* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 28.07.2026
Pronounced on: 08.09.2026
Uploaded on: 08.09.2026

\+ **MISC. APPEAL (FEMA) 40/2025**

M/S INTERSALES & ANR. .....Appellants

Through: Mr.Ashim Vachher, Sr. Adv. along with Ms.Saiba M. Rajpal, Adv.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr.Annirudh Sharma and Ms.Akanksha Tyagi, Advs. for ED

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. The present appeal has been filed under Section 54 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as, ‘FERA’) read with Section 35 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as, ‘FEMA’), challenging the order dated 25.03.2009 passed by the Appellate Tribunal for Foreign Exchange, New Delhi (hereinafter referred to as, the “Tribunal”) in Appeals bearing Nos. 935/2004 and 936/2004.

BRIEF FACTS:

2. It is the case of the appellants that the appellant no. 1, namely, M/s Intersales, was originally a partnership firm, constituted in 1986 between appellant no. 2- Mr. Rajiv Chachra and his mother- Mrs. Pushpa Chachra. The firm was engaged in the business of exporting garments. In August 1998, the partnership was dissolved, and the business, along with its assets and liabilities, was taken over by appellant no. 2 as a sole proprietary concern.

3. Investigations were conducted by the Enforcement Directorate, which revealed that M/s Intersales and its partners- Mr. Rajiv Chachra and Mrs. Pushpa Chachra had effected shipments of goods valued at US$ 62256.50 under the cover of Guaranteed Remittance Forms (hereinafter referred to as, 'G.Rs.'). It was alleged that without obtaining permission from the Reserve Bank of India (hereinafter referred to as, 'RBI'), the appellants had refrained from taking necessary action for securing the export value of certain G.Rs. within the prescribed time period or within the time period as extended by the RBI. The details of the said G.Rs. are as follows:

S.No.	G.R. No.	Amount
1.	7469786	US$ 26,000.00
2.	AJ 238449	US$ 6067.35
3.	AJ 238443	US$ 8730.00
4.	AJ 238446	US$ 2662.65
5.	1102667	US$ 12736.00
6.	1102571	US$ 6060.50
	Total	US$ 62256.50

4. Accordingly, it was alleged that the appellants had acted in contravention of the provisions of Sections 18(2) and 18(3) read with Section 68(1) of the FERA.

5. A Show Cause Memorandum dated 17.01.2002 was issued upon the appellants and Mrs. Pushpa Chachra, calling upon them to show cause as to why adjudication proceedings should not be initiated against them for the alleged contravention of non-realization of export proceeds.

6. In response, *vide* a letter dated 27.11.2003, the appellants, *inter alia,* submitted that a write-off had been granted to them by the RBI in respect of G.R. no. AJ 238446, that is, G.R. at serial no. 4.

7. The learned Adjudicating Authority, *vide* the Adjudication Order No. DD/ADJ/84/DZ/2004/SC(JVS)777 dated 04.02.2004, held that in respect of G.Rs. at serial nos. 1 to 3, 5 and 6, the appellants had failed to take any effective steps or make serious attempts for realization of the export proceeds. It was held that though the appellants had asserted that application seeking write-off of the amounts covered by G.Rs. at serial nos. 2 and 3 had been submitted to the RBI, no particulars regarding the same were provided. Accordingly, it was held that the appellants and Mrs. Pushpa Chachra were liable to penalty under Section 50 of the FERA, and the following penalty was imposed on them:

1	M/s Intersales	Rs. 25 lakhs
2	Shri Rajiv Chachra	Rs. 2.5 lakhs
3	Smt. Pushpa Chachra	Rs. 2.5 lakhs

8. Aggrieved by the said Adjudication Order, the appellants preferred appeals before the learned Appellate Tribunal for Foreign Exchange.

9. The appellants contended before the learned Appellate Tribunal that the Adjudication Order had been passed without taking into consideration a previous Adjudication Order, being Adjudication Order No. ADJ/7/DD(VS)/DZ/2001 dated 17.05.2001 (hereinafter referred to as, 'previous Adjudication Order'). It was submitted that the G.Rs. at serial nos. 2, 3 and 4, to the tune of US$ 17460/- (equivalent to Rs. 6,16,000 approximately), had already been made the subject matter of the previous Adjudication Order, wherein appellant no. 2, the proprietor of appellant M/s Intersales, was held to be guilty and a penalty of Rs. 1,00,000/- was imposed on him.

10. The learned Appellate Tribunal, in the Impugned Order, observed that it was not in dispute that the RBI had granted a write-off in respect of the G.R. at serial no. 4. It was further held that though the previous Adjudication Order had not been brought to the notice of the learned Adjudicating Authority, the penalty imposed in respect of G.Rs. at serial nos. 2 and 3 cannot be sustained as the said two G.Rs. had already been adjudicated upon, resulting in a penalty on the appellant no. 2. Insofar as the remaining G.Rs., that is, G.Rs. at serial nos. 1, 5 and 6 were concerned, the learned Appellate Tribunal held that the export proceeds for the said G.Rs. were still outstanding and that the appellants had failed to bring any material on record to substantiate that they had taken reasonable steps for their realization.

Accordingly, the penalty of Rs. 25,00,000/- imposed on appellant no. 1 was held to be not harsh or excessive and was, therefore, sustained. However, in view of the fact that the appellant firm had been taken over by appellant no. 2 as its sole proprietor, the learned Appellate Tribunal held that the separate penalties of Rs. 2,50,000/- imposed on the appellant no. 2 and Mrs. Pushpa Chachra could not be sustained.

11. Aggrieved thereby, the appellants filed the present appeal, challenging the order of the learned Tribunal upholding the penalty of Rs. 25,00,000/- on the appellant firm.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE APPELLANTS:

12. The learned Senior Counsel for the appellants submits that the learned Appellate Tribunal has imposed a penalty of Rs. 25,00,000/- upon appellant no. 1 for the alleged non-realisation of export proceeds to the tune of US$ 44796.50 (equivalent to Rs. 16,80,000/- approximately), whereas, by the previous Adjudication Order, a penalty of only Rs. 1,00,000/- had been imposed on the appellant no. 2 for contravention to the tune of US$ 17460/- (equivalent to Rs. 6,16,000 approximately). He submits that, therefore, the impugned penalty of Rs. 25,00,000/- is manifestly excessive and disproportionate to the alleged contravention.

13. He submits that the quantum of penalty imposed by the learned Appellate Tribunal must satisfy the test of proportionality. It cannot be excessive and has to be proportionate with the contravention. If an

action taken by the Appellate Tribunal is improper, irrational or otherwise unreasonable, the Court can interfere with such action while exercising its power of judicial review.

14. He submits that in the present case, the impugned penalty has also been imposed without taking into account the previous Adjudication Order, whereby the contraventions relating to G.R. Nos. 2, 3 and 4 had already been adjudicated, resulting in a penalty of Rs.1,00,000/-. Once these G.Rs. had been adjudicated upon, a fresh penalty could not be imposed on the appellants for the contravention relating to them. He submits that, therefore, the penalty of Rs. 25,00,000/- imposed on the appellant no. 1 is in ignorance of the already levied penalty and deserves to be set aside, as the appellants cannot be vexed twice for the same contravention.

15. He submits that Section 50 of the FERA provides for the maximum penalty that can be levied, that is, five times the amount of the contravention or five thousand rupees, whichever is more. He submits that when a provision provides for the maximum penalty, the authority also has the discretion to impose any penalty that is less than that. This discretion conferred on the authority has to be exercised in a judicial manner. In support, he relies on the judgment of the Karnataka High Court in ***Mrs. Sudershan Boury & Anr. v. Director of Enforcement, New Delhi***, 1981 SCC OnLine Kar 315.

16. He further submits that imposing a penalty is not automatic. Levy of penalty is discretionary in nature, but such discretion has to be exercised by the Adjudicating Authority/Appellate Tribunal after

taking into consideration the relevant factors. In furtherance, he relies on the judgment of the Supreme Court in ***Excel Crop Care Limited. v. Competition Commission of India & Anr.***, (2017) 8 SCC 47.

17. The learned counsel submits that the learned Adjudicating Authority/Appellate Tribunal exercises quasi-judicial functions and, therefore, is bound to give reasons for the discretion exercised by it. In support, he relies on the judgment of this Court in ***Sunita Mehta and Others v. Special Director, Enforcement Directorate***, 2026 SCC OnLine Del 1525. He submits that in the present case no reasons have been given by the learned Appellate Tribunal for imposing the penalty of Rs. 25,00,000/- on the appellant no. 1. He submits that penalty imposed by the learned Appellate Tribunal is untenable in law and deserves to be set aside for being without any reasons. In furtherance, he places reliance on the judgments of this Court in ***Marubeni India P. Ltd. v. The Special Director of Enforcement***, 2014 SCC OnLine Del 639, and ***Fuji Bank Ltd. v. The Special Director of Enforcement***, 2014 SCC OnLine Del 638, and of the High Court of Bombay in ***Special Director, Directorate of Enforcement v. Jaipur IPL Cricket Pvt. Ltd. & Ors.,*** 2023 SCC OnLine Bom 2657.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS:

18. The learned counsel for the respondents, on the other hand, submits that judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. It is meant to ensure that an individual receives fair treatment, and is not meant to

ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court.

19. He submits that the determination of the quantum of penalty falls within the discretion of the Adjudicating Authority. While a Court is empowered to alter or interfere with such decision, such interference can be done only when the penalty imposed is so arbitrary or disproportionate that it shocks the conscience of the Court. He submits that, therefore, the Court is not required to examine whether the penalty is proportionate, but whether the decision is based on some evidence. In support, he places reliance on the judgments of the Supreme Court in ***Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and Another***, (2007) 4 SCC 669 and in ***B.C. Chaturvedi v. Union of India and Others***, (1995) 6 SCC 749.

20. He submits that the penalty of Rs. 25,00,000/- imposed on the appellant no. 1 in the present case, is not an amount which has been arbitrarily fixed by the Adjudicating Authority/Appellate Tribunal, but has been decided on the basis of the facts and circumstances of the case. He relies upon Section 50 of the FERA to submit that the penalty for contravention of the provisions of the Act, can reach up to five times the contravention amount. He submits that, therefore, the penalty imposed on the appellant no. 1 falls within the prescribed limits of Section 50 of the FERA and is neither arbitrary nor excessive.

21. He further submits that the previous Adjudication Order

imposing a penalty of Rs. 1,00,000/-, does not render the imposed penalty of Rs. 25,00,000/- unsustainable. He submits that the earlier penalty was not imposed on appellant no. 1, but was imposed upon appellant no. 2. He contends that, therefore, the penalty of Rs.25,00,000/- imposed on the appellant no. 1 cannot be said to amount to the appellants being vexed twice for the same contravention, and therefore, deserves to be upheld.

22. He also submits that the *mens rea* is not an essential ingredient for holding a delinquent liable for penalty under the FERA. He submits that the proceedings under FERA are adjudicatory in nature and not criminal proceedings, and the officers of Enforcement Directorate and other administrative authorities are expressly empowered to adjudicate. In furtherance, he relies on the judgment of the Supreme Court in ***Directorate of Enforcement v. M.C.T.M Corporation Pvt. Ltd. and Others***, (1996) 2 SCC 471.

ANALYSIS AND FINDINGS:

23. We have considered the submissions made by the learned counsels for the parties.

24. At the outset, we would note that the learned Senior Counsel for the appellants did not make any submissions regarding the violation of Sections 18(2) and 18(3) of the FERA by the appellants, as far as G.Rs. at serial nos. 1, 5, and 6 are concerned. He confined his challenge to the Impugned Order on a limited plea that the Impugned Order does not give any reasons for imposing a penalty of Rs.25,00,000/- on the appellant no. 1. He further submits that the

penalty imposed is highly disproportionate to the value of the export proceeds involved in the G.Rs., especially when it is tested on the parameters of the previous Adjudication Order.

25. We, therefore, are only to consider whether the Impugned Order is liable to be set aside on the above submissions of the appellants.

26. Section 50 of the FERA provides for penalty for contravention of Section 18 of the Act, and reads as under:

> *"**50. Penalty.**- If any person contravenes any of the provisions of this Act other than section 13, clause (a) of sub-section (1) of section 18, section 18A and clause (a) of sub-section (1) of section 19 or of any rule, direction or order made thereunder, he shall be liable to such penalty not exceeding five times the amount or value involved in any such contravention or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcement specially empowered in this behalf by order of the Central Government (in either case hereinafter referred to as the adjudicating officer)."*

27. The above provision, therefore, vests a discretion in the Adjudicating Authority to impose a penalty *"not exceeding five times the amount or value involved in any such contravention or five thousand rupees, whichever is more"*. It is settled law that when a discretion is vested in an Authority/State, it must be exercised in a reasonable manner. Reasonableness in the exercise of such discretion requires reasons to be given, and the penalty imposed to be

proportionate to the contravention. In ***Coimbatore District Central Cooperative Bank*** (supra), unlike in the present case where the matter is being considered in an appeal against the Impugned Order, but was being considered on the principles applicable to judicial review of a penalty/punishment, the Supreme Court held as under:

> *"17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".*
>
> *18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise-the elaboration of a rule of permissible priorities.*
>
> *19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative*

Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p. 366.]"

28. In ***Jaipur IPL Cricket Pvt. Ltd.*** (supra), the High Court of Bombay considered the principles applicable to determine the validity and reasonableness of imposition of a penalty, and held as under:

> *"21. We find that in fact no justification has been recorded by the Special Director to impose maximum penalty as opposed to the Tribunal having considered relevant material has interfered and reduced the penalty. We do not find it proper to transgress the limits of this Court's jurisdiction, preferring the view of the Tribunal or that of the Special Director, one way or the other, in regard to factual appreciation of the finding of facts in the matter.*
>
> *22. The parameters for imposition of penalty have also been considered by the Hon'ble Supreme Court of India in Excel Crop Care Ltd. (supra) and it has been held as follows:*
>
> > *"42. ……..Imposition of penalty is not automatic. Levy of penalty is not only discretionary in nature but such discretion is required to be exercised on the part of the Assessing Officer keeping relevant factors in mind……..Penalty proceedings are not to be initiated, as has been noticed by the Wanchoo Committee, only to harass the Assessee. The approach of the Assessing Officer in this behalf must be fair and objective."*
>
> *23. In Hindustan Steel Ltd. (supra), the Apex Court has held as follows:*
>
> > *"8. ……An order imposing penalty for failure to carry out statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct*

contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will also not be imposed because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially or on a consideration of all relevant circumstances………"

24. In Coimbatore District Central Co-operative Bank (supra), the Supreme Court has explained the concept of proportionality in the following manner:

"18. 'Proportionality' is a principle where the Court is concerned with the process, method or manner in which the decision maker has ordered is priorities, reached a conclusion or arrived at a decision. The very essence of decision making consists in the attribution of relative importance to the factors and considerations in the case……… 19………the principle of proportionality needs to be imbibed in to any penalty imposed under Section 27 of the Act. Otherwise excessively high fines may over-deter, by discouraging potential investors which is not the intention of Act………….."

25. We find that the Special Director has completely failed to apply the doctrine of proportionality as interpreted and elucidated by the Apex Court in its various decisions, while choosing to impose maximum penalty on Respondents. Having gone through the impugned order, this Court does not find anything perverse in the findings, reasoning and conclusion of the Tribunal. We are in agreement with the finding of the Tribunal that in the absence of any discussion or justification pertaining to the basis for

> *imposing the maximum penalty and juxtaposing this with the alleged acts attributed to each individual, the order of the Special Director is unsustainable."*

29. Similarly, while considering Section 50 of the FERA, the Karnataka High Court in ***Mrs. Sudershan Boury*** (supra) held as under:

> *"Thus, s. 50 speaks of maximum penalty to be levied, that being five times the amount or value involved in any such contravention or Rs. 5,000 whichever is more. When the section speaks of the maximum penalty, it is obvious that the authority has the discretion to impose any fine less than that also. This discretion which is conferred on the authority by the section has to be exercised in a judicial manner and the exercise of such discretion is a question of law and it is needless for us to point out that the Supreme Court of India has been at pains to point out in recent years that sentencing is an important branch of law and that it is a complex process involving intricate questions of fact and law. That being so, we are satisfied that the present appeals where the quantum of penalty and the exercise of judicial discretion are concerned involve questions of law and as such the appeals are entertainable by this court (vide Ramnaresh Pandey v. State of M.P., AIR 1974 SC 35, Indo-China Steam Navigation Company Ltd. v. Jasjit Singh (1964) 34 Comp Cas 435; AIR 1964 SC 1140, at p. 1153)."*

30. This Court itself, in ***Fuji Bank Ltd.*** (supra), again quashed the penalty imposed under Section 50 of the FERA where no reason had been given for the quantification of the same. A similar view was

taken by this Court in ***Marubeni India P. Ltd.*** (supra) and in ***Sunita Mehta*** (supra).

31. We are, therefore, of the opinion that merely because the imposed penalty falls within the maximum limit prescribed under Section 50 of the FERA, does not, by itself, validate it. The learned Adjudicating Authority/Appellate Authority is required to determine the penalty in a reasonable manner and give at least some reasons for the exercise of the discretion in imposing such penalty and for determination of the quantum thereof.

32. In the present case, in the Impugned Order, the learned Appellate Tribunal, while finding the quantum of penalty imposed on the appellants to be justified and not excessive, observed as under:

> *"12. Now on the question of quantum of penalty it is argued that from 1998 the business of the appellant firm has been taken over by the individual appellant as its proprietor on the basis of deed of dissolution of partnership deed. Though the fact of conversion of the appellant firm to the proprietorship firm has not been established except by filing a copy of alleged deed of dissolution of partnership this tribunal cannot loose sight of fact that in the instant case partnership firm was constituted by mother and son while son was solely responsible for looking after the affairs of the firm which was subsequently stated to be converted to the proprietorship firm of the son i.e. individual appellant. In such a situation separate penalty imposed on the individual appellant cannot be sustained but considering the amount of contravention involved in GR No. 1, 5 and 6 with the amount of penalty imposed on the*

appellant firm cannot be said to be harsh or excessive. In such a situation the penalty imposed on the appellant firm is to be maintained and sustained."

33. We may note that the Adjudicating Authority, in its order dated 04.02.2004, while imposing a penalty of Rs.25,00,000/- on the appellant no. 1, had found the appellant to be in contravention of Section 18 of the FERA, even with respect to G.Rs. at serial nos. 2 and 3. However, this finding has been set aside by the learned Tribunal in its Impugned Order. The amount of contravention, therefore, stood reduced by US$ 14797.35. The learned Tribunal also noted that the RBI had granted a write-off with respect to the G.R. at serial no. 4. The penalty amount has, however, been retained by the learned Tribunal at the same amount as imposed by the Adjudicating Authority, that too without giving any reasons, except for stating that it does not find the penalty to be harsh or excessive.

34. The learned Senior Counsel for the appellants submits that, by the previous Adjudication Order, the learned Adjudicating Authority, for a violation involving a sum of US$ 17460, imposed a penalty of only Rs.1,00,000/- on the appellant no. 2, as the proprietor of the appellant no. 1. The violation for G.Rs. at serial nos. 1, 5, and 6 in the present case amounts to US$ 44796.50. He submits that, therefore, the penalty imposed should be around Rs.2,50,000/-. He submits that imposing a penalty of Rs.25,00,000/- on the appellant no. 1 is totally disproportionate and excessive. We find merit in the said submission, especially in light of the fact that there are no reasons given by the

Appellate Authority for the quantification of such penalty.

35. Given the above, the Impugned Order imposing the penalty of Rs.25,00,000/- on the appellant no. 1 cannot be sustained and is liable to be set aside.

36. As far as the consequential relief is concerned, we could have remanded the matter back to the learned Tribunal for fresh adjudication upon the quantum of penalty, however, we are not persuaded to do so as the order passed by the Adjudicating Authority was of the year 2004 and the Impugned Order was passed on 25.03.2009, and more than 15 years have since passed. Moreover, the transactions forming the subject matter of the said orders had taken place even prior thereto.

37. For the said reasons, instead of remanding the matter back to the learned Tribunal, we deem it appropriate to determine the penalty payable by the appellants and to put a quietus to this case.

38. As noted hereinabove, for a violation of US$ 17460, a penalty of Rs.1,00,000/- was imposed by the Adjudicating Authority on the appellant no. 2, as the proprietor of the appellant no. 1, by an order dated 17.05.2001. Applying the same yardstick, we are of the opinion that for a violation of US$ 44796.50, the appellants be subjected to a penalty of Rs.3,00,000/-.

39. Accordingly, while setting aside the Impugned Order only insofar as it upholds the levy of a penalty of Rs.25,00,000/- on the appellant no. 1, we modify the same and hold that the appellant no. 1 will be liable to pay a penalty of Rs. 3,00,000/-.

40. The appeal is partially allowed in the above terms.

41. There shall be no order as to costs.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

SEPTEMBER 8, 2026/*rv*/Yg