the losses of foreign exchange to the National Exchequer. Finally, the complainant called it a day and refused to give further time to the petitioner to settle its long outstanding export bills. Thereafter, the petitioner disappeared and remained absent in the proceedings, hence Adjudicating Officer decided to proceed against the petitioner in its absence on merits.

4. The Adjudicating Officer set out points for determination as under:-

- i. Whether the above accused is Proprietor/Signatory of M/s. Sana Enterprises, Karachi.
- ii. Whether the above firm/accused person exported goods as details mentioned above.
- iii. Whether the above Firm/ accused person failed to repatriate above export proceeds to Pakistan within stipulated time period.
- iv. What offence, if any, the above firm/accused person has committed.

5. The Adjudicating Officer then proceeded to examine the complainant and the witness produced by him including the record. Through impugned judgment, he concluded that repatriation of sale proceeds was sole responsibility of the petitioner and in case of non-repatriation thereof, the petitioner should have given evidence that despite its genuine efforts, it failed to get amount repatriated to Pakistan as the circumstances were beyond its control. Hence, he directed the petitioner to deposit an amount of Rs.1,815,060/- (Rupees one million Eight hundred fifteen thousand sixty only), the details of breakup of which has been given in the impugned judgment.

6. This judgment was challenged by the petitioner before the Foreign Exchange Regulation Appellate Board at Karachi in appeal. The said appeal has been dismissed vide impugned judgment, hence this petition.

7. The only ground taken by counsel for the petitioner in arguments here is that the penalty has been imposed upon the petitioner in respect of the goods which were not even exported by it; the entries which were examined and decided against petitioner by the Adjudicating Officer were not the entries pertaining to the export of goods made by the petitioner. However, he did not substantiate the same by offering any evidence. On the contrary, we have seen that this was not even the ground taken by the petitioner either before the Adjudicating Officer or before the Appellate Board. Before Adjudicating Officer, the petitioner remained absent and did not put up any defence to either explain the circumstances which thwarted it from

repatriating the export proceeds, or frustrated its genuine efforts in repatriating proceeds of export to Pakistan. On the contrary, the petitioner kept on asking for time to settle export accounts but finally when further time was refused, it chose to remain absent.

8. Before the Appellate Board, the case of the petitioner was confined only to a proposition that it was not granted a reasonable opportunity by the Adjudicating Officer to explain the issue, nor he had appreciated the actual circumstances behind its failure to bring the export proceeds to Pakistan. The ground taken by the petitioner in the appeal was that it was unable to receive payments against the exports made to Srilankan exporter. The Appellate Board while appreciating the ground of the petitioner has observed that petitioner has failed to bring on record any evidence showing the circumstances leading to its inability to receive payments against exports made by it. The Appellate Board has further observed that the petitioner not only before the Adjudicating Officer but before it has failed to produce any sale proceeds realization certificate issued by the concerned bank establishing repatriation of sale proceeds of exported goods. The Appellate Board has also noted the failure of the petitioner to produce any evidence establishing that the circumstances were beyond its control and therefore, it could not bring in Pakistan any sale proceeds of the exported goods.

9. In absence of any material on record indicating bonafide of the petitioner leading to its failure to account for the sale proceeds of exported goods, the concurrent findings recorded by both the forums below against it cannot be said to suffer from any illegality or irregularity. Under the law, the petitioner was required as noted in the undertaking in form "E", to bring in sale proceeds of the exported goods within six months but the petitioner failed to observe such undertaking. When the proceedings against it started before Adjudicating Officer, it failed to give any reason of its failure, and was not able to explain any circumstance beyond its control due to which it was unable to bring any proceeds of exported goods. The relevant evidence in the shape of "E" form was produced before Adjudicating Officer, who on its appreciation concluded that the petitioner was in default. No evidence contrary to it was presented by the petitioner either before the Appellate Board. Even before us, except making a bald assertion that it has been penalized in respect of goods not exported by it, it has failed to produce any

evidence in support of its claim or its failure to account for the sale proceeds of exported goods. His argument that against wrong entries the petitioner has been penalized does not hold good as there is no evidence to substantiate the same. The petitioner has been penalized on appreciation of E form, all of which 53 in number, were produced before the Adjudicating Officer.

10. It goes without saying that the discretion under the constitutional jurisdiction is limited only to see if any illegality has been committed by the fora below, which has caused miscarriage of justice. In this case, two forums below have made in-depth analysis of the record and have concluded that petitioner is liable, due to its default to account for exported goods, to pay penalty of the amount, as detailed above. We do not find any reason to disagree with them and take a different view when there is no evidence, contrary to it, which may change our view. Consequently, we do not find any merits in this petition and dismiss it accordingly along with pending applications.

The petition is disposed of in the above terms along with pending applications.

JUDGE

JUDGE