APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

FPA-FE-13/CHN/2017

M/s. Garg Iron & Energy (P) Ltd. ... Appellant

Versus

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

Advocates/Authorized Representatives who appeared

For the Appellant : Mr. N. Vishwanathan, Advocate

For the Respondent : Mr. Varun Mishra, Advocate

CORAM
SHRI BALESH KUMAR : MEMBER
SHRI RAJESH MALHOTRA : MEMBER

FINAL ORDER
07.05.2026

This Order disposes of the Appeal No. FPA-FE-13/CHN/2017 filed by M/s. Garg Iron & Energy (P) Ltd. against the Order No. JD/CEZO/04/2016 dated 29.12.2016 (Impugned Order) passed by the Joint Director, Directorate of Enforcement, Government of India, Chennai. The Ld. Adjudicating Authority (AA) imposed the penalty of Rs. 11,00,000/- on M/s. Garg Iron & Energy (P) Ltd. 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.

2. Ld. Counsel for the Appellant submitted that the Impugned Order is unjust, arbitrary and contrary to the legal provisions. Ld. Counsel further submitted that the Complainant in the Complaint admitted the obtaining of the foreign exchange from The Authorized Dealer (AD) against furnishing of the relevant declarations for purchase of the goods from abroad. He further admitted to the amount having been paid to Metal Worldwide Inc. through their Banker J&K Bank Ltd., the Authorized Dealer, for the supply of the shredded steel scrap. The amount so paid for the above purchase was also admitted to be lying with the said overseas company. Thus, the above admissions made in the complaint made it abundantly clear that the foreign exchange procured by them for the purpose of purchase of the shredded steel from Metal Worldwide Inc. USA was paid to the above-named overseas company for the purchase of the goods and no unutilized foreign exchange so procured was left with them. So long as the foreign exchange procured or obtained was used for the purpose for which it had been obtained as per the declaration, the FEMA provisions are deemed to have been complied with and the consequent commercial dispute if any arising out of the said transactions between the person obtaining the foreign exchange and the overseas supplier to whom the amount had been paid did not attract the above FEMA provisions.

3. Ld. Counsel for the Appellant stated that they were informed that Metal Worldwide Inc. initiated criminal proceedings against

M/s. Sunco Metal Inc., which supplied the goods to it. As the said criminal proceedings could in no way help them to get back their money, they pressurized and insisted upon the said Shri Sachin Chhabra of M/s Metal Worldwide Inc. to either supply the goods as undertaken or to return their money consequent to which they were successful in securing part of the goods and amounts from them. The remaining part was received from Shri Sachin Chhabra's brother's Company M/s TCC Wireless Inc. As they were more concerned about securing the money advanced, they had no other option but to accept the consignment and the money sent by his brother's company on behalf of Metal Worldwide Inc. particularly when the company got dissolved on 30.04.2011. Their act in obtaining the foreign exchange paid to the overseas seller and averting any loss of foreign exchange to the exchequer should have been appreciated rather than issuing Notice to them. When the AD category 1 Bank had appreciated the fact on record and was satisfied with their proper compliance with the provisions of the Act and the regulations, the issuance of Notice itself is incorrect. The Complaint did not even take into account the finding recorded by the learned Commissioner of Customs in her Order No. NPOR 19826/2012 dated 27.11.2012 dropping the charges against them.

4. Ld. Counsel for the Appellant contended that the Impugned Order traversed beyond the allegations made in the Complaint. It relied upon extraneous facts not adverted in the Show Cause Notice (SCN) in as much as alleging that the Appellant did not adjust the

entire amounts paid in advance to Metal Worldwide Inc. against the value for subsequent supplies except for the noted percentage. Even the finding made from the declaration filed under Section 10 (5) of FEMA leads to inferences contrary to those made by the Ld. AA. Ld. Counsel challenged the necessity to produce any documents to establish that receipt of money from TCC Metal to substantiate the claim of the Appellant that it was in lieu of refunds to be received from M/s Metal Worldwide Inc. Ld. Counsel also challenged that there was any requirement for the Appellant to approach the Reserve Bank of India (RBI) for realization of money from third parties. In any case payments received from TCC Metal were after 08.11.2013 when it had already been permitted by the RBI to receive third party payments. Ld. Counsel stated that inferences drawn in the Impugned Order are based upon mere suspicion. Ld. Counsel also stated that the SCN was issued only to the Company and not to the person in-charge which makes it bad in law. Ld. Counsel pleaded that the penalty amount is harsh and excessive. He pleaded to allow the Appeal.

5. Ld. Counsel for the Respondent Directorate submitted that M/s Garg Iron & Energy (P) Ltd. had placed order with M/s Metal World Wide Inc., USA for supply of 1436.236 MT of Shredded Steel Scrap (in 60 containers). Accordingly, the Appellant Company paid a total amount of US$ 534,135.31 through M/s. Jammu & Kashmir Bank, Chennai. An earlier order placed by M/s Garg for which a total amount of US$ 103,845.55 was remitted had not been

executed and was still pending for shipment of the goods to India. Thus, a total amount of US$ 637,981.06 had been paid by M/s Garg to overseas supplier M/s Metal World Wide Inc. for import of goods into India. From the submissions made by Shri Anand Garg and the verifications carried out, it was evident that amounts totalling US $ 96,564.10 had been adjusted by M/s Garg in the subsequent shipments received from M/s Metal Worldwide Inc. in September/October 2010. The claim of Shri Anand Garg, Managing Director of the Appellant Company that a total amount of US$ 120,407 had been adjusted in two other subsequent shipments during October 2010 cannot be accepted as the shipments were made from a different company called M/s TCC Metal and not from M/s Metal World Wide Inc. Further, with regard to the submissions made by Shri Anand Garg regarding refunds received from the Overseas supplier M/s Metal Worldwide Inc., consequent to the non-shipment of the ordered goods, it was evident that a total amount of US $ 69,000 had been received by them through their bankers from the account of M/s Metal Worldwide Inc. However, the claim of Shri Anand Garg that they received a further refund amounting to US$ 351,575 in January 2012 from M/s Metal Worldwide Inc., consequent to the non-shipment of the ordered goods, is incorrect as it was clearly evident that the said amount had not been sent by M/s Metal Worldwide Inc. The details furnished and confirmed by bank indicated that the remitter was M/s. TCC Wireless Inc., which

was a separate legal entity and did not belong to M/s Metal Worldwide Inc.

6. Ld. Counsel for the Respondent Directorate further submitted that it was evident that M/s Garg acquired foreign exchange totalling US$ 637,981.06, with declarations under Sec. 10(5) of FEMA for making remittances towards imports from M/s Metal World Wide Inc. This amount was lying with the overseas supplier in July 2010. Against this amount, M/s Garg in the subsequent imports during September 2010, from the same supplier had adjusted a total amount of US$ 96,564.10. On account of the non-shipment of material, M/s Garg had received refunds totalling US$ 69000 during December 2010 and January 2011. Thus, from January 2011 onwards M/s Garg had not utilized foreign exchange amounting to US$ 472,416.96 [US$ 637,981.06 (96,564.10+69,000)] equivalent to Rs. 2,18,35,112/- (calculated @ Exchange Rate of Rs. 46.22 per US$). Ld. Counsel further submitted that it emerged from the result of investigation and enquiries made, that M/s Garg had acquired or purchased foreign exchange, for the purpose of import of goods and had neither used the acquired foreign exchange for such purpose nor surrendered it to the authorized person within the specified period. Thus, the Appellant Company contravened the provisions of Section 10 (6) of FEMA read with Regulation 6(1) of The Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2000 to the tune of Rs. 2,18,35,112/-. Accordingly, the Investigating Officer filed a

Complaint under Section 16 (3) of FEMA on 07.10.2014 against M/s. Garg Iron & Energy Pvt. Ltd. for the above-mentioned alleged contraventions proposing Penalty under Section 13 (1) against them. Based on the said Complaint, a SCN was issued on 30.03.2015.

7. Ld. Counsel for the Appellant read the following findings of the Ld. AA in the Impugned Order:

> *"5.1 ……. At the outset I find that both the Complainant and the Noticee do not differ on the facts of the case leading to issuance of the Notice viz., the remittances made by the Noticee to their Overseas Supplier viz., M/s Metal World Wide Inc. from time to time; imports made by the Noticee from the said Overseas Supplier etc.,; the amount due from M/s Metal World Wide Inc. etc. The crux of the allegation of the Complainant leading to issuance of Show Cause Notice was that out of the foreign exchange totalling US$ 637981.56 remitted to the said Overseas Supplier, amounts totalling US $ 472416.96 was not utilized for the purpose for which the said amount was remitted resulting in contravention of the provisions of FEMA, 1999. The denial of the allegation from the Noticee was that, as against the said remittances to the said Overseas supplier, US$ 216971.10 was adjusted while making remittances in respect of six consignments*

balance imported during the period September/October 2010 and the amount of US$ 420575 was received by way of refund in 5 tranches during the period December 2010, January 2011 & January 2012. The Noticee had vigorously argued that the dispute and conflict with their overseas supplier on account of their erroneous dispatch of junk material was not appreciated during the investigation and the efforts taken by them by getting refund from the said supplier was not appreciated and that both the investigating authority viz., the Complainant and the Adjudicating Authority have failed to appreciate the provisions of law and have erred in issuing the SCN. Thus, the core issue to be decided is whether the Noticee has either imported goods totalling US $ 637981.06 from M/s Metal world Wide Inc. or has realised/repatriated the said amount on account of non-import.

5.13……. I hold that the Noticee has acquired foreign exchange for the purpose of importing shredded steel scrap from M/s Metal World Wide Inc. and failed to import the said goods from them and also did not realise/repatriate the amount due from them. I do not accept their stand of equating a third party adjustment/third party refund as fulfilling their obligations under Section 10(6) of FEMA, 1999 in the

absence of any admissible evidences supporting the relationship between the said Third Party viz., M/s TCC Wireless Inc./TCC Metal & M/s Metal World Wide Inc and in the absence of a valid permission from RBI for accepting adjustments with third parties……."

Ld. Counsel therefore pleaded to dismiss the Appeal.

8. We have considered the rival submissions and the material on record. The main question that needs to be answered is that whether the Appellant Company having failed to receive the imported goods of shredded steel scrap, from the US based Company M/s Metal Worldwide Inc., in spite of having remitted US $ 637981.06 for the said purpose over a period of time, acted in compliance to the provisions 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 ?

9. The Appellant has contended that M/s Metal World Wide Inc., a Company owned by Shri Sachin Chhabra, was compelled to return the remitted money through a part of the amount adjusted against the forth coming imports, another part adjusted through imports from M/s TCC Wireless Inc., a Company owned by Shri Tarun Chabra, the brother of Sh. Sachin Chabra, yet another part as refund directly from M/s Metal World Wide Inc. and the final part as refund in January 2012 from the bank account of M/s TCC Wireless

Inc. The contention of the Appellant has been that such adjustments of dues receivable from M/s Metal World Wide Inc. is lawful under FEMA. We observe from the facts of the case that on occasions the imported consignments which comprised of junk like broken tiles were abandoned by the Appellant Company and not cleared through the Customs. It is inexplicable that yet the Appellant Company continued to import from the same Company in USA. The explanation of the Appellant Company that its supplier in USA was being cheated from where it was getting its material is not satisfactory as to being a reason for the persistence by the Appellant Company to continue with M/s Metal World Wide Inc. as supplier. It is also puzzling that the Appellant Company, even if it was attempting to adjust its past remittance failed to adjust the backlog arrear of the remittance already sent against the forth coming consignments rather agreeing to adjust only part of such arrears. We also do not find on record any permission from the RBI as to adjust the defaults in the imports for the remittance already sent against forth coming and future import consignments from third party, particularly so, when third party payment was not permissible before 08.11.2013. In this regard, the relevant findings made in paragraphs 5.7 & 5.8 of the Impugned Order are being reproduced:

> *"5.7 ……. This methodology of suo-moto adjustments has not been provided in the provisions of law. The introduction of Notification No. GSR 931(E) dated 4.9.2014 (with retrospective effect from 8.11.2013) in*

permitting AD Banks to allow payments to be made and received from "third parties", subject to following of certain procedures including specific documentation is itself clear that no third party payments or receipts were allowed till 7.11.2013 and that any person who had resorted to third party payment or receipt is deemed to have contravened the provisions of FEMA, 1999.....

5.8 In the instant case, the Noticee had abandoned the cargo which contained material not ordered by them and hence the "import" has not got completed and the amount already remitted by the Noticee to its Overseas supplier, continue to remain as "Advances" and the importer is obligated to ensure import of the goods from the said supplier only or realize and repatriate the amount back to India. Instead, although the Noticee had enough opportunity to treat the said "advance" for their future shipments, apportioned only a paltry 16% in their future shipments and made further payments to the said overseas supplier. I also find that the argument of the Noticee in faulting the Complainant assertion that imports are to be made from the same person to whom the remittance was made, is not acceptable as only from 8.11.2013, the Reserve Bank permitted an AD Bank to make Third party payments

and that too subject to certain conditions. The situation of the Noticee upon finding that the goods ordered by them have not been actually shipped and the need for recovering the same from the supplier for such erroneous shipment is understandable, but the acts of the Noticee in continuing to make payments to the said supplier even after knowing that he had already cheated them and not adjusting the dues in total when there was an opportunity to do so, adds reasonable suspicion to the entire affairs and transactions between the Noticee and the Overseas supplier."

10. We are not convinced that the payment received from M/s TCC Wireless Inc., being Company of brother of the owner of M/s Metal Worldwide Inc. and that too for business compulsion, should be allowed to be adjusted. The Appellant has failed to produce any provision of law as to sustain this argument. It is also on record that the two Companies are separate legal entities and independent of each other. The argument of the Appellant that no penalty was imposed by the Commissioner of Customs, (Seaport-Import), Chennai, in the Adjudication Order No. 19826 of 2012 dated 30.11.2012 on the Appellant, and hence, the Appellant is not liable for penalty under FEMA cannot be accepted. The proceedings under the Customs Act, 1962 are independent and separate from that under FEMA. Moreover, the Appellant having abandoned the consignments which were imported led to imposition of penalty

under the Customs Act, 1962 on the steamer agent, for not having made a true declaration in the import manifest and not having truly accounted for shredded steel Scrap.

11. In view of the aforementioned discussions and findings we observe that the contraventions of the provisions 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 have occurred. In view of the facts and circumstances of the present case, we find that the ends of justice shall be met on reduction of the penalty amount to Rs. 5,50,000/-. The pre-deposit of penalty amount, if made, shall be adjusted against the reduced penalty.

12. We therefore partly allow the Appeal No. FPA-FE-13/CHN/2017 filed by M/s. Garg Iron & Energy (P) Ltd. Application(s) pending, if any, are disposed of accordingly.

(Rajesh Malhotra)
Member

(Balesh Kumar)
Member

New Delhi
07th May, 2026
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