FEMA Vs FERA

Why in news?

Enforcement Directorate (ED) has recently registered a case against the British Broadcasting Corporation (BBC) India under the Foreign Exchange Management Act (FEMA).

What is the case about?

- The ED registered a case against BBC, under FEMA, for the alleged violation is the Foreign Direct Investment (FDI).
- Earlier, the Income-Tax Department had also carried out surveys in the offices of BBC in New Delhi and Mumbai on non-compliance with transfer pricing rules and vast diversion of profits.
- To know more about transfer pricing Click Here.

What are Foreign Exchanges?

- Different countries have different currencies and a foreign exchange converts the currency of one country into another.
- For example, if India is importing from the US, it needs to pay in dollars, similarly when the US is importing from India it would need to pay in rupees.
- Foreign exchange is also important when a country is investing in another.
- If the US is investing in India, it has to invest in rupees similarly, India has to invest in dollars while investing in US.
- Such transactions create a demand for foreign exchange.

What is the FEMA Act, 1999?

- Foreign Exchange Management Act (FEMA) came in 1999 as a successor to the Foreign Exchange Regulation Act (FERA) of 1973.
- It was drafted while keeping in mind the changing economic conditions in a post-liberalisation India.
- The aim of the act was to facilitate external growth, encourage foreign exchanges, maintenance of foreign exchange market in India.

What are the similarities between the FERA and FEMA?

- The Reserve Bank of India and Central Government continued to be the regulatory bodies.
- Presumption of extra territorial jurisdiction as conceived in FERA was retained.
- The Directorate of Enforcement continued to be the agency for enforcement of the provisions of the law such as conducting search and seizure.

What are the differences between FERA and FEMA?

Provisions	FERA	FEMA
Origin	1973	1999
Aim	To regulate foreign exchange in order to conserve foreign exchange reserves.	To facilitate external trade & payments and promoting orderly development and maintenance of foreign exchange market.
Background	Formulated at a time when the foreign reserves were limited	Enacted at a time when the foreign reserves were satisfactory
Provisions	Complex: consisted of 81 sections	Simple: consist of 49 sections
Right of Assistance	It did not contain any provision on the defaulter to seek any legal assistance	It expressly recognizes the right of appellant to take assistance of legal practitioner
Category of violation	Criminal offence	Civil offence
Punishment	Imprisonment	Monetary penalty
Search & Seizure	It conferred wide powers to make a search	The scope and power of search and seizure has been curtailed and confined to officers of Enforcement
Transactions	All foreign exchange dealings required permission from RBI or Central government	Current account transactions are free from permissions and certain Capital Account transactions required special permission from RBI

Quick facts

Enforcement Directorate
• It is a premier financial investigation agency of the Government of India. • The Directorate of Enforcement is a multi-disciplinary organization mandated with investigation of offence of money laundering and violations of foreign exchange laws which includes - The Prevention of Money Laundering Act, 2002 (PMLA) - The Foreign Exchange Management Act, 1999 (FEMA) - The Fugitive Economic Offenders Act, 2018 (FEOA) - Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA).

References

1. The Indian Express | BBC Issues
2. India Code | About FEMA
3. Enforcement Directorate | About ED

4. Shri Ram College of Commerce | Foreign Exchange Management

