

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

F. No. 18/37/2017-18/ECA-I /45

Date of Order 14th May, 2018

Date of Dispatch 17th May, 2018

Name of Appellant : Shri Ritesh R. Gaikwad,
Room No. 15, Warden Compound,
Sant Savata Path No. 3, Byculla (E),
Mumbai-400027.

Order Appealed against : Order-in-Appeal No. 03/16/144/00046/AM16 dated
10.10.2017 passed by Addl. DGFT, Mumbai.

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

Order-in-Review

M/s Orbit Enterprises, Room No. 15, Warden Compound, Sant Savata Path No. 3, Byculla (E), Mumbai-400027 has filed a Review Petition vide letter dated 24.11.2017 u/s 16 of FT(DR) Act against Order-in-Appeal No. 03/16/144/00046/AM16 dated 10.10.2017 passed by Addl. DGFT, Mumbai.

Facts of the case:

2. M/s Orbit Enterprises, Mumbai obtained IEC No. 0310064309 from RA, Mumbai.
3. An Order-in-Original dated 15.12.2015 was passed by Joint DGFT, Mumbai (Adjudicating Authority), in exercise of the powers vested in the Adjudicating Authority under Section 13 of FT (DR) Act 1992, as amended, taking following action as per a reference received from the office of the Director General of Foreign Trade, New Delhi on 22.09.2015 regarding suspected import of fire crackers, an item restricted for import, mis-declaring it as items other than fire crackers by the firm:
 - (a) Suspended the Importer Exporter Code No. 0310064309 issued to M/s Orbit Enterprises, Mumbai for a period of five years from the date of issue of this order, in terms of Section 8 of FT (DR) Act, 1992, as amended.
 - (b) Imposed a fiscal penalty of Rs. 1,98,00,000/- on M/s Orbit Enterprises, Mumbai, in terms of Section 11(2) & 11 (3) of FT (DR) Act, 1992, as amended.

3.1 It is noted that a Show Cause Notice dated 16.10.2015 was issued to the firm in this regard. At the same time, the firm was given an opportunity for personal hearing before the Adjudicating Authority on 09.11.2015.

3.2 However, the firm neither attended the Personal Hearing nor submitted any written reply to the Show Cause Notice. In the mean time, the Show Cause Notice was received back from the postal authorities with the remark "Unclaimed" though the full address as available in the present IEC data base was mentioned in the envelope.

3.2 If the firm had shifted from the address furnished to RA at the time of issue of IEC, they should have obtained modification of the address in the IEC, as requires in terms of Para 9.1 of HBP Vol. I.

3.3 For that reason, the Adjudicating Authority hold M/s Orbit Enterprises guiltily of violating the provisions of Section 11 (2) and Section 11 (3) of FT (DR) Act, 1992 and Rule 14 (1) of Foreign Trade (Regulation) Rules, 1993 by importing fire cracker, mis-declaring it as 'wash basins'.

4. Aggrieved by the Order-in-Original dated 15.12.2015, the appellant filed appeal under Section 15 of FT (DR) Act,1992, as amended, before the Appellate Authority, Mumbai.

4.1 An opportunity of Personal Hearing was given on 07.03.2017 by the Appellate Authority. Shri Ritesh Gaikwad, Proprietor of the appellant firm appeared before the Appellate Authority on the said date.

4.2 Shri Ritesh Gaikwad stated that his documents were forged and had been used for obtaining Import Exporter Code without his knowledge and his signature were taken with malafide intention and that he had no connection with the Import Export Business carried out by M/s Orbit Enterprises.

4.3 Since then he had been searching for the unknown person Shri Sunil, but he was not aware of whereabouts of the one Shri Sunil and his wife's brother also died on 09.11.2011, therefore, it causing difficulty to look out for him.

4.4 After hearing the appellant and going through the adjudication order as well as the documents available on record, the Appellate Authority found that:

- (i) The contention of Shri Ritesh Gaikwad was not acceptable and the explanation given by him was also not satisfactory.
- (ii) Shri Ritesh Gaikwad had not furnished copy of FIR showing initiating criminal proceedings against the persons who were stated to have used his documents without knowledge of the appellant.
- (iii) Further, the appellant had not submitted the appeal within the prescribed time limit. The appeal was time barred.

4.4 In view of above findings, the Appellate Authority, in exercise of the powers vested in her under Section 15 of FT (DR) Act, 1992, as amended, rejected the Appeal.

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

5.1 On December, 2010, the applicant's brother-in-law suggested him to start up a toy shop for which he was introduced to Mr. Sunil in Colaba where they in a hotel along with seven other people who were interested to participate in the business.

5.2 The applicant was in a hefty financial situation during that time. Mr. Sunil, person who cheated him, suggested him that he would pay the entire financial amount and then would deduct the money from the profits after establishment of the shop.

5.3 After an elaborate discussion with the brother-in-law and Mr. Sunil, the applicant gave Mr. Sunil a copy of his PAN card, ration card, voter ID and electricity bill to get the Toy shop work started. Subsequent on December, 2010 a bank account was opened at the Bank of India Branch in Colaba.

5.4 Mr. Sunil also took applicant's signature on a blank piece of paper stating that it would be used for Gumasta License from Brihan Mumbai Municipal Corporation. After 2-3 months of giving him the signed document, the applicant enquired about the business development progress multiple times for which he was told that the shop location is not finalized.

5.6 Sadly on November, 2011, applicant's brother-in-law Mr. Raviraj Chavan expired. His death was a big setback to her family. In 2012, the applicant was detected with blood cancer and was constantly unwell.

5.7 Death of his brother-in-law due to blood cancer and the constant expenditure on his treatment somewhere made him lose track of the business idea until 27.05.2014 when officers from the Directorate of Revenue Intelligence came to his house for investigation to look for any business activity as they were unaware that he lived in a chawl (slum) and found nothing but his residence. After basic investigation they informed his wife that he needed to present himself in DRI office as there was some illegal activity from his company M/s Orbit Enterprises which he thought never stated business.

5.8 The applicant's wife received summons dated 27.04.2014 from DRI. He appeared before DRI on 28.05.2014. His statement was taken in which he specifically mentioned that he had nothing to do with the company M/s Orbit Enterprises. He also requested to discontinue this IEC and remove his name.

5.9 He received Show Cause Notice from DRI on 22.05.2015. Not understanding the reason for such notice, he went to DRI office where he was told to submit application to the Commissioner of Customs making his submissions.

5.10 He personally handed over a written application to the Commissioner of Customs on 05.08.2015. In written application, he had clearly mentioned that he had nothing to do with the said company and requested that his name be removed from the company and the IEC to be cancelled so as no further fraud could be made against him.

5.11 It is to be noted that after 48 days of his request of removing his name from the said company and to discontinue the IEC, the consignment containing firecrackers which is restricted item was imported on the name of M/s Orbit Enterprises. He was unaware of this activity till he received the order from DGFT on 28.12.2015 in which he was levied a penalty of Rs. 1,98,00,000/-.

5.12 After receiving the order, he sent a letter to the DGFT with his written application to the Commissioner of Custom showing that he had already asked to discontinue the said IEC about 48 days ago.

5.13 On 15.02.2016, the applicant received an Order-in-Original from the Commissioner of Customs in which Bhavin R. Timbadia and Ramakant V. Mhatre names were involved who use his IEC for fraudulent importing Vitamin C mis-declaring it as Sodium Sulphate in the respective bills of entry thus evaded the payment of Anti-Dumping Duty on Vitamin C. In this Order-in-Original, Bhavin R. Timbadia was made liable to pay a penalty of approx. 8.5crore and Ramakant V. Mhatre a penalty of 20 lacs.

The Commissioner of Customs also levied penalty over the applicant to the tune of 3 lacs under Section 112(B) for which he have filed an appeal in CESTAT which is pending adjudication.

5.14 The applicant is trying to file FIR in the Police Station. He has given his statement in Colaba and Byculla Police Station.

He also tried to gather evidence through RTI. However, he is unable to gather information as the authorities have access to the desired data as he is a third party.

5.15 In view of the above, the applicant has requested for setting aside the Order-in-Original dated 15.12.2015.

6. The applicant was granted Personal Hearing on 06.03.2018 at 3.00 PM to be heard by the Reviewing Authority. Shri Ritesh R. Gaikwad himself appeared before the undersigned and made averments as stated in the aforesaid Para's. He, therefore, requested to set aside the order in original and order in appeal passed by RA, Mumbai.

7. I have gone through the facts of the case, carefully. It is observed that M/s Orbit Enterprises, Mumbai obtained the IEC No. 0310064309 from RA, Mumbai under the provisions of FTP. As per section 7 of F.T.(DR)Act, 1992, as amended "*no person shall make any import and export except an Importer-Exporter Code Number granted by the Director General of Foreign Trade or the officer Authorised by him in this behalf, in accordance with procedure prescribed in this behalf by DGFT.*" And, in terms of Para 2.05 of FTP, "*no import or export*"

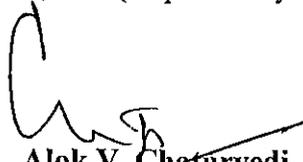
shall be made by any person without obtaining IEC number unless specifically exempted." Application for IEC is submitted in ANF 2A with documents prescribed therein. One of the documents is PAN card of proprietor, in case of proprietary firm and bank account certificate issued by bank or cancelled leaf of check pre-printed name of the proprietor/Firm. The application is submitted online through digital signature. Therefore, no other person can obtain IEC on behalf of other person. Further if someone else has obtained IEC on his behalf then he should have file FIR immediately against the person and request should have been made to RA, concerned who has issued IEC and not to the Customs Authority. However, no serious effort appears to have been made by him. Therefore, the submissions made by the applicant that he was not aware who obtained the said IEC, is not appeared to be true.

7.1 Import of firecrackers is prohibited under FTP. And, it has been established beyond doubt that said IEC has been used as an instrument to clear the illegal imported goods. This act of omission and commission attract violation of FTP, which attract penal action under F.T.(DR)Act/Customs Act. However, since the customs Authority has already identified the real culprit and imposed fiscal penalty on them including on petitioner. Hence, penalty imposed by Adjudicating Authority in his order dated 15.12.2015 seems to be harsh. Accordingly, following order is passed.

Order

F. No. 18/37/2017-18/ECA-I/⁴⁶ Date of Order: 14th May, 2018
17th

The Review Appeal is admitted. Penalty amount is restricted to Rs. 50,000/- (Rupees fifty thousand only). IEC No 0310064309 stands cancelled.


Alok V. Chaturvedi
Director General of Foreign Trade

To

1. Shri Ritesh R. Gaikwad,
Room No. 15, Warden Compound,
Sant Savata Path No. 3, Byculla (E),
Mumbai-400027.
2. Addl. Director General of Foreign Trade,
CGO Complex, Nishtha Bhawan,
New Marine Lines, Churchgate,
Mumbai-400020.


(Tikaram Majhi)

Dy. Director General of Foreign Trade