

ELECTIVE PAPER 6D: ECONOMIC LAWS

Case Study 5

Mrs. Shakuntala Bisht was a dynamic woman entrepreneur running her factory of manufacturing designer candles and other items made of wax as a proprietary concern in Dehradun (Uttarakhand) titled as M/s. Bisht Designer Candles since 2003. She had appointed a number of dealers pan India for selling her designer products.

She was residing in a bungalow on Subhash Road in Dehradun along with her family. Her husband Mr. O. P. Bisht was joint-secretary in Uttarakhand Sachivalaya. Her son Varun had done his B.E. (Bachelor of Engineering) from IIT, Kharagpur and thereafter MBA from IIM, Kolkata in the year 2013. Her daughter Latika was pursuing B.Sc. (Hons.) in Physics from DIT University, Dehradun.

Varun, being a brilliant student, secured a job in Accenture through Campus placement. He attended a three months' residential training programme and joined as Assistant Manager (Operations) in Pune branch of the company. He took a one BHK flat on rent at Hinjewadi locality, purchased some furniture and other daily household items and got himself settled in the new atmosphere. He was happy and content as the package offered to him was very lucrative.

Mrs. Bisht had high aspirations and was desirous of expanding her business further. Therefore, in the year 2013, she thought of exporting her products to various countries crossing the borders of India. After discussing with her family members, she decided to convert her proprietary concern into a private limited company. Accordingly, she got registered her company under the title Bisht Designer Candles Pvt. Ltd. in which she and her daughter were directors while all of the four family members were shareholders. Thereafter, she completed various formalities required for exporting her product which, *inter-alia*, included obtaining a ten digit importer-exporter code (IEC) number from Directorate General of Foreign Trade (DGFT).

In the year 2015, she sent her first export consignment of designer candles to a foreign buyer in Berlin, Germany. The order amounted to € 20800 and the importer was required to make payment in three months after shipment. As per the terms and conditions a Letter of Credit (L/C) was opened by the Deutsche Bank on behalf of the importer. Before shipping goods, Mrs. Bisht had to fill requisite export declaration form since the consignment did not fall in exempted category as mentioned in Regulation 4 of the FEM (Export of Goods and Services), Regulations, 2015. After shipment of goods, she submitted the documentary bill of exchange drawn under L/C to Syndicate Bank, Dehradun and got it discounted under her sanctioned bills discounting limit. On the due date Syndicate Bank received the export payment and squared off her liability.

Subsequently, she explored candle market in the USA and came in contact with M/s. Williams' Art Gallery in Boston which had a five storey departmental store. In this store, one of the floors was meant only for designer candles and other items made of wax. After due negotiations with the CEO Mr. Williams, she managed to get an advance of 50,000 USD being 50% of the total export value. It was well within her knowledge that in case an advance was received against export to a foreign buyer, the shipment of goods was to be made within one year of receipt of advance and the export documents were required to be routed through the same authorised dealer which received the advance on her behalf. She shipped the goods much before one year and also got payment well within the statutory period of nine months from the date of export.

On the successful settlement of her first export consignment to M/s. Williams' Art Gallery of Boston, she took steps to complete another export order from the same party for USD 1,00,500. However, this time no advance payment was made by the importer and on the basis of his firm order, she dispatched the consignment of designer candles. After shipment of goods, she submitted the documentary B/E to Syndicate Bank, Dehradun for discounting. As per the agreement, the importer was to make payment on the completion of five months from the

receipt of consignment at his godown. However, by the time five months were over, the importer could make payment of only 40% of the total export value.

Being in need of funds, she started raising and collecting funds from various sources. In one of the cases she had given an unsecured loan of Rs. 5 lacs to a private limited company in which a distant relative of her husband was a director. However, when she demanded her loan back from the company, it was transpired that the company was under liquidation process before the National Company Law Tribunal under Insolvency and Bankruptcy Code, 2016.

Varun was doing his job at Pune to the complete satisfaction of his superiors. In the next three years' time after joining Accenture, Varun could save a lot of money as he was a man of few needs. One day, a casual talk with the local grocer Ajay Gupta gave him an idea to buy a flat in a housing society. Ajay gave him the phone number of a known property dealer, Mr. Rajnikant. Thereafter, a meeting was fixed in the office of Mr. Rajnikant where he noticed a Certificate of Registration hanging on the wall of his office. On enquiry, he was told that now it was mandatory for the property agents to get themselves registered under Real Estate (Regulation and Development) Act, 2016. After seeing the certificate Varun could conclude that he was dealing with a genuine person. After due negotiations, a ground floor 2BHK apartment was finalised in Vayudoot Apartments at a cost of Rs. 62.35 lacs. He himself arranged Rs. 30 lacs out of his savings; obtained a housing loan of Rs. 20 lacs from Axis Bank while the remaining amount of Rs. 12.35 lacs was given by his father out of his personal savings. The title deeds got registered in his name after making payment of stamp duty and other statutory dues. On an auspicious day Varun shifted to his new flat.

About after a month of shifting to his own flat, Varun's boss called him and informed that recognizing his hard work and devotion towards the company he was being transferred to Boston, USA on promotion as Manager (Operations). He was beaming with happiness and thanked his boss from the bottom of his heart. He was supposed to join within next one month.

He went back to Dehradun, completed various formalities including obtaining of visa, packed his belongings and bade goodbye to his family. On the advice of his father he leased out his flat on rent to a reputed private company and then flew to Boston and joined his job. Over there, he was provided with a furnished apartment by the company in the suburbs of Boston. As daily commuting was a bit difficult, he purchased a second-hand SUV. Slowly and gradually he settled in his new home, new office and new country.

Here in Dehradun, Mrs. Bisht was pursuing vigorously to obtain export payment from M/s. Williams' Art Gallery because the statutory period of nine months was over long back and the remaining payment was yet to be received. In the meantime, the authorities at Syndicate Bank also started pressurizing Mrs. Bisht to get the foreign exchange realised at the earliest since the statutory period of nine months was already over. They opined that in cases of default the Reserve Bank of India may also issue appropriate directions for the purpose of securing the payment if the goods were sold in USA or if they were still unsold to get them re-imported into India within the specified period. Though the Reserve Bank had not so far issued any directions but according to her bankers, omission on the part of RBI to give directions did not absolve her from the consequences of committing the contravention. Therefore, she was duty bound to realise the export payment as early as possible.

Besides taking various steps, she also persuaded her son Varun who was already in Boston to follow the matter vigorously and advised him to meet Mr. Williams personally and settle the case. A meeting was fixed and during conversation, it was transpired that though Mr. Williams had sold whole of the consignment, the purchaser was yet to make payment because of some mismanagement. However, on the vigorous persuasion of Varun, Mr. Williams exerted pressure on the local purchasers and within next one month, remaining payment along with interest was realised and repatriated to India.

Varun had a school friend Raman Verma in India who had done MBA from Symbiosis, Pune after his graduation from Dehradun and had joined sales team of LIC at Shimla. From time to time after joining Accenture in Boston, Varun was persuading him to visit Boston and nearby areas along with his wife Vaishnavi Verma. At last, Raman and his wife agreed for the foreign visit and both of them obtained visa.

Raman approached Canara Bank, Shimla for purchase of USD 12,000 for a private visit to the USA. The bank without much formalities gave him the required amount in foreign currency since it was well within USD 2,50,000, i.e. an amount which could be remitted by a resident individual in a financial year under Liberalised Remittance Scheme (LRS). Moreover, the foreign currency was not required to be remitted for any prohibited current account transaction [mentioned in Schedule I to the FEM (Current Account Transactions) Rules, 2000] like participation in lottery schemes or lottery like schemes existing under different names like money circulation scheme or remittances for the purpose of securing prize money/awards, etc. He was asked to submit a simple letter containing the basic information, viz., his name, address and that of beneficiary (i.e. self), SB account number, amount to be remitted and the purpose of remittance along with a cheque of equivalent amount in rupees. In no time, both of them reached the USA.

Varun received Raman and his wife with open heart at the Logan International Airport, Boston and all of them drove to his residence. The next ten days were full of fun and frolic. They visited a number of famous sites which included John F. Kennedy Presidential Museum & Library, Boston Public Library which was opened in 1852 as the first free publicly-supported municipal library in America, Museum of Fine Arts having world's most comprehensive art collections, Boston Public Garden famous for its Swan Boats and having over 600 varieties of trees, Old North Church & Historic Site where the two famous signal lanterns were hung launching the American Revolution, New England Holocaust Memorial where its six glass towers represented the six million Jews who perished in the holocaust, Bunker Hill Monument, etc. In between, they had an overnight stay at New York as well.

Varun helped them in purchasing some nice dresses, chocolates, perfumes, cosmetic items and also some souvenirs for their relatives and friends in India. They enjoyed their trip to USA to the fullest and flew back to India with nice memories.

Raman still had with him unspent amount of USD 3500. On enquiry with his bankers regarding surrender of this amount he was informed that he could surrender to the bank any unspent foreign exchange within a period of 180 days from the date of his return to India. Even if he approached the bank after this period, the bank would not refuse to purchase unspent foreign exchange merely because the prescribed period of 180 days had expired. He was further informed that he was permitted to retain with him foreign currency notes up to USD 2000 and foreign coins without any ceiling beyond 180 days and he could utilize this amount for his subsequent visit abroad.

Varun wanted to be inform regarding sale of his flat in Pune if he was to settle down in the USA permanently since his family at Dehradun was not that much inclined to keep the flat. He once again approached Mr. Rajnikant and enquired whether he, as NRI, could sell his flat. Mr. Rajnikant after obtaining necessary information from one of his lawyer friends, informed him that he was permitted to sell his flat in India to a person resident in India. Further, he could also sell the flat (since it was not an agricultural or plantation property or farm house) to a person resident outside India who is an Indian citizen or to a person of Indian origin resident outside India. Such permission was available under Regulation 3 of FEM (Acquisition and Transfer of Immovable Property in India), Regulations, 2000.

As regards purchase of immovable property at Boston, Varun was informed that FEMA did not restrict such acquisition by a non-resident Indian and he had to follow local laws in this respect. However, if his family members in India remitted to him funds under the Liberalised Remittance Scheme (LRS) for purchasing immovable property outside India, then the said property should be in the name of all the members who made the remittances. Even as per Section 6(4) of the FEMA, if he becomes a person resident in India in future, he would be allowed to hold, own or transfer the immovable property situated outside India because such property was acquired by him when he was resident outside India.

I. Objective Type Questions (2 marks each)

Select the most appropriate answer from the options given for each question:

1. Which of the following remittance would require prior approval of the Reserve Bank of India?
 - (a) Donation exceeding 0.5% of foreign exchange earning during the previous three financial years or USD 40,00,000, whichever is less for contribution to funds promoted by educational institutes,
 - (b) Commission per transaction to agents abroad for sale of commercial plots in India of USD 20,000 or 4% of the inward remittance whichever is more,
 - (c) Remittance exceeding USD 10,00,000 per project for other consultancy services procured from outside India.
 - (d) Remittance of 4% of investment brought into India or USD 90,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.
2. Mr. O. P. Bisht's name does not appear in the registration papers relating to Pune apartment purchased by Varun though he contributed Rs. 12.35 lacs towards the cost of the apartment.
 - (a) It is a benami transaction to the extent of Rs. 12.35 lacs.
 - (b) It is wholly a benami transaction.
 - (c) It is not a benami transaction
 - (d) None of the above
3. Export of the following goods/software would require furnishing of the declaration under FEMA, 1999?
 - (a) Goods imported free of cost on re-export basis
 - (b) Publicity material supplied free of payment
 - (c) By way of gift of goods accompanied by a declaration by the exporter that they are of six lakh rupees in value
 - (d) Unaccompanied personal effects of travellers
4. An exporter receiving advance payment against exports from the foreign buyer is required to make the shipment of the goods within ----- of receiving advance payment, if export agreement does not mention anything to the contrary regarding time period:
 - (a) 6 months
 - (b) 9 months
 - (c) One year
 - (d) One and a half years
5. An Indian citizen resident outside India is permitted to transfer his agricultural property in India to:
 - (a) any person resident in India
 - (b) any person resident outside India if he is a citizen of India or a person of Indian origin.
 - (c) Neither (a) nor (b)
 - (d) both (a) and (b)
6. Foreign exchange purchased from an authorised dealer by a resident individual, if remains unspent, needs to be surrendered to the authorised dealer within ----- of purchase or date of his return to India:
 - (a) 60 days

- (b) 90 days
 - (c) 120 days
 - (d) 180 days
7. In case of goods valuing up to Rs. 5,00,000 as declared by the exporter and sent by way of gift to an importer in a foreign country:
- (a) an export declaration need to be furnished
 - (b) an export declaration need not be furnished
 - (c) furnishing of export declaration depends upon the discretion of the authorised dealer who handles export documents
 - (d) furnishing of export declaration depends upon the discretion of the Custom authorities
8. The term 'Moratorium' in the Insolvency and Bankruptcy Code, means-
- (a) A temporary prohibition on an activity by the competent authority.
 - (b) A period declared by the NCLT, during which no action can be taken against the Company or the assets of the Company.
 - (c) Suspension order of the Board on the debtor's operations.
 - (d) Order issued by the NCLT prohibiting an action against the creditor.
9. Is it possible for a non-resident Indian to acquire immovable property outside India:
- (a) No, it is not possible
 - (b) Yes, it is possible
 - (c) Yes, it is possible but subject to the permission of RBI
 - (d) None of the above
10. As per the Insolvency and Bankruptcy Code, 2016, an Interim Resolution professional approved by the committee of Creditors:
- (a) Can never be replaced until the conclusion of the resolution process
 - (b) Has a fixed term of 180 days
 - (c) Can be replaced with 75% voting in favour of the decision and approval of the Board
 - (d) Can be replaced with 75% voting in favour of the decision.

II Descriptive Questions (10 marks each)

1. Analyse the following situations under the Foreign Exchange Management Act, 1999:
- (i) Forex Dealers Ltd. is an Authorised Person within the meaning of Foreign Exchange Management Act, 1999. Reserve Bank of India issued certain directions to the said Authorised Person to file certain returns, which it failed to file. You are required to state the penal provisions to which the said Authorised Person has exposed itself.
 - (ii) Mr. Shekhar resided for a period of 150 days in India during the Financial year 2016-2017 and thereafter went abroad. He came back to India on 1st April, 2017 as an employee of a business organization. What would be his residential status during the financial year 2017-2018?

(iii) 'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

2. Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether there are any restrictions in respect of the following:-

- (i) Drawal of Foreign Exchange for payments due for depreciation of direct investment in the ordinary course of business.
- (ii) A person, who is resident of U.S.A. for several years, is planning to return to India permanently. Can he continue to hold the investment made by him in the securities issued by the companies in U.S.A.?
- (iii) A person resident outside India proposes to invest in the shares of an Indian company engaged in construction of farm houses.
- (iv) A person, who is resident of Canada, is planning to acquire an immovable property in Mumbai.

3. Analyze the following situations under the Real Estate (Regulation and Development) Act, 2016:

- (i) Mr. Ram booked a 4 BHK flat under the Gateways project. The project is under supervision of Mr. Pankaj. Mr. Pankaj without telling the allottees reduced the number of rooms from 4 to 3 himself. Whether this is allowed under the Act and what remedies does the Allottees have.
- (ii) Mr. Vivaan booked a 4 BHK flat under the Flower Valley project for a total cost of Rs. 2 Crore. The project is under supervision of Mr. Shyam. Mr. Shyam put a condition to pay Rs. 50 Lakhs as an application fee before entering into a written agreement for sale with Mr. Vivaan. Decide whether the contention of Mr. Shyam is valid?