

**APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI**

**(1) FPA-FE-137/MUM/2011**

Shri Vallabhbhai Surani ... Appellant

**(2) FPA-FE-138/MUM/2011**

Shri Jivrajbhai P. Surani ... Appellant

**(3) FPA-FE-140/MUM/2011**

Shri Virjibhai K. Kukadia ... Appellant

**(4) FPA-FE-141/MUM/2011**

Shri Suresh V. Kukadia ... Appellant

**(5) FPA-FE-142/MUM/2011**

Shri Rajeshbhai J Surani ... Appellant

**(6) FPA-FE-143/MUM/2011**

Mrs. Kalavatiben V Surani ... Appellant

Versus

Directorate of Enforcement, Mumbai ... Respondent

**Advocates/Authorized Representatives who appeared**

For the Appellant : Shri Sunil Dalal, Sr. Adv.  
Mr. Ajay Chopra, Shri Ankit  
Rana, Shri Sarthak Malhotra,  
Shipra Bali, Advocates

For the Respondent : Shri Varun Mishra, Shreeya Sud,  
Advocates

**CORAM**

**JUSTICE MUNISHWAR NATH BHANDARI** : **CHAIRMAN**  
**SHRI G.C. MISHRA** : **MEMBER**

**FINAL ORDER**  
**.04.2026**

**Brief facts:**

1. The present appeals have been filed against the order of the Adjudicating Authority dated 28.10.11 u/s 19 of the Foreign Exchange Management Act, 1999 (FEMA, 1999) wherein it was held that M/s J.B. Diamonds Ltd. has contravened provisions of section 7 of FEMA, 1999 read with Regulation 8,9,13 and 16(1)(i) of Foreign Exchange Management (Exports of Goods & Services) Regulation, 2000. The directors (appellants herein) of the J.B. Diamonds Ltd. have contravened the aforesaid provisions and penalized with a sum of Rs. 5,00,00,000/- as well as Rs. 5,000/- each as detailed in the impugned order.

2. The facts of the case reveal that intelligence was gathered in the Mumbai Zonal Office of the Directorate of Enforcement, that M/s J.B. Diamonds Ltd. engaged in the business of import and export of rough, cut and polished diamonds did not realize the proceeds of exports for more than twelve months from the date of exports. Based on the information, summons were issued to the appellants.

3. It was further revealed that one of the directors, Vallabhbai P. Surani, in his statement recorded on 15.02.2010 stated that M/s J.B. Diamonds Ltd. was established in 1981 and in the year 2007 the company changed its status and became a limited company. Sh. Vallabhbai P. Surani, Sh. Jivarajbhai P.Surani, Sh. Bhagwanbhai K Kukadia, Sh. Virjibhai K. Kukadia, Sh.Rajeshbhai J Surani, Sh. Suresh V. Kukadia and Smt. Kalavatiben V. Surani are the directors in M/s J.B. Diamonds Ltd.. He further added that the rough and polished diamonds were imported from Belgium, Dubai, Hong Kong and London, and were

then sent to their three manufacturing units located in Surat for processing from rough to polished diamonds. It was further stated that J.B. Diamonds Ltd. was not able to realize the export remittances, due to 30% to 40% fall in prices of cut & polished diamonds in the year 2008-09 and also due to the global recession. Their buyers abroad defaulted in the payments. Moreover, the company had exported polished diamonds to their foreign buyers, with whom they had established business transactions for more than 10 to 15 years. These buyers were based in Hongkong, UAE, Bangkok, London, Israel, USA etc, and the goods were supplied on the credit terms of 90 to 120 days, however, due to fluctuations in exchange rates and fall in demand of the diamonds in the International market, the foreign buyers were not able to recover their money from their buyers and thus in turn stopped making payments of export dues to M/s J.B. Diamonds Ltd. The statement further disclosed that certain foreign buyers were related parties with family members of the directors of M/s J.B Diamonds Ltd. holding positions in those entities. However, it was contended that the transactions between these entities and M/s J.B. Diamonds Ltd. were conducted without undue benefit.

4. The investigation further revealed the records obtained from the Authorized Dealer of M/s J.B. Diamonds Ltd. demonstrate the extent of unrealized export proceeds. Moreover, in several cases, the figures disclosed by M/s J.B. Diamonds Ltd. were inconsistent and did not match the corresponding records provided by the authorized dealers.

5. Accordingly, the Adjudicating Authority held that M/s J.B. diamonds Ltd. failed to take the necessary steps to realize exports proceeds pertaining to 417 export invoices (2004-2009) and a substantial amount remained outstanding. Moreover, it was held that the appellants could

not provide substantial documents to prove their claim that the foreign companies had gone into liquidation and therefore the export money could not be recovered. Hence, the Adjudicating Authority concluded that the appellants failed to take due diligence and the reasonable steps to recover the export proceeds within the prescribed time limit and thereby violated section 7 of FEMA, 1999 read with Foreign Exchange Management (Exports of Goods & Services) Regulation, 2000.

**Submissions of appellants:**

6. The Ld. Counsel for the appellants argued that the respondent wrongly held that there was a willful inaction on the part of the appellants in taking necessary steps to realize the export outstanding. However, this claim of the respondent is based on the presumption that certain foreign buyers were the sister companies of M/s J.B. Diamonds Ltd. The respondent completely failed to appreciate that the company had received Rs.4,140 crores foreign exchange out of the total export of Rs. 4,459 crores during 2005 to 2009, a portion of which come from these very so-called sister concerns.

7. It was also argued that the respondent failed to appreciate that the provisions of section 8 of FEMA, 1999 does not define the terms "reasonable steps" to be taken by an exporter. Similarly, Regulation 15 of the Foreign Exchange Management (Export of Goods & Services) Regulation, 2000 also does not deal with the term "reasonable steps" to be taken by the exporter when there is a delay in receipt of payment. On the contrary, Regulation 15 requires RBI to give such directions as appears to it to be expedient for the purpose of securing the payment. There is no clear indication in the statute itself regarding what steps

would be reasonable enough to absolve an exporter from committing a contravention.

8. It was further argued that the respondent failed to appreciate that the appellants submitted various documents before the respondent, during the adjudication proceeding. The foreign buyers were making regular payments all through the period between 2005 to 2008. It was only during 2008 to 2009 that the worldwide recession started and the foreign exchange in those countries also got devalued, the cumulative effect of which was defaulting payments to the suppliers from India. This was a long process and ultimately during 2010 all the three companies faced liquidation and stopped their business. The respondent has made an observation that even in the case of liquidation, some of the foreign companies were owned by the family members only. This is not a ground for suspecting that the J.B. Diamonds Ltd. tried to keep the money abroad with their relatives. Further, these very companies owned by the relatives had been remitting foreign exchange towards exports regularly during the period 2005 to 2008.

9. It was further argued that Regulation 13 of Foreign Exchange Management (Export of Goods & Services) Regulation, 2000 requires every exporter to seek permission of the RBI only when they want to do or refrain from doing anything or take or refrain from taking any action which has the effect of "securing" that the payment for the export is not received. The term "securing" has the special meaning and effect for the purpose of this Regulation 13. The respondent also held the appellant guilty of contravention of Regulation 16 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2000 for non-export of goods against the advance remittances. Regulation 16 merely requires an exporter to ship the goods within one year from the date of

receipt of advance payment. However, the proviso clause to Regulation 16(1) merely prohibits refund of the advance payment received if a shipment is not made within one year of receipt of advance payment. In case the refund is to be made after one year, the permission of RBI is required. In the case of the appellant, no refund was made even after one year, nor was any shipment after one year. Hence there was no requirement of any permission from the RBI. Violation of this Regulation would take place only when the J.B Diamonds Ltd. was to refund the advance to the respective buyers after a period of one year without seeking RBI approval.

10. The appellant also submitted that they exercised all due diligence and took all the possible steps to realize the export proceeds including appointment of legal counsel to initiate and pursue liquidation proceedings against the concerned entities. Moreover, the appellants asserted that they have paid the pre-deposit of Rs.25,00,000/- in compliance of the statutory requirement under FEMA, 1999.

11. The appellant also submitted that one of the directors of the company has expired and the said director was in charge of the operations of the company and not the other directors i.e. the present appellants. Therefore, none of the appellants would be liable under section 42(1) of the FEMA, 1999. It was contended that the role and liability of the individual directors ought to have been considered separately and cannot be mechanically attributed.

The appellants limited their arguments to the points mentioned above, despite an opportunity provided during the final hearing.

**Submissions of respondents:**

12. The counsel for the respondents submitted his arguments. The respondent argued that the proceeds of exports remained unrealized beyond the prescribed period and that the appellants failed to take any reasonable and effective steps for their recovery. The respondents submitted that director appellants will be liable under section 42 of the FEMA, 1999 as neither the company nor its directors took any reasonable steps to realize the export proceeds. They also failed to provide the requisite documentary evidence to prove their contentions. Further arguments made by the respondent would be referred to while recording findings to avoid repetition of one and the same facts and for the sake of brevity.

**Analysis and Findings:**

13. We have heard the arguments and perused the documents on record.

14. It is the case where export proceeds amounting to US \$117,315,207.13 with respect of 417 export invoices remained unrealized beyond the prescribed period and the appellants failed to take reasonable and effective steps to realize the said proceeds. The respondent contended that M/s J.B. Diamonds Ltd. failed to export goods against the receipt of advance amounting to a total sum of INR 3,77,21,139/- from its overseas buyers within twelve months from the date of receipt of such advance thereby contravening section 7 of FEMA, 1999 read with Regulation 16(1)(i) of Export regulation. The relevant sections are reproduced below:

Section 7 of FEMA, 1999-

*7. Export of goods and services.—(1) Every exporter of goods shall— (a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, 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 a market outside India; (b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.*

*(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.*

*(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.*

16(1)(i) of Foreign Exchange Management (Exports of Goods & Services) Regulation, 2000-

*16. Advance payment against exports. –*

*(1) Where an exporter receives advance payment (with or without interest), from a buyer outside India, the exporter shall be under an obligation to ensure that-*

*(i) the shipment of goods is made within one year from the date of receipt of advance payment;*

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*Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilised portion of advance payment or towards payment of interest, shall be made after the expiry of the said period of one year, without the prior approval of the Reserve Bank.*

On the other hand, the appellants contended that M/s J.B Diamonds Ltd. has realized a substantial portion of its export proceeds and out of

exports worth approximately ₹4, 459/- crores during the period 2005–2009, foreign exchange amounting to about ₹4,140/- crores had already been realized. Moreover, the outstanding dues were attributable to global economic conditions prevailing during 2008–09, including recession in international markets, the fluctuation in exchange rates and decline in demand for diamonds, which resulted in defaults by foreign buyers. The outstanding dues were spread across numerous buyers and were not limited to the sister entities of the J.B. Diamonds Ltd..

15. The regulatory framework under Section 7 of FEMA, 1999 and Regulation 9 of the Foreign Exchange Management (Exports of Goods & Services) Regulation, 2000 puts an obligation upon exporters to realize and repatriate the full export value of goods within the stipulated period. The said Regulation is reproduced below:

*9. Period within which export value of goods/software to be realised. –*

*[(1)] The amount representing the full export value of goods or software exported shall be realised and repatriated to India within [nine months] [Substituted for the words "twelve months" by Notification No. G.S.R. 362 (E) dated 28.4.2014 (w.e.f. 8.5.2000)] from the date of export:*

*Provided that where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within fifteen months from the date of shipment of goods:*

*Provided further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the said period of [nine months] [Substituted for the words "twelve months" by Notification No. G.S.R. 362 (E) dated 28.4.2014 (w.e.f. 8.5.2000)] or fifteen months, as the case may be.*

*Explanation. - For the purpose of this regulation, the "date of export" in relation to the export of software in other than physical form, shall be deemed to be the date of invoice covering such export.*

(2)*(a) Where the export of goods or software has been made [\* \* \*] [Inserted by G.S.R. 199(E), dated 27.2.2001 (w.e.f. 27.2.2001).] [by a Status Holder Exporter, as defined in the Exim Policy in force,] [Inserted by G.S.R. 473(E), dated 1.4.2002 (w.e.f. 8.7.2002).] [then notwithstanding anything contained in sub-regulation (1), the amount representing the full export value of goods or software shall be realised and repatriated to India within twelve months from the date of export:*

*Provided that the Reserve Bank may for a sufficient and reasonable cause shown, extend the said period of twelve months.*

(b)*The Reserve Bank may for reasonable and sufficient cause direct that the [said exporter/s] [shall cease to be governed by sub-regulation (2): [Inserted by G.S.R. 199(E), dated 27.2.2001 (w.e.f. 27.2.2001).]*

*Provided that no such direction shall be given unless the [said exporter] [Inserted by G.S.R. 199(E), dated 27.2.2001 (w.e.f. 27.2.2001).] [has been given a reasonable opportunity to make a representation in the matter.*

(c)*On such direction, the [said exporter/s] shall be governed by the provisions of sub-regulation (1), until directed otherwise by the Reserve Bank.]]*

The prescribed scheme under the Act and regulations also allow the exporter to seek extension of time from the Reserve Bank of India or authorized dealer upon showing sufficient cause. However, in the present case, the material on record indicates that the export proceeds are outstanding from 24.05.2004 and the appellants have failed to furnish requisite information to prove that efforts were made to realize these proceeds during the period of 5-6 years when the business of the overseas parties were running.

16. The appellants have also failed to bring any documentary evidence on record showing that extension of time was sought or granted by the Reserve Bank of India in respect of the said export bills. The appellants have only annexed application that was addressed to the authorized bank to request RBI for extension.

17. The appellants have also contended that Regulation 13 of the Foreign Exchange Management (Export of Goods and Services) Regulation, 2000 states that prior permission of the Reserve bank of India is only required under circumstances where the exporter undertakes any act of omission with effect of “securing” non-realization of export. Regulation 13 of the Foreign Exchange Management (Export of Goods and Services) Regulation, 2000 is reproduced below:

13. Payment for the export. –

*In respect of export of any goods or software for which a declaration is required to be furnished under regulation 3, no person shall except with the permission of the Reserve Bank or, subject to the directions of the Reserve Bank, permission of an authorised dealer, do or refrain from doing anything or take or refrain from taking any action which has the effect of securing-*

*(i) that the payment for the goods or software is made otherwise than in the specified manner; or*

*(ii) that the payment is delayed beyond the period specified under these Regulations; or*

*(iii) that the proceeds of sale of the goods or software exported do not represent the full export value of the goods or software subject to such deductions, if any, as may be allowed by the Reserve Bank or, subject to the directions of the Reserve Bank, by an authorised dealer:*

*Provided that no proceedings in respect of contravention of these provisions shall be instituted unless the specified period has expired and payment for the goods or software representing the full export value, or the value after deductions allowed under clause (iii), has not been made in the specified manner within the specified period.*

This contention of appellants is rejected as the appellants have violated the aforesaid Regulation by failing to realise export proceeds within the prescribed period and not by securing the full export value of exports. It is noted that a substantial portion of export proceeds remained unrealised, including amounts arising from transactions with sister concerns without obtaining permission from Reserve Bank of India or an authorized dealer.

18. We have perused the documents produced by the appellants to demonstrate liquidation of certain overseas buyers, however, the copy of these records was not obtained from any official sources but were merely printouts obtained from internet sources. We also find that there is no material on record to demonstrate that the appellants had filed claims before liquidators or initiated effective recovery proceedings against the overseas buyers in question. It is also noted that the companies have undergone liquidation after the Directorate of Enforcement started investigation in the matter. Even though the director appellants have attributed the delay to the global recession and financial distress of foreign buyers, the record does not disclose sufficient evidence of concrete recovery measures such as legal proceedings, arbitration or claims lodged with insolvency authorities abroad in respect of the majority of the outstanding buyers. Moreover, the some of these companies were owned by their family members as admitted in the statement of Sh. Vallabhbhai P. Surani.

19. The next allegation relates to receipt of advance payments from overseas buyers amounting to ₹3,77,21,139/- against which exports were not affected within one year from the date of receipt of advance. It is the argument of the appellant that Regulation 16(1)(i) of the Regulation of 2000 merely requires shipment within one year and that contravention of the same would arise only in cases where the advance amount is refunded after the expiry of the prescribed period without obtaining approval of the Reserve Bank of India. Plain reading of Regulation 16(1)(i) of Foreign Exchange Management (Exports of Goods & Services) Regulation, 2000 reveals that obligation is imposed on the exporter to ensure shipment of goods within one year from the date of receipt of advance payment. The proviso also mentions refund of advance after

expiry of the said period. The said regulation does not dilute the primary obligation of the exporter to effect shipment within the stipulated time. In case at hand, the appellant Sh. Vallabhbhai Surani in his statement dated 18.02.2010 admitted that exports were not made against certain advances received from the overseas buyers. In addition to this, no satisfactory explanation has been placed on record as to why exports were not effected within the prescribed period or why the advances were not adjusted against other export obligations. Therefore, the finding of the Adjudicating Authority regarding contravention of Section 7 of FEMA, 1999 read with Regulation 16(1)(i) of Foreign Exchange Management (Exports of Goods & Services) Regulation, 2000 cannot be said to be without basis.

20. The Adjudicating Authority also stated that Section 42(1) of FEMA, 1999 has been violated and held that the directors of the company were liable for the contraventions committed by the company. Section 42(1) is reproduced below:

*42. Contravention by companies.—*

*(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*

*Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.*

*Explanation.—For the purposes of this section— (i) “company” means any body corporate and includes a firm or other association of individuals; and (ii) “director”, in relation to a firm, means a partner in the firm.*

The said provision stipulates that where a contravention has been committed by a company, every person who at the time of contravention was in charge of and responsible for the conduct of its business shall be deemed to be guilty unless he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contraventions. In the present case, the Sh. Vallabhbhai Surani admitted in his statement dated 15.02.2010 that Sh. Vallabhbhai P. Surani, Sh. Jivarajbhai P.Surani, Sh. Bhagwanbhai K Kukadia, Sh. Virjibhai K. Kukadia, Sh.Rajeshbhai J Surani, Sh. Suresh V. Kukadia and Smt. Kalavatiben V. Surani were the persons responsible for the conduct of the business of the company during the relevant period. No material has been produced to demonstrate the contrary or even that they had exercised due diligence to ensure compliance with the provisions of FEMA, 1999.

21. However, with respect to the appellant Smt. Kalavati it is held that she was only a housewife and not responsible for the day-to-day affairs of the company. There is nothing on record to show that she had the knowledge of exports and non-realization of export proceeds. Hence, all the appellant directors except Smt. Kalavatiben V. Surani are guilty of violating section 42(1) of the FEMA, 1999.

22. In light of the above discussion, we find cause of interference in the impugned order so far as the appeal filed by the appellant Smt. Kalavatiben V. Surani. Accordingly, her appeal is allowed.

23. Keeping in view the discussions made above, we find no cause of interference in the impugned order with regards to the appeal filed by the other directors.

**(Justice Munishwar Nath Bhandari)**  
**Chairman**

**(G.C. Mishra)**  
**Member**

**New Delhi,**  
**..... April, 2026**  
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