

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

**(1) MP-FE-171/BNG/2018 (Stay)
FPA-FE-17/BNG/2016**

M/s. BPL Limited ... Appellants

Versus

The Joint Director
Directorate of Enforcement, Bangalore ... Respondent

**(2) MP-FE-170/BNG/2018 (Misc.)
FPA-FE-18/BNG/2016**

Shri Ajit G. Nambiar ... Appellant

Versus

The Joint Director
Directorate of Enforcement, Bangalore ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellants : Mrs. Aachal Basur, Advocate
Mr. Abhay Kumar, Advocate

For the Respondent : Mr. Shoumendu Mukherji, Adv.

CORAM

SHRI BALESH KUMAR : MEMBER
SHRI RAJESH MALHOTRA : MEMBER

FINAL ORDER
07.05.2026

This Order disposes of the Appeals Nos. FPA-FE-17/BNG/2016 filed by M/s. BPL Limited and FPA-FE-18/BNG/2016 filed by Shri Ajit G. Nambiar (Managing Director), against the Order No. BGZO/JD/04/2016 dated 31.08.2016 (Impugned Order) passed

by the Joint Director, Directorate of Enforcement, Government of India, Bengaluru Zonal Office. The Ld. Adjudicating Authority (AA) imposed the penalty of Rs. 50,00,000/- on M/s. BPL Limited for the contravention of Section 10 (6) of the Foreign Exchange Management Act, 1999 (FEMA) read with Regulation 6 (1) of Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulation 2000, (RBI No. FEMA 9/2000-RB dated 03.05.2000 issued by the Reserve Bank of India (RBI)), to the extent of Rs. 4,90,43,501.66. Penalty of Rs. 5,00,000/- was imposed on Shri Ajit G. Nambiar for the aforementioned contraventions in terms of Section 42 of FEMA.

2. Ld. Counsel for the Appellant submitted that the Impugned Order is arbitrary and untenable on facts and in law. The Show Cause Notice (SCN) was issued to the Appellants in September, 2015 with respect to transactions that had occurred 15 years ago in 2000-01. Ld. Counsel stated that on 28.11.2002 the Respondent Directorate issued a notice bearing No. T-3/IMP/589-BZ/02(SR) asking the Appellant Company to confirm whether it had submitted the Exchange Control Copies of the Bills of Entry relating to a set of completely different transactions as per the list attached thereto. It was submitted that till 2015 no further inquiry was made. The Respondent Directorate vide its letter in 2015 asked the Hong Kong and Shanghai Banking Corporation (HSBC) and the Citibank to furnish proof of submission of the Exchange Control Copies of the Bills of Entry. While the HSBC informed that the Appellant

Company had not submitted Exchange Control Copies of the Bills of Entry in respect of 10 transactions, the Citibank stated that the Appellant Company did not submit Exchange Control Copies of the Bills of Entry in respect of four transactions. The Appellant Company was not in position to trace the record and hence no reply was sent. Ld. Counsel stated that in the Complaint dated 02.09.2015 under Section 16 of FEMA and in the SCN dated 16.09.2015 the Appellants were charged for 13 transactions of which 10 related to HSBC and 3 related to Citibank.

3. Ld. Counsel for the Appellant argued that no material was produced during the Adjudication Proceedings to show that the Banks even sent a single reminder to the Appellant Company with respect to 13 transactions. Ld. Counsel contended that mere letter from the Banks to that effect does not prove that the Appellant Company contravened the provisions of FEMA. Ld. Counsel stated that the Banks i.e. the Authorised Dealer (AD) should have followed up with the Appellant Company for three months from the date of remittance. Ld. Counsel also submitted that no penalty for the same offence could have been imposed upon the individual Appellant. He cited the decisions in the case of Xerox Modi Corp. Ltd. and Innovative Tech Pack Ltd. Ld. Counsel also stated that the penalty imposed was harsh without taking into account that in 2001-02 the Appellant Company had imported goods worth Rs. 188,14,32,338/-. He therefore prayed to allow the two Appeals.

4. Ld. Counsel for the Respondent Directorate submitted that the Citibank vide their letters dated 16.01.2002, 10.02.2002 and 25.08.2015 had furnished the details of remittances made for the import of electronic components by the Appellant Company, where the Bills of Entry had not been submitted. He further stated that the HSBC vide letter dated 14.01.2003 and 15.07.2015 confirmed that the Appellant Company had not submitted the required documents as proof of import with respect to ten transactions. Ld. Counsel stated that after certain adjournments taken by the Appellants, their Counsel submitted on 14.07.2016 that no contravention was indulged in intentionally and prayed for lenient view. Ld. Counsel stated that the Citibank confirmed having followed up with the Appellant Company for furnishing of the documents. The HSBC confirmed that they had made 25 remittances on behalf of the Appellant Company out of which no documentary evidence was furnished in respect of 10 Bills.

5. Ld. Counsel for the Respondent Directorate cited the following findings made by the Ld. AA in paragraphs 14, 15, 16 & 18 of the Impugned Order:

“14. Thus, it is evident that the Banks have been keeping track of the import transactions of the noticee company and they have not failed in their duties to keep the records as per the directions of the Reserve Bank of India, as alleged by the noticee now. The Banks have further confirmed that the noticee company

has not furnished documentary evidence showing import in respect of the above-mentioned remittances to them.

15. Section 10(6) cast a duty on the person who acquire any foreign exchange for any purpose which is duly declared by that person to an authorised person to use it for that purpose, or any other purpose for which acquisition of foreign exchange is permitted; failing which he is required to surrender the foreign exchange so acquired back to the authorised person within the stipulated period. It is the duty of the person who acquires the foreign exchange to furnish documentary evidence of import to the authorised dealer within the stipulated period, failing which it is presumed that he has not imported any goods as required under the law. In this case no such documentary evidence is produced before the Authorised Dealer, though the Bank has been following it up with the buyer, and as such it is clear that the noticee has failed to import any goods against these remittances.

16. The duty of the authorised person is only to report the matter to Reserve Bank of India, which they have done. They are not supposed to supervise the import of goods by their client. It is pertinent to note that the noticee has never contended that they have imported

the goods for which the remittances were made, neither in their reply to the show cause notice, nor during the course of personal hearing. Thus it is clear that the noticees have failed to import the goods and as such failed to comply with the conditions given under Section 10(6) of the Act read with Regulation 6(1) of the Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulation 2000.

18. I find that the noticee chose to keep quiet for such a long time even though the bank has sent reminders to them, and is now claiming limitation on the ground that the proceedings were initiated after a long time. This is to avoid the action under the provisions of FEMA. Thus their contention in this regard merits rejection.”

Ld. Counsel further submitted that the aforementioned contraventions were found to have been established against the Appellant Company to the extent of Rs. 4,90,43,501.66. The individual Appellant by virtue of being the Managing Director of the Appellant Company during the relevant time and being responsible for the conduct of its business was also penalized in terms of Section 42 of FEMA. Ld. Counsel prayed to dismiss the two Appeals.

6. We have considered the rival submissions and the material on record. The plea taken by the Appellants for their inability to produce the Exchange Control Copies of the Bills of Entry with

respect to 13 impugned transactions is the delay in issuing the SCN after almost 15 years of the impugned transactions. We observe that the Appellant Company was put to notice on 28.11.2002. In response to the Notice received by it, in a letter, dated 10.01.2003, the Appellant Company pointed out several mistakes made by the Respondent Directorate in enumerating the transactions in the list appended to the Notice and stated that out of the 31 transactions mentioned therein, 11 were repetitions and 11 had already been dealt with. From the remaining 9 transactions, the Appellant Company forwarded the proof of having submitted the Exchange Control Copies of the Bills of Entry in respect of 3 transactions and informed the Respondent Directorate that it was searching its records to submit the proof of submission of the Exchange Control Copies of the Bills of Entry in respect of the balance 6 transactions, all of which had taken place a couple of years back, only.

7. The Appellants have strongly taken up the plea of laches. They have stated that a delay of over 15 years in issuing the SCN by the Respondent should free them of the charges that they could not deposit the documentary evidences of the imports made against the reported remittances drawn by them from the AD Banks. It is observed that the Appellant Company was put to notice about initiation of enquiry under FEMA by the respondent as early as 28.11.2002. However, the Appellants did not provide complete response and sought more time to furnish the reply. It is not on record that the Appellant Company till the issuance of SCN chose to

complete its response. It is to be noted that the Appellants have chosen to respond to the Respondent Directorate and join the enquiry after SCN was issued to them on 16.09.2015. Under such circumstances the Appellants cannot take refuge under the plea of laches. Their plea that the passage of long time prevented them from submitting proofs of imports against the reported remittances does not cut much ice given that in spite of having been put to notice they could not keep the safe custody of the documents relevant to dispute in hand. It is surprising that a Company which was importing on regular basis could not even produce alternative documents to sustain their contentions that for the remaining 13 remittances they had in fact imported goods.

8. Ld. Counsel for the Appellants has cited the case of **Xerox Modi Corp. Ltd. v. Enforcement Directorate [2015 SCC OnLine Del 6593]**, decided by the Hon'ble Delhi High Court on 15.01.2015. In the instant case the Hon'ble Court has observed that even on merit the appellants therein had raised substantial defence to raise sufficient doubt with regard to the allegations that the appellant had not made imports in respect of the 3 remittances. The Hon'ble High Court has mentioned about documents which clearly brought out the communications of the Appellants where they had mentioned about the copies of the relevant Bills of Entry having been submitted to the Banks as well as to the Adjudicating Authority and to the Appellate Tribunal which were not taken note of during these proceedings. Moreover, the Hon'ble High Court has categorically

stated that the enquiry by the ED was initiated belatedly. On the other hand, in the present Appeal no alternative documents or communication has been produced by the Appellants as to show any evidence for the import of goods for the reported 13 remittances. As already noted afore, the Appellant Company was put to notice on 28.11.2002 which was in close proximity to the occurrence of the impugned transactions.

9. Ld. Counsel for the Appellants cited the Judgment in the matter of **Innovative Tech Pack Ltd. v. Special Director of Enforcement [2017 SCC OnLine Del 6485]** which has facts are not the same as those of the present appeal. In fact, in the cited case, it appears that for the 3 remittances in question the appellant had placed on record the Bills of Lading, yet the Adjudicating Authority and the Appellate Tribunal issued the order against the appellants therein. In the present Appeal, the Appellants have failed to produce even the alternative documents to establish that they did in fact import 13 consignments against the remittances made. Moreover, the Show Cause Notice issued on 27.05.2002 in the cited case was served as late as on 15.02.2006 on the Appellant, which is not the case in the present appeal. The cited case has also quoted the Exchange Control Manual to state that in respect of cases which are under investigation the Exchange Control Copy of Bill of Entry should be preserved till the investigating agency gives clearance.

10. The Appellants have cited A.P. (DIR Series) Circular No. 9 dated 24.08.2000 and in particular paragraph A.17 sub-para (v) &

(viii) and paragraph A.18 sub-para (i), which are being reproduced below:

“A.17 (v) Authorised dealers should ensure that in all cases, including cases of advance remittance permitted in terms of paragraph A.11 above, evidence of import is submitted by their importer customer and is duly verified. In respect of imports on D/A. basis, since goods would normally be cleared before the due date of payment, authorised dealers should insist on production of evidence of import at the time of effecting remittance of import bill. Authorised dealers should advise this requirement to their importer customer while delivering the documents against acceptance.

(viii) Documents evidencing import into India received in terms of paragraph A.17 above should be preserved by authorised dealers for a period of one year from the date of its verification as required under sub-paragraph (vii) above. However, in respect of cases which are under investigation by investigating agencies, the documents should be destroyed only after obtaining clearance from the investigating agency concerned.

A.18 (i) In case an importer does not furnish the document of evidence of import, as required under paragraph A.17, within 3 months from the date of

remittance involving foreign exchange exceeding US\$5,000, the authorised dealer should rigorously follow-up for the next 3 months, including issue of registered letters to the importer, for submission of an appropriate document as evidence of import.”

We find that it is on record that the Citibank did follow up with the Appellant Company. There is mention in the Impugned Order about the follow-up by the ADs. The argument of the Appellant Company that there is no duty cast on the importer to maintain the import documents could have been acceptable if they had not been put to notice way back in 2002 that for all the consignments imported by it, the Exchange Control Copies of the Bills of Entry were not available. Moreover, after having promised to search for the required documents in their response dated 10.01.2003, the Appellant Company failed to follow up in spite of having such large-scale import as quoted by them for the year 2001-02.

11. The arguments of the Appellants that no penalty could be imposed on the individual Appellant since it would tantamount to imposition of fine twice over is not acceptable. The provisions of Section 42 are clear in as much as there hold those who are responsible for the conduct of the affairs of the Company during the period of contravention liable for penalty. We find that the individual Appellant Shri Ajit G. Nambiar was the Managing Director of the Appellant Company and therefore cannot deny the responsibility towards the conduct of the affairs of the Company.

There is nothing on record which shows that the individual Appellant exercised due diligence to prevent such contravention.

12. We find the imposition of the penalty amounts of Rs. 50,00,000/- on the Appellant Company and Rs. 5,00,000/- on the individual Appellant to be harsh in the given facts and circumstances of the case. The ends of justice shall be served on reduction of the penalty to Rs. 10,00,000/- on the Appellant Company and Rs. 1,00,000/- on the individual Appellant.

13. In view of the aforementioned discussions and analysis, we partly allow the Appeals Nos. FPA-FE-17/BNG/2016 filed by M/s. BPL Limited and FPA-FE-18/BNG/2016 filed by Shri Ajit G. Nambiar. Applications pending, if any, stand disposed of accordingly.

(Rajesh Malhotra)
Member

(Balesh Kumar)
Member

New Delhi
07th May, 2026
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