Mukesh Himatlal & Ors. @ APPELLANTS @Hash The Joint Director Directorate Of Enforcement, Mumbai

Court: Appellate Tribunal Under Prevention Of Money Laundering Act

Date of Decision: Feb. 7, 2024

Acts Referred: Foreign Exchange Regulation Act, 1973 â€" Section 6(4), 6(5), 50, 68(1),68, 73(3)
Foreign Exchange Management Act, 1999 â€" Section 49
Banking Companies (Period of Preservation of Records) Rules, 1985 â€" Rule 2, 3

Hon'ble Judges: V. Anandarajan, Member

Bench: Single Bench

Advocate: Varun Singh, Udit Jain, Pranav Mishra

Final Decision: Disposed Of

Judgement

,

This order seeks to dispose of the appeal filed by the above-mentioned appellants on 15/10/07 [check date of filing appeal in each case] against the,

common order passed by the Special Director of Enforcement on the 29th August 2007 holding the appellants in these appeals (among several other,

individuals and entities) guilty of violations of the provisions of the Foreign Exchange Regulation Act, 1973 (FERA, 1973) and imposing penalties of",

different amounts upon them. The appellants in this set of appeals are a firm, namely, M/s Nahalchand Laloochand, its partners, namely, Shri Mukesh",

Himmatlal and Rajesh Himmatlal, a company, namely, Nucleus Netsoft and GIS (India) Ltd. (formerly Nucleus Securities Ltd.) and its directors,",

namely, Shri Asit C. Mehta Shri Kirit H. Vora, Shri N. Venkiteswaran, and Shri Deena A. Mehta.",

FACTS IN BRIEF,

2. The relevant facts as recorded by the learned Special Director of Enforcement in the impugned order are that the Directorate of Revenue,

Intelligence (DRI), Mumbai made certain seizures of cash and pay orders from the possession of certain individuals, a residential premises, and a",

bank. In consequence of the enquiries conducted in the case, a Show Cause Notice (SCN) was issued on 17.05.2002 to one Shri Ambalal B. Soni",

who was charged with contravention of section 8(1) of the Foreign Exchange Regulation Act, 1973 (FERA, 1973). The charge was based on the",

premise that during the year 1994-95, the said Shri Ambalal B. Soni, with the assistance of his associates in India, disposed of gold smuggled into India",

and converted the sale proceeds of the gold into foreign currency equivalent to Rs. 24,90,35,182/- by availing foreign exchange in fictitious names from",

certain Full-Fledged Money Changers (FFMCs), namely, M/s Nahalchand Laloochand, M/s Nucleus Securities Ltd. (now Nucleus Netsoft and GIS",

(India) Ltd.), Ms Trade Wings Ltd and M/s Wall Street Finance Ltd., and transferred the said foreign exchange with the help of his associates, being",

persons other than authorized dealers in foreign exchange in India, to persons in Dubai without any previous general or special permission from the",

Reserve Bank of India (RBI).,

3. It further appeared from the facts unearthed that during the year 1994-95, the FFMC M/s Nahalchand Laloochand, and its partners Mssrs. Mukesh",

Himmatlal, Himmatlal Kanulal and Rajesh Himmatlal sold foreign exchange equivalent to Rs.12,23,63,745/- to persons other than bona fide passengers",

travelling abroad under Basic Travel Quota (BTQ) Scheme, without any previous general or special permission of the RBI and thereby contravened",

the provisions of Section 7(4) read with 6(4) and 6(5), read with 68(1) and the FLM Notification under section 73(3) of FERA 1973.",

4. Similarly, it appeared that during the year 1994-95, the FFMC Nucleus Securities Ltd. (now Nucleus Netsoft and GIS (India) Ltd.), sold foreign",

exchange equivalent Rs.8,30,23,262/- to persons other than bona fide passengers travelling abroad under BTQ Scheme without any previous general",

or special permission of the RBI and, thereby, contravened the provisions of section 7(4) read with 6(4) & 6(5) read with FLM notification issued",

under section 73(3) of FERA 1973. Having considered at length the material placed before him, the submissions made and explanations advanced on",

behalf of the noticees in response to the Show Cause Notice, the Ld. Special Director of Enforcement recorded the following findings in the impugned",

order:,

5. With regard to M/s Nahalchand Laloochand,

Ã¢â‚¬Â¢ That FFMC M/s Nahalchand Laloochand sold foreign exchange equivalent to Rs.12,23,63,745 /- to persons deputed by Ambalal B. Soni on the",

strength of letterheads of various firms which were later found to be fictitious. The exchange was released by them to 40 firms,

Ã¢â‚¬Â¢ As revealed by the statement of Shri Mukesh Himmatlal, partner of the said FFMC, the FFMC released foreign exchange to one Samad Ahmed",

Rasul Miya and 5 other persons. In each of these cases, foreign exchange amounting to US $ 19,800 was released as per the request letter of M/s",

AFS Diamonds, Exporters & Importers signed by the proprietor of the said firm. The FFMC obtained pay orders amounting to Rs. 6,38,000/ each.",

They did not verify the bona fides of M/s AFS Diamonds prior to the issue of foreign exchange to their sales executives. These persons were referred,

to them by Feroz Batliwala, a travel agent. Each of these passengers was given an amount of US $ 15,750 towards business travel, plus US $ 2000",

towards Entertainment Allowance + 2000 towards basic travel quota + 50 basic quota (total US $ 19,800). The Firmâ€Ÿs name, AFS Diamonds, does",

not appear in the aforesaid 6 pay orders. In his statement, Shri Mukesh Himmatlal admitted that in the case of AFS Diamonds, there was a lapse on",

their part in verifying pay orders equivalent to Rs. 38,28,000/- before releasing foreign exchange to the six persons which was in fact released on the",

pay orders of M/s Acrobond Exports. It is, therefore, clear that the FFMC Nahalchand Laloochand has released foreign exchange to M/s AFS",

Diamonds based on pay orders produced from the current account of Acrobond Exports totalling Rs. 38,28,000/- in respect of the 6 pay orders.",

Moreover, foreign exchange to AFS Diamonds was released based on applications which were specifically in respect of business quota. But based on",

the said letter, the FFMC also released foreign exchange to the same persons under basic travel quota, entertainment allowance etc. It is not clear",

how the foreign exchange was released under business quota, basic travel quota and entertainment allowance to the same person simultaneously on",

the same application. This amounts to gross negligence on the part of the FFMC and is a contravention of the instructions contained in para 11 and 12,

of FLM Memorandum relating to release the foreign exchange under BTQ and business quota respectively.,

Ã¢â‚¬Â¢ Although the irregularities committed by the FFMC were noticed in respect of the six pay orders totalling 38,28,000/-, the said FFMC had carried",

out foreign exchange transactions with Ambalal B. Soni and his associates to the tune of Rs. 12,23,63,745/- covering as many as 40 firms which were",

fictitious and bogus. It is not known how many more such suspicious transactions have gone unnoticed. It is, therefore, clear that M/s Nahalchand",

Laloochand has released foreign exchange on the basis of application submitted to them on the letterheads of firms which were not in existence. The,

bona fides of the said firms were not verified by the FFMC while releasing for exchange. The FFMC also did not obtain passport copies of the,

persons to whom foreign exchange was released, along with other relevant travel documents as required under para 11 and 12 of FLM Memorandum.",

The FFMC also failed to maintain records/registers as contemplated in FLM 1 to FLM 10 as the same were not produced. The firm Nahalchand,

Laloochand and its partnerâ€Ÿs Shri Mukesh Himmatlal, Himmatlal Kanulal and Rajesh Himmatlal, have therefore, grossly defied the instructions",

contained in FLM Memorandum while releasing the foreign exchange to persons deputed by Ambalal B. Soni. The charges against them were,

therefore proved insofar as violation of the instructions contained in FLM Memorandum are concerned,

Ã¢â‚¬Â¢ So far the charges against the said FFMC and it partners for having aided and abetted Shri Ambalal B. Soni in acquiring for an exchange,

fraudulently is concerned, there is no material on record to indicate that the FFMC connived in the activities carried on by Shri Ambalal B. Soni, nor",

have they derived any pecuniary gain. Shri Ambalal B. Soni and his associates have also not said anything whatsoever regarding the FFMC being,

consciously aware of their illegal activities. Accordingly, the charges against M/s Nahalchand Laloochand and its partners for the contravention of",

Section 8(1) read with section 64(2) of the FERA, 1973 are dropped",

6. With regard to Nucleus Netsoft and GIS (India) Ltd.,

Ã¢â‚¬Â¢ The FFMC M/s Nucleus Netsoft and GIS (India) Ltd. had sold foreign exchange equivalent to Rs.8,30,23,262 during the period 1994-95 in favour",

of 26 firms which was handed over to the persons deputed by Shri Ambalal B. Soni and Feroze Batliwala and the said firms were found to be,

fictitious,

Ã¢â‚¬Â¢ On the request of M/s Acrobond Exports, the said FFMC had released foreign exchange to their representatives (one Mashood Akhtar Sanabh",

and three others). In each case, foreign exchange amounting to US $ 19,800 was issued based on the applications made by the proprietor of M/s",

NAME OF INDIVIDUAL / ENTITY,PENALTY IMPOSED

Sh. Mukesh Himmatlal,"15,00,000/-

Sh. Rajesh Himmatlal,"15,00,000/-

M/s Nahalchand Laloochand,"1,50,00,000/-

M/s Nucleus Netsoft & GIS (I) Ltd. (then Ã¢â‚¬Å¾Nucleus

Securities Ltdâ€Ÿ)","1,00,00,000/-

Sh. Asit C. Mehta,"10,00,000/-

Sh. Kirit H. Vora,"10,00,000/-

Sh. N. Venkiteswaran,"5,00,000/-

Sh. Deena A. Mehta,"10,00,000/-

10. Reliance is also placed by the appellant on the following other cases:,

i) Surendralal Girdharilal Mehta vs. Union of India [2018 (364) ELT 81 (Cal)],

ii) Neeldhara Weaving Factor vs. DGFT, New Delhi [(2007) 210 ELT 658 (P&H)]",

iii) Bhagwandas S. Tolani vs. B.C. Aggarwal [(1983 12 ELT 44 (Bom)],

11. It is prayed by the appellants that the impugned proceedings may be quashed on this ground alone,",

12. Secondly, it is contended that the Show Cause Notice is vague, unintelligible and did not make out any offence qua the Appellant or its directors.",

The Show Cause Notice is the foundation of adjudication proceedings and must clearly and unequivocally set out the cause of action and bring out the,

material facts and evidence, on which the cause of action is based. Various decisions of the Apex Court are cited in this regard, including",

Commissioner of Customs, Mumbai Vs. Toyo Engineering India Limited [(2006) 7 SCC 592], Commissioner of Central Excise, Bangalore Vs",

Brindavan Beverages Pvt. Ltd. (2007 6 TMI 4 SC), Commissioner of Central Excise, Bhubaneswar-1 vs. M/s Champdany Industries Limited - 2009",

(9) TMI 7- Supreme Court. The show cause notice must be specific and precise, thereby enabling the noticee to understand and meet the allegations",

being raised against it. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of Gorkha Security Services v. Govt. of NCT,

of Delhi [AIR 2014 SC 3371) in support of the contention wherein the Honâ€Ÿble Apex Court has held that the fundamental purpose behind the serving,

of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of,

imputations detailing out the alleged breaches and defaults he has committed. It is contended that in the present case, the only allegation levelled",

against the Appellant and its directors in the Show Cause Notice is as below:,

AND WHEREAS by selling foreign exchange equivalent to INR 8.30,23,262/- in the above said manner M/s Nucleus Securities Limited and its",

Directors S/Shri Asit. C. Mehta, Kirit. H. Vora, D.A. Mehta and Venkateshwaran appear to have contravened Section 6(4) & 6(5) r/w 68(1) & the",

FLM notification under 73(3) of the Foreign Exchange Regulation Act, 1973...""",

13. The appellant contends that the impugned Show Cause Notice did not specify the exact offence committed by the appellant or its directors. The,

Impugned Show Cause Notice did not even specify any involvement of the appellant company in the commission of the alleged offence. Thus the,

SCN was vague, violates the principles of natural justice, and vitiates the proceedings in toto.",

14. Next, it is contended on behalf of the appellants that the impugned order goes beyond the scope of Show Cause Notice and is wholly without",

jurisdiction. In the said order, it was alleged for the first time (in para 72) that the appellants have ""not complied with the conditions laid down in Para",

11 and 12 of the FLM Instructions"". No such allegation was made, nor the para number of FLM Instruction which was alleged to have been",

contravened was specified in the Show Cause Notice stage. Accordingly, it is submitted that the order travels well beyond the scope of the Show",

Cause Notice, which is impermissible in law and renders the impugned order illegal and bad in law. The decision of the Honâ€Ÿble Supreme Court in",

SACI Allied Products Ltd. v. CCE (Civil Appeal No. 5854 of 1999) and the judgment of the Honâ€Ÿble Telangana High Court dated 01.03.2019 in,

Surya Lakshmi Cotton Mills Ltd. v. Joint Director General of Foreign Trade are relied upon. It is further contended that the impugned order did not,

even specify which clause of Para 11 and 12 of the FLM Instructions have been violated and even during the course of the hearing before this,

Appellate Tribunal, the Ld. Counsel for the respondent directorate failed to specify which clause of the FLM Instructions is alleged to have been",

violated. Thus, the Appellant has never been put on notice about the exact offence which is alleged to have been committed. This effectively denies",

the Appellant a fair opportunity to appropriately respond to the allegations levelled by the Respondents. In the Impugned Order, the Ld. Adjudicating",

Authority has simply reproduced the provisions of FERA to justify the imposition of penalty without any discussion on the corresponding act attributed,

to the Appellant to deserve such penalty.,

15. Coming to the arguments on the merits, it is firstly submitted that as a full-fledged money changer, the Appellant has carried out necessary due",

diligence and fully complied with the FLM Instructions before release of foreign currency which is evident from the procedure adopted by the,

appellant. First, the Appellant receives a letter from the sponsoring firm on their letterhead requesting for issuance of foreign currency. The letter",

clearly mentions the name and address of passenger, passport number, country to be visited, nature of visit, date of departure, period of stay and the",

foreign exchange required. Thereafter, the pay orders, air tickets and passport were duly verified and the signatures of the passengers were verified",

with the passport. Only thereafter, foreign exchange was released. For release of Basic Travel Quota (BTQ), a separate request letter was obtained",

from the concerned passenger. A declaration was obtained from the passengers that the BTQ limit has not been breached in the calendar year. The,

exchange issued was duly endorsed on the passport and traveller's signature was obtained on the travellersâ€Ÿ cheque.,

16. Therefore, it is submitted, necessary due diligence was exercised, and RBI guidelines were followed by the Appellant before release of foreign",

exchange to the concerned parties. The entire transaction has been carried out in full compliance of the FLM Instructions. It is also pointed out that,

the RBI guidelines stipulate a condition for renewal of the license that requires the appellant to stay clear of any violation of the FERA/FEMA Act. It,

is also contended that no proceeding was initiated by the RBI and licenses were renewed by them despite the knowledge of the present matter against,

the appellant. This clearly shows the bona fide of the Appellant.,

17. With regard to the respondentâ€Ÿs observation that the Appellant has not retained copies of passport, it is submitted that the Appellant had duly",

verified passport numbers of all persons involved in the transaction. There is no allegation that the passport numbers were incorrect. At the relevant,

period, the FLM Memorandum did not require retaining copies of the passport. The only requirement under para 11 of the FLM Memorandum was",

that ""passport of the traveler should be verified"". The requirement of retaining passport copies was subsequently introduced by RBI in February 1996",

(i.e. subsequent to the transaction in question) and was not applicable during the period in dispute.,

18. On the allegation that Appellant did not maintain relevant travel documentation, it is submitted by the appellants that the allegation is grossly",

incorrect. As pointed already out, the letter from the sponsoring firm clearly mentions the name and address of passenger, passport number, country to",

be visited, nature of visit, date of departure, period of stay and the foreign exchange required. Pay orders, air tickets and passport were also duly",

verified as already stated.,

19. With regard to the allegation that the Appellant did not verify the status of passengers before release of foreign exchange it is contended that this,

allegation is also grossly incorrect. For release of Basic Travel Quota (BTQ), a separate request letter was obtained from the concerned passenger.",

In terms of Para 11 of FLM Memorandum, resident Indian citizens were eligible for BTQ upto USD 2000 per calendar year. The said limit has not",

been breached.,

20. Similarly, with regard to the allegation that the Appellant has not maintained relevant records/ registers as contemplated in the FLM Memorandum,",

it submitted that this allegation is also incorrect. All the relevant registers, returns were filed with the RBI which has duly inspected the records of the",

Appellant and renewed its license.,

21. Without prejudice to the submissions above and as an alternate contention, it is argued that the even if the allegation were assumed to be true, the",

penalty imposed is disproportionate. A perusal of the Departmentâ€Ÿs case reveals that the findings in the Impugned order in respect of the alleged,

contravention of section 6(4) and 6(5) relate specifically to M/s Acrobond Exports and its employees and no other persons or entities are referred in,

the impugned order. Therefore, the alleged violation as per the Department has been committed while issuing foreign currency to only one party, i.e.,",

Acrobond Exports. The total foreign exchange released to Acrobond Exports was only INR 45.46 lakh. Even in respect of the said party, the",

Respondent noticed that ""only two such instances"" of violation surfaced during the course of investigation. Therefore, even if the allegations are",

assumed to be true, a penalty of INR 1.35 crores is highly disproportionate and arbitrary. In this regard it is argued that the legal position with respect",

to the proportionality of penalty to the nature of offence has is well-settled. The quantum of penalty imposed on the Appellant ought to be directly,

proportionate with the alleged contravention. But the Ld. Adjudicating Authority has imposed exorbitant penalty without providing any justification or,

reasoning for the same. The decision of the Hon'ble Bombay High Court in its judgment dated 13.12.2023 in the case of Special Director vs. Jaipur,

IPL Cricket (P.) Ltd. (FEMA Appeal No. 1 of 2020 (Bom HC) is relied upon by the appellant wherein it was held as below:,

Ã¢â‚¬Å“22. 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. In any case, we find that the matter is of pure appreciation of evidence and does not raise",

any question of law."""",

22. It is further contended by the appellants that the documentational compliance threshold maintained by them was similar to other money changers,

(i.e., Trade Wings and Wall Street Finance) in respect of whom penalty proceedings have already been dropped. Therefore, in similar facts, there is",

no justification for levy of penalty on the appellant and its directors. In this regard, it is submitted that it is well settled that similarly placed persons",

cannot be discriminated by the Department by taking contrary stands. The decision of the Honâ€Ÿble Supreme Court in Damodar J Malpani vs CCE,

2002 [(146) ELT 483 (SC)] is cited in support of the contention.,

23. Without prejudice to the abovementioned arguments and as a further alternative contention, it is submitted that penalty cannot be imposed for any",

technical breach and in absence of mens rea. The appellant had no role in the alleged smuggling of gold as conclusively held by the Ld. Adjudicating,

Authority in Para 73 of the Impugned Order and also by Hon'ble CEGAT. Under the circumstances, the levy of penalty, being in the nature of quasi",

criminal proceedings, is liable to be sustained only where it be found that mens rea existed or the appellant was guilty of contumacious or dishonest",

conduct. Penalty cannot be imposed on account of any technical or procedural breach. The essential ingredients for the levy of penalty were,",

therefore, not satisfied in the present case. Reliance in this regard is placed on the decisions in Hindustan Steel Ltd. v. State of Orissa (1969 2 SCC",

627), Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore and Ors. 1980 (6) ELT 295 (S.C.), Pratibha Proce",

ssors vs Union of India [1996 11 SC 1011],

24. With regard to the penalties levied on the directors, it is submitted by the appellants that their case is squarely covered by the judgment of the",

Hon'ble Delhi High Court in Kavita Dogra which was passed after due consideration of section 68 of the FERA Act. It is contended that in the,

impugned order, there has been no application of mind to the precise role and responsibility of the Directors in the day-to-day affairs of the Appellant",

Company. The law is well-settled that for penalty to be imposed, the role of the directors in the alleged offence must be specifically brought out. The",

impugned order does not have any finding vis-Ãƒ -vis the role of the directors in commission of the alleged offence. A director does not automatically,

become vicariously liable for the offence alleged to be committed by the Company. The decisions in Umesh K. Modi vs. Deputy Directorate of,

Enforcement 2014 (3) JCC 2028, SMS Pharmaceuticals Ltd. (I) vs. Neeta Bhalla (2005) 8 SCC 89, Saroj Kumar Poddar vs. State (NCT of Delhi)",

(2007) 3 SCC 693, Kavita Dogra vs. Director of Enforcement (2015 (8) TMI 1105 (Del HC) are relied upon for the contention. It is further pointed",

out that recently, the Hon'ble Supreme Court in the case of Shailendra Swarup vs The Deputy Director vide order dated 27 July 2020, while analysing",

section 68 of FERA held that the word, Ã¢â‚¬Å“every person who, at the time of the contravention was committed, was in charge of, and was responsible",

to, the company for the conduct of business"" has to be given some meaning and purpose. The provision cannot be read to mean that whosoever was a",

Director of a company at the relevant time when contravention took place, shall be deemed to be guilty of the contravention. The Apex Court further",

observed that had the legislature intended that all the Directors irrespective of their role and responsibilities shall be deemed to be guilty of,

contravention, the section could have been worded in different manner. When a person is proceeded with for committing an offence and is to be",

punished, necessary ingredients of the offence as required by Section 68 should be present.",

25. Without prejudice to the above submissions, it is further contended that the benefit of proviso to section 68 would be available to the appellant.",

Once it has found that necessary due diligence has been carried out to prevent any contravention, the benefit of the proviso to section 68 of the FERA",

Act would be available to the Directors of the Company. The said proviso provides that the provision of Section 68(1) deeming the directors of the,

company to be guilty of the contravention will not render such person liable if he proves that the contravention took place without his knowledge or,

that he exercised all due diligence to prevent such contravention.,

In light of the above contentions, it is prayed by the appellant that the Impugned Order be quashed and the penalty levied on the Appellants be set",

aside in toto.,

Submissions on behalf of M/s Nahalchand Laloochand and its Partners,

26. Firstly, on the factual context of the case, it is submitted that on 21.02.1995, the appellants received six pay orders dated 20.02.1995 for an amount",

of Rs. 6,38,000/- (total Rs. 38,28,000/-) drawn on the Syndicate Bank towards consideration for foreign currency as an advance payment.",

The Pay orders were issued by Acrobond Exports. Thereafter, on the next day. i.e., on 22.02.1995, the appellants received six applications from AFS",

Diamonds Exporters and Importers for the release of foreign currency for the purpose of business visit abroad for its sponsored persons, namely, Mr",

Samad Ahmed Rasul Miya and five others. In the said applications, release of US $ 19,800 for each person was sought. After verifying all the",

documents of the aforesaid persons, including ticket number, passport number, airline etc., the appellant issued the permissible amount of foreign",

exchange that is US $ 19,800 to each of the persons mentioned in the applications. Each of the persons signed the Travellers Cheques received by",

them. The appellant deposited the Pay orders with the Central Bank. However, on 22.02.1995, the appellants were shocked to know that the aforesaid",

Pay orders had been dishonoured under the directives of the DRI. Thereafter, the appellants, along with three other FFMCs, were served with Show",

Cause Notices dated 16.08.1995. The Show Cause Notice inter alia stated that one Shri Ambalal B. Soni and his accomplices were responsible for,

receiving smuggled gold sent from Dubai through passengers. They were also responsible for procuring foreign exchange from FFMCs at official,

rates in a fraudulent manner. It was also alleged that the appellant M/s Nahalchand Laloochand and others had sold foreign exchange to non-existing,

firms. It was further alleged that foreign exchange was sold under Basic Travel Quota and Business Travels Scheme by them without proper,

identification of the firms and the persons purchasing the foreign exchange. The Ld. Commissioner of Customs (Preventive) decided the matter,

against the FFMC and imposed penalties upon them. The matter travelled to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT)",

and the Honâ€Ÿble CEGAT vide its order dated 02.02.2001, allowed the appeal filed by the appellants and held that the FFMCs were not aware that the",

traveller's cheques issued by them were not meant to be used for the purpose for which they were issued, i.e., for business travel, and that there was",

no abetment or attempt to smuggle foreign exchange by the FFMCs. The Directorate has contested the said order of the CEGAT before the Honâ€Ÿble,

High Court and proceedings are pending.,

27. After the aforesaid appeal filed by the appellants before the CEGAT was allowed, a Show Cause Notice dated 17.05.2002 was issued by the",

Directorate of Enforcement (ED) alleging violation of various provisions of FERA, 1973. It is emphatically pointed out by the appellants that the same",

was issued just 13 days before the sunset period under section 49(3) of the FEMA, 1999 was to expire on 01.06.2002.",

28. Coming to the impugned order passed by the Ld. Special Director of Enforcement, it is contended that though the Ld. Special Director has",

observed that the appellant sold the foreign exchange equivalent of Rs. 12,23,63,745/-, there is no finding of the said order with regard to an amount of",

Rs. 12,23,63,745/-. The findings of the Ld. Special Director are restricted only to the transactions dated 21.02.1995 totalling to Rs. 38,28,000/-",

29. It is submitted by the appellants that the Honâ€Ÿble Supreme Court in the case of Shanti Prasad Jain v. Directorate of Enforcement AIR 1962 SC,

1764 (para 35) has held that proceedings under FERA, 1973 are quasi criminal in nature. Furthermore, the Apex Court, in Govind Impex Impex Pvt.",

Ltd. & Ors. v. Appropriate Authority, Income Tax Department 2018 SCC 529 (para 11) and certain other judgements which have been cited by the",

appellants, held that a provision of law which invites penalty must be strictly construed. The Appellant submits that since FERA, 1973 is quasi criminal",

in nature and imposes penalties, therefore, the said Act should be construed strictly.",

30. The Appellant has also submitted point-by-point responses to the findings against them in the impugned order. The main contentions in this regard,

are summarized as below:,

Ã¢â‚¬Â¢ There is no specific allegation in the Show Cause Notice (SCN) dated 17.05.2002 regarding which provision of FLM Memorandum which was,

violated by the Appellants. It is a settled proposition of law that the allegations in the SCN should be specific. When the foundation of the charge is not,

made out in the SCN, then the impugned order cannot be sustained. The mere citation of FLM Memorandum is not enough to impose penalty. In the",

absence of any specific mention of the provision of FLM Memorandum violated by the appellants, the Ld. Special Director should not have held the",

appellants guilty of violation of FLM Memorandum. The decisions in B D Gupta v. State of Haryana (1973) 3 SCC 149 (para 9); Commissioner of,

Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd. (2007) 5 SCC 388 (para 13, 14); Biecco Lawrie Ltd & Anr. v. State of Bengal & Anr",

(2009) 10 SCC 32 (para 24-25); Gorkha Security Services Vs. Government NCT of Delhi (2014) 9 SCC 105, (para 21-22) are relied upon",

Ã¢â‚¬Â¢ The appellants were not required to check the bona fides of M/s AFS Diamonds Exporters and Importers as per the FLM Memorandum. Para-11,

of the Memorandum pertains to the sale of foreign currency for basic travel quota and para-12 pertains to the sale of foreign currency for business,

visits abroad, i.e., business travel (BT). None of the aforesaid provisions of the FLM Memorandum put the obligation on the FFMC to check the bona",

fides of the sponsoring firm. The provisions do not reasonably require an FFMC to check for the bona fides of the sponsoring firm as it is totally,

impractical to impose such a restriction,

Ã¢â‚¬Â¢ The appellants did check the bona fides of the person to whom the foreign currency was issued. There is no allegation that the foreign currency,

was issued to the wrong persons. Furthermore, there is also no allegation that appellants issued more foreign exchange than the permissible limits. The",

appellants had asked the passport number date and place of issue of passport, airline route, ticket number, departure date and residential address. At",

the relevant time, the FLM memorandum did not stipulate that copy of passport must be taken. It is only through a later Circular dated 12.02.1996 that",

the RBI mandated that copies of passports are required to be retained. The passports were checked. There is no allegation that the passport numbers,

were incorrect or foreign exchange was released to a person holding passport of a different person.,

5.The appellant was bound to maintain a Register of sales of foreign currency notes/coins and foreign currency travellers' cheques to the public in,

form FLM-3. And also Registers in form FLM 3 and form FLM 5. Para 24 provides that the money-changers should submit a statement to the RBI.,

Para 25 empowers any officer of the RBI to inspect the books of accounts and other documents of money-changers. Para 28 empowers Reserve,

bank to revoke the license granted to the money-changer at any time if the money-changer has not complied with the provisions of the Memorandum.,

The appellants maintained all the documents as per para-11 and 12 and complied strictly with all the requirements. They also submitted the necessary,

documents, including the statement of sales of foreign currency notes/coins and travellers' cheques, FLM Statements No. 8,9,10, along with the copy",

of FLM 3 & 5 for the relevant period to RBI. The RBI has never objected to or doubted the said documents. Furthermore, the RBI renewed the",

license of the Appellant on 01.04.1992 for 3 years and never revoked the same,

Ã¢â‚¬Â¢ On similar facts, the Ld. Special Director let off other FFMCs. Mr. Kirti Shah and Mr Abdul Gaffar Merchant of Trade Wings had admitted in",

their statements that before releasing the foreign exchange to the person sponsored by M/s Vijay Agencies they had not done any verification,

regarding the bona fides of the company or the said two persons. Despite these statements and despite the facts and circumstances being almost,

similar to the case of the appellants, the Ld. Special Director did not impose penalty upon M/s Trade Wings",

Ã¢â‚¬Â¢ The appellants did not have any reason not to issue the foreign exchange as the documentation for release of foreign exchange was proper and as,

per law. The appellants received Pay orders of a nationalised bank. Therefore, there was no presumption that the bank accounts opened with a",

nationalised bank were of a fraudulent firm. The transactions were processed in good faith, during the course of normal transactions of Appellants",

Ã¢â‚¬Â¢ The Ld. Special Director imposed penalty on the appellants on the ground that the transaction in question was dated 22.02.1995 and the appellants,

received the Pay orders on 21.02.1995. The FLM Memorandum does not prevent. The FLM Memorandum also does not regulate the mode of,

payment. Nor does it stipulate a condition that payment has to be made before or after the release of the foreign currency. Similarly, neither the",

aforesaid FLM Memorandum nor the Indian Contract Act, 1872 prohibits receipt of consideration from third party",

Ã¢â‚¬Â¢ The RBI, vide its letter dated 30.06.1994 clarified that Basic Quota and Basic Travel Quota can be clubbed",

Ã¢â‚¬Â¢ The Ld. Special Director has given a finding that the Appellants have not derived any pecuniary gains and have not connived with the activities,

carried out by Ambalal B. Soni. In the absence of any finding of connivance or pecuniary benefit received by the appellants, they cannot be held",

liable. The Special Director failed to establish any mens rea related to the transaction in question. The impugned order was passed without,

appreciating documents on record and based merely on conjectures. The Special Director failed to appreciate that there was no dishonest conduct on,

the part of the Appellants,

Ã¢â‚¬Â¢ The impugned order does not record any finding as to which partner was in charge of or responsible for the conduct of partnership firm at the,

relevant time. Therefore, penalty ought to have been dropped against the partners. The decision of the Apex Court in Girdhari Lal Gupta v. D.H.",

Mehta (1971) 3 SCC 189 (para 6-7) and Sham Sunder & Ors. v. State of Haryana (1989) 4 SCC 630 (paras 9-10) are relied upon. Also, the law is",

well-settled that separate penalties on partnership firm and their partners is not permissible. Judgment of the Honâ€Ÿble Supreme Court in Commissioner,

of Sales Tax, Madhya Pradesh, Indore vs. Radhakrishan & Ors. (1979) 2 SC 249, paras 6-7; Dena Bank vs. Bhikhabhai Prabhudas Parekh & and",

Goondla Venkateswarlu v. State of A.P. (2008) 9 SCC 613: (2008) 3 SCC (Cri) 829 are relied upon,

Ã¢â‚¬Â¢ The proceedings are vitiated from their inception as there was an enormous delay of about seven years in the issuance of the Show Cause,

Notice. The law is well-settled that delay in issuance of Show Cause Notice leads to invalidation of the proceedings. Reliance is placed inter alia on,

the decisions in Bhagwandas S. Tolani v. B.C. Aggarwal [1983(12)ELT44(Bom), para 6 and 7], Universal Generics Pvt. Ltd. v. Union of India [1993",

(68) ELT 27 (Bom), para 2. Further, the law is also well settled that belated/ delayed imposition of penalties is not justified. Decisions in Neeldhara",

Weaving Factor v. DGFT, New Delhi 2007 (210) ELT 658 (P&H) (para 2) is relied upon wherein delay in imposition of penalty was considered a",

good ground for setting it aside. In the present case the transactions admittedly relate to the year 1994-95 whereas the Show Cause Notice was issued,

on 17.05.2002 and the impugned order was passed on 29.08.2007. Thus, it is after a period of more than a decade that penalty has been imposed upon",

the Appellant. In view of this judgment of the Punjab & Haryana High Court it is respectfully it is respectfully submitted that the instant appeal is liable,

to be allowed for this ground alone,

Ã¢â‚¬Â¢ The Adjudicating Authority failed to take the note of Order dated 02.02.2001 passed in appeal filed by the appellants before the CEGAT,",

whereby the appellants were exonerated and were held not liable for abetting export of foreign currency. The said order pertains to the very same,

transaction, i.e., transaction dated 22.05.1995 and similar issues formed the subject matter of proceedings under the Customs Act, 1962. The CEGAT",

decided the appeal in favour of the appellant inter alia dropping the similar charges levelled against the appellant. It is submitted that on this ground too,",

the impugned order stands vitiated in as much as the law to this regard is also settled by decision of Hon'ble Supreme Court that similarly placed,

persons cannot be discriminated by the instrumentality of the State and Government departments in particular by taking contrary stand. Reliance is,

placed on the decisions in Damodar J. Malpani v. Collector of Central Excise 2002 (146) ELT 483 (SC), [para 3, 6], Unipatch Rubber Ltd. v.",

Commissioner of Central Excise, Bhopal 2011 (272) ELT 340 (SC) [para 4, 5]",

Ã¢â‚¬Â¢ Imposition of penalty has to be proportionate to the act/offence, if any, and the Department is not free to choose what amount of penalty to be",

imposed without considering the nature of the offence and the extent of involvement. Reliance is placed in the judgment of the Honâ€Ÿble Delhi,

High Court in J. Mitra & Bros. V. Commissioner of Customs [CUS A.C. No. 1/2013], decision dated 11.10.2013. On this ground too, the impugned",

order suffers from grave legal infirmity. The total value of the transaction in question dated 22.02.1995 was Rs. 38,28,000/- and the total penalties",

imposed on the appellants are to the tune of Rs. 1,95,00,000/-. The said imposition of an astronomical penalty is uncalled for and is against the settled",

principle of law. Assuming, without admitting, that requisite documents were not maintained properly by the Appellants, even then the maximum",

penalty that could be imposed upon the Appellants would be Rs. 5,000/- as per Section 50 of FERA, 1973 and nothing more.",

31. The appellant submits that in view of the aforesaid incontrovertible facts, the impugned Order against the appellants is liable to be quashed, as",

there is no complicity or wrong doing on their part. The appellants have acted bona fide in due discharge of their functions. The impugned order is,

liable to be set aside.,

32. It is pointed out by the appellants that Mr. Himmatlal Kantilal expired on 06.03.2005, the proceedings have abated against him and, therefore, no",

appeal has been preferred in his name.,

ARGUMENTS ON BEHALF OF THE RESPONDENT,

In respect of M/s Nucleus Netsoft & GIS (India) Ltd. and its Directors,

33. On facts, it is submitted by the respondent directorate that subsequent to the DRI action, the Enforcement Directorate registered a case against",

Sh. Ambalal B Soni, a notorious smuggler of gold who used to convert the sale proceed of smuggled gold into foreign currency equivalent to Rs",

24,90,35,182/- by availing foreign exchange in fictitious name from different money changers including the appellant and its directors.",

34. The said Sh. Ambalal B Soni had availed foreign exchange equivalent to 8,30,23,262/- which is clear from the statement dated 03.03.1995 of Mr",

Mahendra N. Jude, Senior Manager of the appellant company who stated that on the request of Acrobond Exports, they have released foreign",

exchange to their representatives namely Mashood Akhtar Sanabh, Mohammad Abdul Gani, Ismail Siddiqui Mistry and Shaishuddin N. Shaikh, and",

other 26 firms as detailed in the Annexure-A to the Show Cause Notice issued to them and that in each case US$ 19,800/- was issued based on the",

applications made by the Proprietor of Acrobond Exports.,

35. In one of the cases where encashment of pay orders of Rs 6,34,000/-by the appellant was stopped by the DRI, foreign exchange was released to",

different six persons who have been shown as employees of M/s Acrobond Exports. This was done on the basis of 6 different application forms,

sponsored by Acrobond Exports. Scrutiny of those application forms clearly indicates as under:,

i) In the last paragraph of the application no details of payment, i.e., cheque number, date, amount and bank have been shown, whereas in last",

paragraph of the receipt issued by the appellant simply says that they received Indian currency in lieu of sale of forex but no cheque detail drawn on,

syndicate bank has been given. Moreover, signatures of applicant and money changer are also missing",

ii) The appellants were issuing forex to number of such people as detailed in Annexure-A without receiving complete details in the form and thus,

acting beyond the scope of their authorization issued by RBI under section 6 & 7 of FERA, 1973 and were aiding and abetting the smuggler Sh.",

Ambalal Soni by their conduct.,

36. The appellant was charged for contravening section 7(4) read with 6(4) & 6(5) read with 68 of FERA, 1973. As a money changer (FFMC) the",

appellant was an authorized dealer to transact in foreign exchange subject to the conditions laid down by the RBI vide notifications, i.e., FLM issued",

under section 73(3) of FERA, 1973. Section 6(5) clearly stipulates that the authorized dealer SHALL before undertaking any transaction on behalf of",

any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not",

involve in any FERA contraventions and if not reasonably satisfied he shall refuse to transact in foreign exchange.,

37. In the mentioned case, the appellants did not perform their statutory obligation as detailed in section 6(5) on following counts:",

Ã¢â‚¬Â¢ They accepted incomplete forms wherein the information relating to payment against the release of forex was concealed. All the material,

information was not provided in the form itself even then the appellant issued forex to them,

Ã¢â‚¬Â¢ That the appellant was obligated to take the following documents from the persons whom forex was released,

- Copy of valid passport,

- Copy of return confirmed ticket,

- Copy of valid visa,

- BTQ application duly completed.,

38. By acting against the statutory obligations and by not keeping the proper record of foreign exchange dealings the appellant and its partners wilfully,

contravened the alleged provisions of FERA and were hence liable for the penalty which the Ld. Adjudicating Authority imposed vide his detailed and,

reasoned order.,

39. It is also contended that that it is very important to keep in mind that the period of forex transaction was the year of 1995 when forex reserve with,

the country were at precarious level. All foreign exchange was to be used for genuine and bona fide purposes. By not exercising due diligence,",

appellant has caused damage to forex reserve of the country and hence needed to be dealt with strict penal provisions.,

In respect of M/s Nahalchand Laloochand and its Partners,

40. The contentions put forward on behalf of the respondent in this set of cases are substantially on the same lines as in the case of M/s Nucleus,

Netsoft and GIS Ltd. and its directors. The case was registered by the Enforcement Directorate under FERA, 1973, subsequent to the DRI action. It",

is stated that Shri Ambalal B Soni was a notorious smuggler of gold who used to convert the sale proceeds of smuggled gold into foreign currency,

equivalent to Rs 24,90,35,182/- by availing foreign exchange in fictitious name from different money changers including the appellant and its partners.",

The said Sh. Ambalal B, Soni had availed foreign exchange equivalent to 12,23,63,745/- from the appellant in the name of M/s AFS Diamonds",

Exporters and Importers and other 49 firms as detailed in the Annexure-A to the Show Cause Notice issued to them.,

41. In one of the cases where payment of pay orders of Rs 38,28,000/- to the appellant was stopped by the DRI, foreign exchange was released to",

different six persons who were shown as employees of M/s AFS Diamonds. This was done on the basis of 6 different application forms sponsored by,

AFS Diamonds. Scrutiny of those application forms clearly indicates th following:,

i) In the last paragraph of the application no details of payment i.e. cheque number, date, amount and bank has been shown, whereas in last paragraph",

of the receipt issued by the appellant simply says that they received Indian currency in lieu of sale of forex but no cheque detail drawn on syndicate,

bank has been given. Moreover, signatures of applicant and money changer are also missing",

ii) Indian currency received has been shown on 20.02.1995 whereas sponsor letter is dated 22.02.1995. It establishes that the appellants were fully,

aware and were regularly doing business with the AFS Diamonds come to them against forex already released,

iii) The appellants were issuing forex to a number of such people as detailed in Annexure-A without receiving complete details in the form and thus,

acting beyond the scope of their authorization issued by RBI under section 6 & 7 of FERA, 1973 and were aiding and abetting the smuggler Sh.",

Ambalal Soni by their conduct,

42. The appellants in this case also were charged with contravention of the very same provisions, namely, section 7(4) read with 6(4) & 6(5) read with",

68 of FERA, 1973. The rest of the contentions of the respondents are also the same as in the cases of M/s Nucleus Netsoft and its directors, namely,",

that the appellant FFMC accepted incomplete forms wherein the information relating to payment against the release of forex was concealed; that all,

the material information was not provided in the form, even then the appellant issued forex to them; that the appellant was obligated to take copies of",

valid passport, return ticket, visa, and BTQ application duly completed from the persons to whom forex was released. It is contended that by acting",

against the statutory obligations and by not keeping the proper record of foreign exchange dealings the appellant and its partners wilfully contravened,

the alleged provisions of FERA and were hence liable for the penalty which the Ld. Adjudicating Authority imposed vide his detailed and reasoned,

order. It is reiterated that the period of forex transaction in questions was the year of 1995 when forex reserves with the country were at precarious,

level. All foreign exchange was to be used for genuine and bona fide purposes. By not exercising due diligence, appellant has caused damage to forex",

reserves of the country and hence needed to be dealt with strict penal provisions.,

43. In view of the above, the respondent submits that the appeals deserve to be dismissed",

ANALYSIS AND FINDINGS,

44. I have given careful consideration to the material before me and the rival contentions put forward by the two sides. Firstly, I propose to deal with",

the preliminary issues raised by the appellant which, according to the appellants, go to the root of the matter and render the impugned order illegal",

even without going into the merits of the factual issues arising in the case. The first contention of the appellant is that the entire adjudication,

proceedings were vitiated on account of an inordinate delay of 13 years. The alleged offence in this case relates to 1994-95 but the Show Cause,

Notice was issued only in 2002 (just prior to the sunset period), and the impugned order levying penalty upon the appellants is dated 29.08.2007.",

Thus, the order imposing the penalty was passed about 13 years after the commission of the alleged offence. The appellants have relied upon the",

judgment of the Hon'ble Supreme Court in Citibank, 2022 (382) ELT 293 SC and certain other decided cases. It is contended that it is a settled",

proposition of law that where no period has been provided in the statute for the initiation of particular proceedings, the adjudicating authority is required",

to initiate the proceedings within a ""reasonable period"". While what constitutes a reasonable period would depend upon the facts and circumstances of",

each case, by no stretch of imagination a period of 13 years can be justified as reasonable.",

45. Having perused the order of the Honâ€Ÿble Supreme Court in the case of Citibank cited by the appellant, I find that the same is distinguishable on",

facts. The decision of the Honâ€Ÿble Supreme Court in that case was based on the finding that the Banking Companies (Period of Preservation of,

Records) Rules, 1985 provided for the preservation of records for 5 years and 8 years respectively under Rule 2 and Rule 3 thereof and, therefore,",

permitting issuance of Show Cause Notice and continuation of proceedings for transactions taken place much prior to 8 years would be unfair and,

unreasonable. Also, in that case, the allegation was that the respondent Bank had accepted cash in foreign currency during the period October 1992 to",

January 1993 to the credit of NRE account of a Non-Resident Indian. In the present case, the allegation is of a very different nature, namely, of",

having released foreign exchange to persons based on a letter of recommendation from a non-existent firm. Significantly, the order of the Honâ€Ÿble",

Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), Mumbai Bench in the case booked under the Customs Act against Shri Ambalal",

Soni and others noted that Shir Ambalal Soni did not reply to the show cause notice or appear before the Commissioner. No satisfactory reason was,

advanced for his failure to do so. He was in grave peril as a result of the investigations as he stood in danger of losing his liberty and a substantial sum,

of money stood in danger of being confiscated. Yet he did not even claim before the authorities that the gold was obtained legitimately or furnish a,

scintilla of information or evidence. It was not disputed that the money which was found deposited in the accounts was deposited at his instance nor,

that the accounts in which it was deposited are in fictitious names there being no entities in the names in which the accounts were opened. Thus, the",

allegations in the present case are of a far more serious nature.,

46. Similarly, in the case of Surendra Lal Girdhari Lal Mehta v. Union of India decided by the Honâ€Ÿble Calcutta High Court, there was a clear-cut",

finding that the first notice of hearing was issued in 1999, almost 9 years after issuance of the Show Cause Notice. Further, no response was given to",

the noticeeâ€Ÿs request for documents. The next notice of hearing was issued in 2015. The Honâ€Ÿble High Court found that the authorities were never,

serious about the adjudication proceedings and in 24 years since the issuance of the Show Cause Notice, not a single hearing was held. These facts",

are clearly distinguishable from the facts of the present case and the order of magnitude of the delay is also vastly different.,

47. In the case of Bhagwan Das Tolani decided by The Honâ€Ÿble Bombay High Court, the Show Cause Notice was issued to the appellant in August",

1966 to which a reply was given by them within a week thereafter. No formal order was passed. Thereafter, in January 1977 the Directorate gave",

another notice to the petitioner to which too the petitioners sent a reply within a few days, wherein, significantly, it was pointed out that the",

Enforcement Directorate had earlier given certain directions to the Reserve Bank of India at Bombay which were lifted after the earlier personal,

hearing given by the Directorate at New Delhi. Furthermore, all the relevant records had been destroyed and the persons who were in-charge were",

no longer in employment. Comparable facts do not exist in the instant case.,

48. Without going into the facts of each and every case relied upon by the appellants, it would be sufficient to state that the case laws cited by the",

appellant in support of the preliminary issues raised by them turned on their own facts and an identical situation does not exist in the present set of,

cases for them to be squarely covered by the ratio of those of cases on the preliminary issues.,

49. In the context of the next preliminary issue raised by the appellants that the Show Cause Notice suffered from the vice of being vague and,

unintelligible, thus rendering it illegal, I have also perused the aforesaid Show Cause Notice issued to the appellants in the present set of cases. It is",

seen that the said notice, firstly, outlines the allegations against Shri Ambalal B. Soni and his associates. Thereafter, it points out that the investigation",

indicates that the appellant companies have aided and abetted the aforementioned Shri Ambalal B. Soni in acquiring and transferring foreign exchange,

equivalent to the amount specified in the notice. Thereafter, it is pointed out that by aiding and abetting Shri Ambalal B. Soni in acquiring and",

transferring foreign exchange of the specified amounts, the appellant companies appear to have contravened the provisions of Section 8(1) read with",

64(2) of the Foreign Exchange Regulation Act, 1973 and thereby rendered themselves liable to be proceeded against under section 50 of the Foreign",

Exchange Regulation Act, 1973 read with sub-section 3 and 4 of section 49 of the Foreign Exchange Management Act, 1999. It is also mentioned that",

the partners and directors of the appellant FFMCs, being persons in charge and responsible for the conduct of business of the firm/company, are also",

liable to be proceeded against under the relevant provisions of the Act. Having perused the contents of the Show Cause Notice, I do not find that the",

same is either vague or unintelligible or that it did not make out any offence qua the appellant or its directors.,

50. In view of the discussions, above the preliminary issues raised by the appellants while praying that the appeals be allowed even without going into",

the merits, are hereby dismissed. The instant cases will, therefore, be decided on merits and not on the preliminary issues raised.",

51. In sum and substance, the charges against M/s Nucleus Netsoft are that foreign exchange was issued by them based on applications made by the",

proprietor of M/s Acrobond Exports without verifying the whereabouts of the said firm or the credentials of representatives deputed by them; that the,

foreign exchange towards entertainment allowance was released without verifying the status of the passengers and the same was released only on the,

basis of application made by M/s Acrobond Exports; that they granted more amount foreign exchange to the representatives of Acrobond Exports,

than they had even requested for, only with a view to adjusting the excess amounts in the pay orders; that they failed to maintain relevant records/",

register as contemplated in the FLM Memorandum, namely, FLM 1 to FLM 10 as the same were not produced during the proceedings; that they did",

not comply with the conditions laid down in Para 11 and 12 of the FLM Instructions while releasing the foreign exchange as due diligence was not,

exercised by the company before acting on the applications made on such letterheads. It is pointed out that M/s Nucleus Netsoft had sold foreign,

exchange equivalent to Rs.8,30,23,262/- during the period 1994-95 which was handed over to the persons deputed by Ambalal Soni and Feroze",

Batliwala. The same were released on the basis of applications seeking foreign exchange on letterheads of firms which were found to be fictitious.,

Though only two instances have come to light where the instructions contained in the FLM Memorandum were contravened, considering the quantum",

of business done with entities controlled by Shri Ambalal Soni, the respondent Directorate apprehends that many more such instances have gone",

undetected. At the same time, however, no evidence of complicity with Shri Ambalal B. Soni or his associates in any manner was found against the",

company or its directors.,

52. The allegations in the case of M/s Nahalchand Laloochand are substantially the same as in the case of Nucleus Netsoft. It is alleged that they did,

not verify the bona fide of M/s AFS Diamonds prior to issue of foreign exchange to their sales executives based on their letter; that while the pay,

orders were received on 21.02.1995 the request letters were received only on 22.02.1995; that the Pay Orders brought by persons referred by AFS,

Diamonds were issued from Acrobond Exports and the employees of M/s Nahalchand Laloochand failed to verify bonafides of the said pay orders of,

AFS Diamond; that they released foreign exchange to six passengers based on the sponsor letter of M/s AFS Diamonds Exporters and Importers and,

in the said letter M/s AFS Diamonds Exporters and Importers had not stated the cheque number, date amount and the bank against which the foreign",

exchange was sought to be released and yet the employees of the FFMC did not ascertain the same from the office of AFS Diamonds even,

telephonically prior to release of foreign exchange; that they did not even know the name of the bankers of AFS Diamonds to whom they gave foreign,

exchange for the first time and also did not cause any verification of the firm; that the name of AFS Diamonds does not appear in the pay orders,

xerox copies of which were shown to them; that Shri Mukesh Himmatlal admitted the lapse of not verifying the pay orders; that they released foreign,

exchange towards Basic Travel Quota, Business Quota and Entertainment Allowance to the same person simultaneously on the same application; that",

bona fide of the firm AFS Diamonds were not verified which was in fact not in existence; that they also failed to obtain photocopies of passports of,

the travellers to whom foreign exchange was released along with travel documents as required under para 11 and 12 of the FLM memorandum as the,

same were not produced during the investigation. Although irregularities were detected only in respect of six pay orders totalling Rs.38,28,000, the",

respondent directorate apprehends that many more such instances have gone undetected considering the fact that the FFMC had carried out foreign,

exchange transactions with Ambalal Soni and his associates to the tune of Rs.12,23,63,745 covering as many as 40 firms which were fictitious and",

bogus.,

53. The gist of allegations which emerges from the above is that the appellants failed to exercise due diligence expected of them as Full-Fledged,

Money Changers and contravened the provisions of the relevant RBI Instructions (the FLM Memorandum) while acting on the applications made on,

the letterheads of non-existent companies operated by Shri Ambalal Soni and his associates.,

54. Having perused all the facts before me and the rival contentions of the two parties, I find much force in the submission put forward on behalf of",

the appellants. Upon perusal of the relevant FLM memorandum issued in March 1994, especially para 11 and 12 thereof, I find that the obligations",

cast upon FFMC are to obtain a letter in duplicate giving particulars such as name, address, nationality, countries of visit, number and date and place of",

issue of passport of the traveller, and a declaration that exchange applied for together with exchange already availed of, if any, under the BTQ during",

the calendar year does not exceed US $ 2000 or its equivalent. Further the passport of the traveller should have been verified by the FFMC, it should",

be insured that the traveller is in a possession of a ticket for travel to countries for which the exchange had been applied for, the passport should be",

endorsed with the amount of foreign exchange sold and a notation Ã¢â‚¬Å¾Basic Travel Quotaâ€Ÿ should be made under proper authentication with stamp,

and date. Sale of Foreign Exchange should be made only on personal application and identification of the traveller. One copy of the letter obtained,

from the traveller should be sent to the RBI with monthly statement etc.,

55. Similarly, rules have been stipulated under para 11 for sale of foreign exchange for business visits abroad. The contended by the appellant, the",

Respondent Directorate has not pointed out the specific clauses of the FLM Memorandum which have been contravened. In the absence of the same,",

a general allegation that the conditions stipulated under Paragraphs 11 and 12 have been contravened cannot be accepted. It is the contention of the,

appellants that they had duly fulfilled the requirements of Para 11 & 12 and obtained the requisite documents and fully complied with the FLM,

instructions by receiving a letter from the sponsoring firm on their letter-head requesting for the issue of foreign currency wherein the name of address,

NAME OF INDIVIDUAL / ENTITY,"PENALTY

IMPOSED

Sh. Mukesh Himmatlal,Nil

Sh. Rajesh Himmatlal,Nil

M/s Nahalchand Laloochand,"10,00,000/-

M/s Nucleus Netsoft & GIS (I) Ltd. (then Ã¢â‚¬Å¾Nucleus

Securities Ltdâ€Ÿ)","10,00,000/-

Sh. Asit C. Mehta,Nil

Sh. Kirit H. Vora,Nil

Sh. N. Venkiteswaran,Nil

Sh. Deena A. Mehta,Nil