

**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. 18/28/2017-18/ECA-I / 83

Date of Order 26<sup>th</sup> May, 2018

Date of Dispatch.....May, 2018  
06.06.2018

Name of Appellant : M/s Ambika Woods Pvt. Ltd.,  
1/952, Tenkasi Road, Piranoor,  
Shencottah, Tamil Nadu-627809.

Order Appealed against : Order-in-Appeal No. A (06) / Addl. DGFT / ECA / Che /  
AM18 / Mdu. / 237 dated 13.09.2017 passed by Addl.  
DGFT, Chennai.

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

**Order-in-Review**

M/s Ambika Woods Pvt. Ltd., 1/952, Tenkasi Road, Piranoor, Shencottah, Tamil Nadu-627809 has filed a Review Petition u/s 16 of F.T.(D&R)Act, vide letter dated 17.10.2017 against Order-in-Appeal No. A (06)/Addl. DGFT/ECA/Che/AM18/Mdu./237 dated 13.09.2017 passed by Addl. DGFT, Chennai.

**Facts of the case:**

2. M/s Ambika Woods Pvt. Ltd., Shencottah (Tamil Nadu) obtained an EPCG Authorization No. 3530001363 dated 23.11.2005 from RA, Madurai for import of Capital Goods for a duty saved amount of Rs. 18,29,023/- with an obligation to export wooden furniture etc. for a FOB value of US\$ 325521 within 8 years from the date of issue of authorization.

3. An Order-in-Original dated 27.10.2014 was passed by the Joint Director General of Foreign Trade, in exercise of the powers vested in him u/s 13 of F.T.(DR)Act, being Adjudicating Authority declared vide Notification No. SO (E) dated 17.04.2009 issued by DGFT, New Delhi in F. No. 18/27/HQ/06-07/ECA-II, imposing penalty of Rs. 58,40,268/- on the firm and its directors towards non-fulfillment of export obligation in full against the subject Authorization.

3.1 It is noted by the Adjudicating Authority that the firm had not submitted statement of exports evidencing fulfillment of export obligation in spite of RA's letters dated 09.03.2007, 14.06.2010, 19.11.2012, 27.11.2013 and 10.01.2014 calling for statement of exports.

3.2 A Show Cause Notice dated 29.05.2014 with personal hearing on 12.06.2014 at 3.00 pm was issued to the firm and its directors. Despite that they failed to submit the prescribed documents for EODC.

3.3 Shri N.U.M. Gomathinayagam, representative of the firm appeared before the Joint DGFT and had requested for extension in time for fulfillment of export obligation. The export obligation period had already expired on 22.11.2013. Since 50% of export obligation was not fulfilled in 1<sup>st</sup> block as per authorization condition and request for export obligation period extension was submitted after 30 days from the date of expiry of original export obligation period, the request for EOP extension was rejected as time barred in terms of Para 5.11 (d) of Hand Book of Procedures, Vol. 1 and the applicant was requested to regularize the case by way of payment of duty with applicable interest. There was no response from the firm.

3.4 A Demand Notice dated 14.08.2014 was issued with direction to pay duty saved amount along with applicable interest to the Customs Authorities and furnish Challan to RA. There was no response from the firm or its directors. Hence the firm and its directors were placed under Denied Entities List (DEL) vide order dated 22.09.2014.

3.5 The firm and its directors were found guilty of violating the conditions of the authorization in question. Hence order in original came to be issued.

4. Aggrieved by the Order-in-Original dated 27.10.2014, the firm filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Appellate Authority, Chennai.

4.1 Personal Hearing was given to the firm on 28.08.2017 at 4.00 PM. Shri K. Vasudevan, Manager of the firm attended the Hearing.

4.2 He requested to set aside the penalty as they had already made payment of duty and interest. He also requested to condone the delay in filing of appeal as the Order-in-Original was received by him late. He had assured to submit the date of receipt of the Order-in-Original within a week, but no such evidence had been submitted till the date of Order-in-Appeal passed.

4.3 The Appellate Authority observed that the last date of filing appeal had expired on 11.11.2014 whereas the appeal had been filed on 02.06.2017. The Appellate Authority dismissed the appeal as the same had been filed beyond the condonation period.

5. Aggrieved by the decision of Appellate Authority, the applicant has filed the present Review Petition vide their letter dated 17.10.2017 stating inter alia that:

5.1 They have fulfilled partial Export Obligation and paid duty with interest for unfulfilled Export Obligation.

5.2 Due to market volatility, they were unable to fulfill 100% export obligation. They have fulfilled 28.94% of export obligation for US\$ 89612 (EO shortfall – US\$ 219935).

5.3 Meanwhile action was taken by the office of the Additional Commissioner of Customs, Inland Container Depot, Whitefield, Bangalore to clear the Custom Duty with interest. They have cleared the

Custom Duty with interest for Rs. 36,25,124 for unfulfilled Export Obligation as per letter dated 12.04.2017 issued by Shri G. Ravinthiran, Asstt. Commissioner, ICD, Whitefield, Bangalore.

5.4 Since RA, Madurai issued Order-in-Original, action was taken by the District Collector, Tirunelveli under RR Act and they recovered Rs. 2,25,000/- even though they have fulfilled Export Obligation for Rs. 35,35,486/- and paid Duty with interest for unfulfilled Export Obligation.

5.5 The Appeal was rejected as time barred. They, therefore, have requested for Review of Order-in-Appeal dated 13.09.2017 and set aside the Order-in-Appeal and Order-in-Original in view of partial Export Obligation fulfilled by them and Duty with interest paid for unfulfilled Export Obligation.

6. The applicant was granted Personal Hearing on 04.05.2018 at 3.45 PM before me. Learned Advocates Shri Pulkit Tare and Ms Saumya Singh, appeared before the undersigned on the given date on behalf of the firm. During the course of personal hearing, they submitted stating inter alia that:

6.1 They had obtained EPCG Authorisation No. 3530001363 dated 23.11.2005 from RA, Madurai for import of Capital Goods for a duty saved amount of Rs. 18,29,023/- with an obligation to export wooden furniture etc. for a FOB value of US\$ 325521 within 8 years from the date of issue of authorization.

6.2 They have fulfilled 28.94% export obligation maintain average obligation. Balance export obligation could not be fulfilled due to volatility and no demand of their product in the International market. However, for shortfall, they have paid duty plus applicable interest to the Customs Authority. They invited my attention towards Section 11(2) of FT(DR)Act, which speak that penal action can be taken if any person makes or abets or attempt to make any export or import in contravention of any provisions of this act or any Rules or Order made thereunder or the Foreign Trade Policy, he shall be liable to a penalty of not less than ten thousand rupees and not more than five times the value of goods or services or technology in respect of which any contravention is made or attempted to be made, whichever is more. However, they have not violated any provision of FTP or contravened any provisions of F.T.(DR)Act. Capital goods imported under EPCG are freely importable subject to payment of duties. Since they have paid duty and applicable interest, the items imported get automatically out of purview of EPCG Authorisation. Therefore, penalty imposed by Adjudicating Authority is unjustified.

6.3 They, therefore, requested to set aside the order passed by adjudicating Authority as well as appellate Authority and remand the case back to RA concerned for issue of EODC.

7. I have gone through the facts and record of the case as well as oral and written submissions made by the petitioner, carefully. It is a matter of facts that capital goods could be imported freely on payment of applicable duties. Under EPCG Authorisation, imports are allowed without payment of duties subject to export obligation to be fulfilled within stipulated period. In the instant case, the petitioner has fulfilled partial export obligation and has paid duty and applicable interest on unfulfilled portion of export obligation but after Adjudication order is passed. The District Collector, Tirunelveli, under RR Act, has also recovered Rs. 2,25,000/- from the appellant. This unpleasant situation could

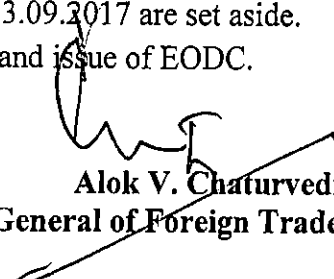
have been avoided if documents and proof of payment of duty were submitted in time by the applicant. I, therefore, pass the following order.

**Order**

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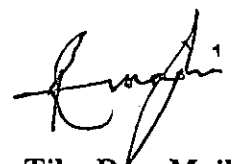
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- (i) The Review Appeal is admitted.
- (ii) Order-in-Original dated 27.10.2014 and Order-in-Appeal dated 13.09.2017 are set aside.
- (iii) The case is remanded to RA, Madurai for de novo consideration and issue of EODC.

  
Alok V. Chaturvedi  
Director General of Foreign Trade

To

1. M/s Ambika Woods Pvt. Ltd.,  
1/952, Tenkasi Road, Piranoor,  
Shencottah,  
Tamil Nadu-627809.
2. Addl. Director General of Foreign Trade,  
26-Haddows Road, Shastri Bhawan Annexe,  
Chennai-600006.

  
Tika Ram Majhi  
Dy. Director General of Foreign Trade