

**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF COMMERCE
OFFICE OF THE DIRECTOR GENERAL OF FOREIGN TRADE
Udyog Bhawan, New Delhi-110011**

F. No. 18/02/2018-19/ECA-I/171

Date of Order August, 2018

Date of Dispatch 27th August, 2018

Name of Appellant : M/s Sawhney (India) Pvt. Ltd.,
W-40, 1st Floor,
Okhla Industrial Area Phase-II,
New Delhi-110020.

Order Appealed against : Order-in-Appeal No. 05/16/140/00017/AM14/Appeal/
CLA dated 12.12.2017 passed by Addl. DGFT, CLA,
New Delhi.

Order-in-Review passed by : Shri Alok Vardhan Chaturvedi, Director General of
Foreign Trade

Order-in-Review

M/s Sawhney (India) Pvt. Ltd., W-40, 1st Floor, Okhla Industrial Area Phase-II, New Delhi-110020 has filed a Review Petition dated 02.05.2018 under Section 16 of FTDR Act, 1992, as amended, against Order-in-Appeal No. 05/16/140/00017/AM14/Appeal/CLA dated 12.12.2017 passed by Addl. DGFT, CLA, New Delhi.

Facts of the case:

2. M/s Sawhney (India) Pvt. Ltd., New Delhi obtained an Annual Advance Authorization No. 0510145653 dated 14.12.2004 from CLA, New Delhi for CIF value of Rs. 1,50,00,000/- (US\$ 327154) for import of , inter alia, Fabric. The Authorization was issued, inter alia, with the condition that the firm would export Textile General (and others as per the details in the authorization) for FOB value of Rs. Rs. 2,50,00,000/- (US\$ 550055) by 13.12.2006.

2.1 It is noted that the firm had executed a Bank Guarantee / LUT under Para 2.20 read with 4.18 of the Hand Book of Procedures 2009-2014 with the condition, inter alia, that in the event of default in fulfilling the export obligation within the stipulated time, the firm would pay an amount equal to the amount of duty saved with 15% interest per annum from the date of import of the first consignment till the date of payment.

2.2 The export obligation period expired on 13.12.2006. The firm did not submit the prescribed export documents regarding fulfillment of the export obligation.



2.3 A Show Cause Notice dated 06.07.2010 under Section 14 for action under Section 11 of FTDR Act, 1992 was issued to the firm directing it to submit the requisite documents for fulfillment of export obligation.

2.4 The firm failed to submit the requisite documents.

2.5 An Order-in-Original No. 05/21/39/00020/AM05 dated 11.12.2012 was passed by the Joint DGFT, CLA, New Delhi (Adjudicating Authority), in exercise of the powers vested in the Adjudicating Authority under Section 11 (2) read with Section 13 of FTDR Act, 1992, as amended, imposing fiscal penalty of Rs. 4,50,00,000/- on the firm for non-fulfillment of export obligation.

3. Aggrieved by the Order-in-Original dated 11.12.2012, the firm filed an appeal under Section 15 of FTDR Act, 1992, as amended, before the Appellate Authority, CLA, New Delhi.

3.1 It is noted that the case was fixed for personal hearings on 05.12.2013, 30.10.2014, 14.11.2014 and 25.09.2017. While Shri Maninder Jeet Singh, Authorized Representative appeared during the first three personal hearings, the last notice was returned unserved with the remarks "Left".

3.2 The Adjudication Order was passed on 11.12.2012. The appeal was filed on 26.08.2013. The Appellant submitted that due to closure of its business, it had not received any communication from the Department.

3.3 The Appellant had submitted its request to the Department on 20.03.2013 against which it received a letter on 20.07.2013 that its case had been adjudicated.

3.4 The Appellant requested that the date of receipt of the letter on 20.07.2013 should be taken as the date of receipt of the Adjudication Order and delay in filing the appeal be condoned.

3.5 The Adjudication Order was passed on 11.12.2012 and dispatched on the same day through registered post to, inter alia, the following address:

M/s Sawhney (India) Pvt. Ltd., S-501, 2nd Floor, Greater Kailash. Part II, New Delhi.

3.6 The appeal was filed by the Appellant bearing the same address and there was nothing on record to justify the Appellant's stand that the Adjudication Order was not served on this address.

3.7 Further, the letter dated 20.07.2013, on which the Appellant had relied, was earlier dispatched on 25.03.2013 and 05.04.2013 to the same address and the Appellant had offered no explanation why the date of service of the Adjudication Order should not be based on these earlier dates.

3.8 The plea that the Appellant did not receive the Adjudication Order till 20.07.2013 was, therefore, rejected and it was held that the appeal was barred by limitation of time.



3.9 The Appellant had also failed to deposit the penalty imposed by the Adjudication Order as required by the second proviso to Section 15(1) of the FTDR Act.

3.10 In its appeal, the Appellant had made no reference to its failure to satisfy the condition of pre-deposit of penalty.

3.11 Therefore, the Appellant failed to satisfy the second proviso to Section 15(1), rendering the appeal fit for dismissal ab initio.

3.12 The Appellate Authority, in exercise of the powers vested in her under Section 15 of the FTDR Act, 1992, as amended, dismissed the appeal in limine vide her Order-in-Appeal dated 12.12.2017.

4. Aggrieved by the decision of Appellate Authority, the applicant has filed the present Review Petition dated 02.05.2018 stating that:

4.1 They obtained Annual Advance Authorization No 0510145653 dated 14.12.2004 for import of raw material subject to , inter alia, the conditions that they would fulfil the export obligation and other conditions prescribed in the Authorization.

4.2 They imported raw material and exported as per details given below:

Import Details

Import Item Name	CIF value of Authorization allowed	Actual CIF value of Import made	Quantity Imported (SQM)
Textile General	Rs 1,50,00,000/- (US\$ 327154)	Rs. 48,99,860/- (US\$ 106867.17) (32.66%)	81969.75

Export Details

Import Item Name	FOB value of Authorization allowed	Actual FOB value of Export made	Quantity Exported (SQM)
Textile General	Rs. 2,50,00,000/- (US\$ 550055)	Rs. 1,03,02,877/- (US\$ 226685.83) (41.21%)	72598.15

There was a shortfall of 8516.30 sq. meters for which they have paid Custom Duty for Rs. 5,38,743/-.

4.3 The export was made within the validity of the Authorization and export proceeds have been realized in an approved manner within prescribed time.

4.4 Due to the Global recession and heavy financial losses, they closed down their business during 2007-08 and currently they are not operational. However, they complied all the terms and condition imposed against the Authorization in the year 2004-05 and 2005-06 within the validity of the Authorization.



4.5 Due to the closure of the business, they left their registered office address S-501, 2nd Floor, Greater Kailash, Part-II, New Delhi-110048 and could not submit the prescribed export documents towards fulfillment of Export Obligation for redemption of Annual Advance Authorization.

4.6 They changed their registered office address to 121-A, Lane 6, Central Avenue, Sainik Farm, New Delhi-110062 on 18.05.2009.

4.7 A Show Cause Notice was issued on 06.07.2010 and subsequently Adjudication Order imposing a fiscal penalty of Rs. 4.50 crores against the duty saved amount of Rs. 60,00,000/- (approx.) was passed on 11.12.2012 and the same was dispatched to S-501, 2nd Floor, Greater Kailash, Part-II, New Delhi-110048 which was confirmed by the Appellate Authority in her order dated 12.12.2017 .

4.8 Form No. 18 from ROC for change in registered office w.e.f. 18.05.2009 is sufficient evidence to justify their request that the Adjudication Order was not served to them and returned undelivered by the postal authorities.

4.9 The Adjudication Order was passed imposing a heavy fiscal penalty of Rs. 4.50 crores against the duty saved amount of Rs. 60.00 lacs (approx.) only. Export obligation was otherwise fulfilled.

4.10 They wrote a letter to DGFT on 20.03.2013 to find out the status of the Annual Advance Authorization which was replied / dispatched by the office of Addl. DGFT, CLA, New Delhi as per details given below:

Date	Address	Status
25.03.2013	S-501, 2 nd Floor, Greater Kailash, Part-II, New Delhi-110048	Returned undelivered.
05.04.2013	S-501, 2 nd Floor, Greater Kailash, Part-II, New Delhi-110048	Returned undelivered.
17.07.2013	New changed address: 121-A, Lane 6, Central Avenue, Sainik Farm, New Delhi-110062	Received on 20.07.2013.

A copy of Adjudication Order was also sent to them along with the letter dated 17.07.2013 intimating that the case had already been adjudicated on 11.12.2012.

4.11 On receipt of the copy of the Adjudication Order on 20.07.2013, they compiled all the export documents towards fulfillment of Export Obligation and submitted to RA for redemption and simultaneously filed appeal to the Appellate Authority under Section 15 of the FTDR Act, 1992 on 26.08.2013 (within the prescribed period of 45 days).

4.12 The case was fixed for personal hearing on 05.12.2013, 30.10.2014 and 14.11.2014 before the Appellate Authority (Shri Summeet Jerath, Addl. DGFT). Their Authorized Representative attended all the hearings and explained all the facts of the case and required documents were submitted to the Appellate Authority. They were advised to pay CD + Interest on excess import which they paid.

4.13 They have stated that all the PH intimation letters sent to new address 121-A, Lane 6, Central Avenue, Sainik Farm, New Delhi-110062 were received by them.

4.14 A last notice for personal hearing was sent on 25.05 2017 to appear before the Appellate Authority (Smt. Vasundhara Sinha, Addl. DGFT) which was returned with remarks "LEFT" and the appeal was dismissed in LIMINE without considering fulfillment of Export Obligation and granting any further opportunity for personal hearing.

4.15 They have further stated that the Order-in-Appeal is improper and unjust because it has been passed without delivery of the Show Cause Notice, Adjudication order and Notice for personal hearing.

4.16 They could not file written reply to the Show Cause Notice because they did not receive the same.

4.17 They had already realized the entire export proceeds within the prescribed period and to that effect BRC has been received from the concerned bank.

4.18 They have stated that on receipt of Adjudication order they have compiled all the documents and submitted the same for redemption and simultaneously filed appeal. As per them, all the conditions of the Advance Authorization for fulfillment of export obligation have been met within the validity of the Authorization and payment of Customs Duty on excess import has been made which Appellate Authority has not considered.

4.19 In their appeal, they have already intimated that they have closed down their business activities and there are no manufacturing activities since 2007 and, therefore, order for pre-deposit as condition precedent to the acceptance of the appeal would cause undue hardship.

4.20 In view of the above, the firm has requested to accept the date of receipt of Adjudication Order on 20.07.2013 and to set aside the impugned order. Imposition of unjustified penalty may be waived off.

5. The applicant was granted Personal Hearing on 06.06.2018 at 3.45 PM to be heard by the Reviewing Authority. Shri Vikas Chopra, authorized representative appeared before the undersigned. During the personal hearing, the applicant has submitted a written representation reiterating the same facts as stated in the Review Petition.

5.1 I have heard the firm and read the review application and related documents. It is observed that the appellant had obtained an Annual Advance Authorization in 2004 for a CIF value of Rs. 1.5 crore which enabled him to import different types of fabrics etc. without payment of any duty. The govt. revenue is involved. He was supposed to export and realize export proceeds within the specified period of time. He should have been disciplined and followed the provisions of the Annual Advance Authorization. The export obligation period expired on 13.12.2006 and in the absence of compliance, the adjudication order was passed on 11.12.2012. The applicant had ample time to submit requisite documents towards fulfillment of export obligation. The appellate authority has rightly rejected on the plea of the appellant about his contention that he did not receive Adjudication Order passed on 11.12.2012 in time and got it only on 20.07.2013 and this date should be taken as the date of receipt of the adjudication order and delay in filing the appeal should be condoned. His plea is contradicted by the fact that the appeal was filed bearing the same address. Moreover, the

appellant did not satisfy the Appellate Authority regarding not depositing the pre-deposit of penalty. The Appellate Authority clearly and elaborately recorded in the proceedings on the Appellant's contentions. The Appellate Authority has rightly rejected the appeal in accordance with the provisions of the FTDR Act. I find no legal infirmity in the Appellate Order. There is no merit in the submissions made.

6. In view of the above position, I, in exercise of powers vested in me under Section 16 of the FTDR Act, 1992, as amended, pass the following order.

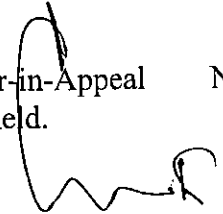
Order

Date of Despatch: 27.08.18

F. No. 18/02/2018-19/ECA-I/172


Date of Order August, 2018

The Review Application is dismissed and Order-in-Appeal No. 05/16/140/00017/AM14/Appeal/ CLA, New Delhi dated 12.12.17 is upheld.


Alok V. Chaturvedi
Director General of Foreign Trade

To

1. M/s Sawhney (India) Pvt. Ltd.,
W-40, 1st Floor,
Okhla Industrial Area Phase-II,
New Delhi-110020.
2. Addl. Director General of Foreign Trade (CLA),
A-Wing, Indraprastha Bhawan, I.P. Estate,
New Delhi-110002.


Tika Ram Majhi
Deputy Director General of Foreign Trade