

**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. 18/41/2017-18/ECA-I / 79

Date of Order.....May, 2018

Date of Dispatch.....May, 2018

06.06.2018

Name of Appellant : Shri Daniel Anil Prabhune,  
Flat No. 401, A-Wing,  
Shreya Apartment, Shankeshwar Krupa Complex,  
Birla College Road, Kalyan West,  
Thane-421301.

Order Appealed against : Order-in-Appeal No. 03/16/144/00041/AM.17 dated  
12.10.2017 passed by Addl. DGFT, Mumbai.

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

**Order-in-Review**

Shri Daniel Anil Prabhune, Flat No. 401, A-Wing, Shreya Apartment, Shankeshwar Krupa Complex, Birla College Road, Kalyan West, Thane-421301 has filed a Review Petition u/s 16 of FT(DR)Act, against Order-in-Appeal No. 03/16/144/00041/AM.17 dated 12.10.2017 passed by Addl. DGFT, Mumbai.

**Facts of the case:**

2. Shri Daniel Anil Prabhune has obtained an IEC No. 0313037558 in the name of M/s Omkar Enterprises, Kalyan (West) from RA, Mumbai which was misused allegedly by the petitioner by importing prohibited items.

3. An Order-in-Original dated 15.12.2015 was passed by the Joint Director General of Foreign Trade (Adjudicating Authority), in exercise of the powers vested in the Adjudicating Authority under Section 13 of the FT (DR) Act, 1992, as amended, and as per Notification o. 39 dated 29.08.2013 suspending the IEC No. 0313037558 for a period of five years from the date of issue of the order, in terms of Section 8 of the FT (DR), Act, 1992, as amended, and imposing a fiscal penalty of Rs. 36,00,000/- upon the firm, in terms of Section 11 (2) and 11 (3) of FT (DR), Act, 1992, as amended, as the firm had violated the provisions of Section 11 (2) and Section 11 (3) of the FT (DR) Act, 1992 and Rule 14 (1) of the Foreign Trade (Regulation) Rules, 1993 by importing fire crackers, mis-declarig it as 'Empty Chocolate Tray'.

3.1 RA, Mumbai had received a reference from the Directorate General of Foreign Trade, New Delhi on 06.10.2015, regarding suspected import of fire crackers, an item restricted for import, mis-declaring it as items other than fire crackers by M/s Omkar Enterprises.

3.2 Accordingly, a Show Cause Notice dated 20.10.2015 was issued to M/s Omkar Enterprises with an opportunity for Personal Hearing before the Adjudicating Authority on 12.11.2015.

3.3 However, the firm neither attended the Personal Hearing nor submitted any written reply to the Show Cause Notice. Therefore, Order in original came to be issued.

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

4.1 An opportunity of Personal Hearing was granted to the Appellant on 21.03.2017. However, nobody attended the Personal Hearing. Again a personal hearing was granted on 25.07.2017. Shri Daniel Prabhune and Shri Sanjay Sharma appeared before the Appellate Authority on 25.07.2017.

4.2 He referred to his statement given and mentioned in the Show Cause Notice dated 28.07.2015 issued by Customs JNPT wherein he had stated that he never worked for any customs clearing agency and he did not have any idea of import. He never applied to DGFT for grant of IEC. He never heard of firm namely M/s Omkar Enterprises. However, he did not furnish any documentary evidence showing that he had filed any FIR or complaint against Shri Mohit Kamdar who was stated to have cheated the appellant. He also failed to establish his innocence in the matter.

4.3 The Appellate Authority further observed that the Appellant filed an appeal on 18.10.2016 against the Order-in-Original passed by the Jt. DGFT, Mumbai on 15.12.2015 which was after 45 days, and not in time as per Para 1 of the Order-in-Original. In view of this, the Appellate Authority rejected the appeal as time barred.

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

5.1 He was nowhere involved in this Scam. He was not aware as to who has done on his certified documents which were taken to open a saving account in his name by a person who was recently known to him and he misused his name and address which was intimated to him by Custom Officers when they came at his residence with search warrant.

5.2 He has submitted the copy of statements taken by Investigation CIU Custom Department, Jawaharlal Nehru Custom House NHAVA-SHEVA in which he has given clean chit and the culprit has been arrested and no penalty was imposed on the appellant by Customs Department.

5.3 He has also submitted copy of FIR lodged by him at his nearest police station at Kalyan. He has stated that due to lack of knowledge he was unknown regarding procedure of DGFT as per there-say he was delayed in approaching DGFT Mumbai and his appeal was 'Rejected as time barred'.

5.4 He has requested to go through the documents submitted by him and remove him and his family from this Trauma.

6. The applicant was granted Personal Hearing on 04.05.2018 at 5.00 PM. Shri Daniel Anil Prabhune appeared before the undersigned on the given date. During the personal hearing, the Applicant has reiterated the same facts as submitted in his representation and requested to quash

the order in original and discharge him from penalty. He also requested to cancel the said IEC which has been obtained in his name.

7. I have gone through the fact and record of the case as well submissions made by the petitioner. It is observed that the IEC No 0313037558 was obtained by some unscrupulous person against the documents belonging to the applicant but without his consent. And, the same IEC was used by him to clear goods which are restricted to import. However, CIU of Customs Authority has identified subsequently the real culprits in the case. The petitioner has also lodged FIR against that person. In fact, this is a case of cheating and forgery and for that action under IPC is being initiated against culprits. The petitioner seems to have been a victim of conspiracy. Therefore, justice demands that innocent should not be punished. I, therefore, pass the following order.

**Order**

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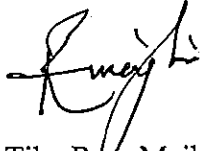
Date of Order .....May, 2018  
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- i. The Review Appeal is admitted.
- ii. Order-in-Original dated 15.12.2015 and Order-in-Appeal dated 12.10.2017 are set aside.
- iii. IEC No 0313037558 is cancelled ab initio.

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

To

1. Shri Daniel Anil Prabhune,  
Flat No. 401, A-Wing,  
Shreya Apartment, Shankeshwar Krupa Complex,  
Birla College Road, Kalyan West  
Thane-421301.
2. Addl. Director General of Foreign Trade,  
CGO Complex, Nishthā Bhāwan,  
New Marine Lines, Churchgate,  
Mumbai-400020.

  
**Tika Ram Majhi**  
**Deputy Director General of Foreign Trade**