

**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. 18/26/2017-18/ECA-I/308.

Date of Order January, 2019

Date of Dispatch 17<sup>th</sup> January, 2019

Name of Appellant : M/s Alpha Enterprises,  
1<sup>st</sup> Floor, Industrial Plot No. 2,  
Near Patel Bhawan, Ajrona,  
Faridabad-121001.

Order Appealed against : Order-in-Appeal No. 05 / 16 / 140 / 00117 / AM.16 /  
Appeal / CLA / 1267752 dated 12.09.2017 passed by  
the Additional DGFT, CLA, New Delhi.

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

**Order-in-Review**

M/s Alpha Enterprises, Faridabad has filed Review Petition under Section 16 against Order-in-Appeal No. 05/16/140/00117/AM.16/Appeal/CLA/1267752 dated 12.09.2017 passed by the Additional DGFT, CLA, New Delhi.

**Facts of the case:**

2. M/s Alpha Enterprises, Faridabad obtained an Advance Authorization No. 0510233902 dated 05.01.2009 from CLA, New Delhi for import of Cross Looms Motor Looms-1000 Nos. and Motor Looms-10000 Nos. for a CIF value of Rs. 12,48,040/- (US\$ 16400) subject to fulfillment of export obligation for FOB value of Rs. 1,25,65,150/- (US\$ 1,69,000) by 04.01.2011 as per the Foreign Trade Policy and Hand Book of Procedures 2008-2009.

2.1 The export obligation period of the authorization expired on 04.01.2011.

2.2 The firm had failed to submit the required export documents to prove that export obligation had been completed.

2.3 A Show Cause Notice dated 18.12.2011 under Section (14) of the Foreign Trade (Development and Regulation) Act, 1992, as amended, was issued to the firm asking as to why action should not be taken against it under Section 11(2) and (7) of the Foreign Trade (Development and Regulation) Act, 1992, as amended and under Rule 7.1(k) of Foreign Trade (Regulation) Rules, 1993.

2.4 An opportunity of personal hearing was also given to the firm on 05.11.2012. But the firm failed to attend the personal hearing on the appointed date. Also no reply to the Show Cause Notice dated 18.12.2011 was received from the firm.

2.5 The firm willfully defaulted on their export obligation commitment under the advance authorization.

2.6 Hence, the Adjudicating Authority, in exercise of power vested under Section 11(2) read with Section 13 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, passed Order-in-Original No. 05/23/40/649/AM07/ZALC.I/1172355 dated 17.09.2015 imposing a penalty of Rs. 24,96,080/- (Rupees Twenty Four Lakh Ninety Six Thousand Eighty only) on the firm with direction to pay Custom duty with interest @15% on inputs imported against the advance authorization.

3. Aggrieved by the Order-in-Original No. 05/23/40/649/AM 07/ZALC.I/1172355 dated 17.09.2015, the appellant filed appeal on 24.02.2016 under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, before the Additional Director General of Foreign Trade (Appellate Authority), CLA, New Delhi.

3.1 The appeal had not been filed within the time stipulated under Section 15(1) of the Foreign Trade (Development and Regulation) Act, 1992, as amended. In a petition for condonation of delay filed along with the appeal, the appellant had submitted as follows:

- (i) The impugned order was received on 30.09.2015. The appellant had not used the Advance Authorization at all. Order imposing penalty and payment of duty had completely unnerved the appellant.
- (ii) The appellant, therefore, took up the matter with the Customs Authority. It had taken time to obtain the non-utilization of advance authorization certificate from the customs authorities which had resulted in delay.
- (iii) Since no import was made, no customs duty was foregone and hence the requirement to export was Nil. The balance of convenience was in favour of the appellant.

3.2 Section 15(1) of the Foreign Trade (Development and Regulation) Act, 1992, as amended, provides that an appeal must be filed within forty five days from the date on which the adjudication was served on the appellant. The first provision to Section 15(1) also provides for condonation of delay in filing appeal for a further period of thirty days. In other words, the discretion afforded to the appellate authority to admit an appeal operates only when the appeal is filed within 75 days of the date of service of the adjudication order. In the present case, the appeal has been filed with a delay of 102 days which is more than the period provided for in the Section. The appeal, therefore, was held to be barred by limitation.

3.3 Hence, in exercise of the powers vested in her under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992; as amended, dismissed the appeal in limine vide Order-in-Appeal No. 05/16/140/00117/AM.16/Appeal/CLA/1267752 dated 12.09.2017.

4. Aggrieved by the decision of Appellate Authority, the applicant has filed the present Review Petition under Section 16 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, stating that:

4.1 The petitioner could not import goods against the Advance Authorization. The Advance Authorization was misplaced and could not be found. A complaint with Police Station, Sector-15A, Faridabad was filed on 24.08.2012.

4.2 On 30.09.2015, the petitioner received the adjudication order dated 17.09.2015 under which penalty amounting to Rs. 24,96,000/- was imposed on the firm and it was further ordered to pay customs duty with interest.

4.3 The Adjudication Order referred to a Show Cause Notice dated 18.12.2011. The Show Cause Notice was not received by the petitioner and hence no reply was filed.

4.4 The petitioner applied for an Advance Authorization and received a deficiency letter dated 15.10.2015 that their firm is on denied entity list.

4.5 On coming to know of the implications, the petitioner approached to the Customs who took a lot of time to issue non-utilization report against the Advance Authorization dated 5/01/2009 along with import ledger showing nil import and have informed that as per manual records available, the subject authorization displays the message. "In valid Authorization Number/Date" and thus appears not registered at the port DEL-4.

4.6 The Advance Authorization was not registered with Customs. No import against the said authorization was made. The authorization had in fact been lost. When no import was made naturally no export against the authorization was required to be made.

4.7 The circumstances explained above resulted in delay in filing the appeal. The delay was 102 days. The Adjudicating Authority also suspended the IEC.

4.8 The Appellate Authority has dismissed the appeal under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, as time barred.

4.9 Now, they have filed Review Petition against the impugned Order-in-Appeal on the following grounds.

- (i) The appeal has been dismissed on ground of being time barred without going into the merits of the case.
- (ii) The merits of the case are that even though the petitioner had obtained an Advance Authorization to import specified quantities of goods, no import was made. The Advance Authorization had been lost for which police complaint was filed.

4.10 The punitive action of imposing penalty, suspension of IEC and putting them on denial list were, therefore, wrong and bad in law. They were punished for a wrong which was not committed.

4.11 The facts of non-import against the authorization have been corroborated by the Customs. The Order-in-Original was passed at their back as Show Cause Notice was not received by them.

4.12 The grounds of time bar should not be used to inflict such a high amount of penalty and suspend IEC when no import was made at all and when no revenue is involved. Neither the Adjudicating Authority nor the Appellate Authority has appreciated the fact that revenue involvement in the case is Nil.

4.13 In view the above, the petitioner has requested to consider the submissions and admit the Review Petition and set aside the Order-in-Appeal, the penalty and other punitive actions.

5. The applicant was granted Personal Hearing on 28.08.2018 at 4.45 PM to be heard by the Reviewing Authority. Shri N.K. Sharma, Advocate appeared before the undersigned on the given date on behalf of the petitioner and explained their case.

5.1 I have gone through the facts and records of the case carefully. It is observed that the Appellant has claimed to have lost the authorization which remained unutilized i.e. no import against the authorization was made. The Appellant has also stated that they have got non-utilisation report from the customs. When no import was made, no export against the authorization was required to be made.

6. I, therefore, in exercise of powers vested in me under section 16 of the FTDR Act, 1992, as amended, pass the following order :

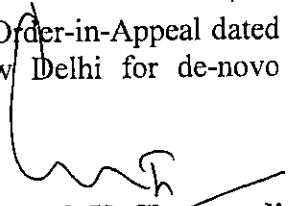
**Order**

F. No. 18/26/2017-18/ECA-I /309

Date of Order

January, 2019  
17.01.2019


The Review Appeal is accepted. Order-in-Original dated 17.09.2015 and Order-in-Appeal dated 12.09.2017 are set aside. The case is remanded back to CLA, New Delhi for de-novo consideration.



**Alok V. Chaturvedi**  
**Director General of Foreign Trade**

To

1. M/s Alpha Enterprises,  
1<sup>st</sup> Floor, Industrial Plot No. 2,  
Near Patel Bhawan, Ajrona,  
Faridabad-121001.
2. The Additional Director General of Foreign Trade,  
A-Wing, Indraprastha Bhawan, I.P. Estate,  
New Delhi-110002.



**Alok Dwivedi**  
**Deputy Director General of Foreign Trade**