

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. 18/42/2017-18/ECA-I/5)

Date of Order 14th May, 2018

Date of Dispatch 18th May, 2018

Name of Appellant : M/sCepham Milk Specialities Ltd.,
Village-Bhagwas,
6 K.M. Stone DeraBassi-Barwala Road, DeraBassi,
District-Mohali,
Punjab-140507.

Order Appealed against : Adjudicating Order (Order-in-Original) No.
05/24/40/749/AM09/CLA/1258035 dated 30.06.2017
passed by Addl. DGFT, CLA, New Delhi.

Order-in-Appeal passed by : ShriAlokVardhanChaturvedi, Director General of
Foreign Trade

Order-in-Appeal

M/sCepham Milk Specialities Ltd., Village-Bhagwas, 6 K.M. Stone DeraBassi-Barwala Road, DeraBassi, District-Mohali, Punjab-140507 has filed anAppeal/s 16 of FT(DR)Act, vide letter dated 08.08.2017 against Adjudicating Order (Order-in-Original) No. 05/24/40/749/AM09/CLA/1258035 dated 30.06.2017 passed by Addl. DGFT, CLA, New Delhi.

Facts of the case:

2. M/s Cepham Milk Specialities Ltd., Village-Bhagwas, Punjabobtained' an Advance Authorization No. 0510237884 dated 13.03.2009for CIF value of Rs. 1,25,00,000/- (US\$ 250000) for import of, inter alia, Lactose Edible Gradewith condition that the firm would export 312.500 MT Lactose Pharma Grade and others as per details in the authorization for FOB of Rs. 1,55,00,000/- (US\$ 310000) by 12.03.2011 as per the Foreign Trade Policy and Hand Book of Procedures 2009-2014.

3. An Order-in-Original dated 30.06.2017 was passed by Addl. DGFT, CLA, New Delhi (Adjudicating Authority) imposing fiscal penalty of Rs. 1,00,00,000/- on M/s Cepham Milk Specialities Ltd. in exercise of the powers as vested in Adjudicating Authority under Section 11(2) read with Section 13 of FT (DR) Act, 1992, as amended, holding the firm guilty of willfully defaulting on their export obligation.

3.1 It was noted by the Adjudicating Authority thatthe export obligation period was expired on 12.03.2011. The firm was supposed to submit documents namely, original Shipping Bills and Bank Realization Certificate towards fulfillment of export obligation but failed to do so.

3.2 A Show Cause Notice dated 30.08.2012 under Section 14 for action under Section 11(2) of FT (DR) Act, 1992 was issued to the firm.

3.3 The firm had neither submitted documents evidencing fulfilment of the export nor availed the opportunity of personal hearing on 14.09.2012.

3.4 Reminders of dated 17.03.2015 and 18.05.2016 were also issued asking the firm to submit the documents within 15 days of receipt of the letter but the firm failed to respond.

3.5 Final opportunity of personal hearing was given on 19.12.2016 but there was no response from the firm. Therefore, Adjudicating Authority issued order imposing fiscal penalty.

4. Aggrieved by the Order-in-Original dated 30.06.2017, the appellant filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Appellate Authority (Director General of Foreign Trade).

4.1 The petitioner was given Personal Hearing on 06.03.2018 at 4.30 PM. Shri D.C. Pruthi, Chairman of the firm appeared before me for Personal Hearing on 06.03.2018 and reiterated the same facts as stated in the appeal dated 08.08.2017, which are as under:

4.2 The Plant was set up in the year 1994-95 and very first two year of its operation, the firm attained the status of Recognized Export House. However, after the year 2000, the Project was a complete failure because of the reasons beyond control. Milk was a highly subsidized item in Europe and other western countries and they could not compete in the international market, due to the total project lost.

4.3 The group is totally in RED and we could not submit the export obligation document for EODC.

4.4 They are really in a very very bad shape but still they are surviving and manufacturing and exporting pharma.

4.5 The firm has requested to accept their export obligation wherever they have completed the export obligation and where there is short fall give them six months time to complete their export obligation.

4.6 The firm has further requested to quash the condition to deposit the fiscal penalties and grant them six months time to deposit the Custom Duty along with the interest.

5. I have gone through the facts of the case and submission made by the applicant, carefully. It is observed that the petitioner has obtained the Authorisation in question under duty exemption scheme of FTP, 2004-2009 for import of goods without payment of applicable duties. The Authorisation was issued with Actual User condition for import of Lactose Edible Grade for CIF value of Rs. 1,25,00,000/- (US\$ 250000) with condition that the firm would export 312.500 MT Lactose Pharma Grade, as per details in the authorization for FOB of Rs. 1,55,00,000/- (US\$ 3,10,000). The Authorisation was issued having 18 months validity to import and 24 months validity to export, which could be extended upto 36 months on payment of composition

fee. The petitioner was under obligation to fulfill the stipulated export obligation within the initial/extended export obligation period and would submit prescribed documents evidencing fulfilment of EO within two months from the expiry of EO. However, he failed to do so. Vide Public Notice No 22 dated 12.08.2013, exporters were given one time relaxation to get the pending cases regularised on payment of duty and interest equal to duty only in case of bonafied default. However, the petitioner did not avail the said facility. Further, he could have approached Policy Relaxation Committee for getting extension in export obligation period to complete balance export. However, no efforts seem to have been made to get export obligation period extension. Extension in export obligation period after 9 years and particularly after passing Adjudication order is not allowed.

5.1 On perusal of documents submitted by the petitioner, it is observed that he has fulfilled only 30.76 % export obligation(96.65 MT out of 312.500MT) in quantity terms and 33% in value terms. However, they did not submit the prescribed documents to the Regional Authority despite repeated opportunities extended to them.

5.2 Taking into consideration the above facts, I am of the considered view that duty free imported goods have not been utilised fully the purpose for which it were allowed to import. There is no justification for obtaining huge value and quantity of Authorisation in 2009 when company was not doing well since 2000 onwards, as stated by the petitioner. These all facts indicate that Authorisation was not obtained with good intention and the same has been used an instrument to avail duty exemption. The applicant should have come with clean hands before Adjudication Authority for seeking remedy. I do not find merit in the case hence pass the following order.

Order

F. No. 18/42/2017-18/ECA-I / ^{52 to 54} Date of Order ^{14th} _{18th} May, 2018

1. The review appeal is dismissed with no relief in penalty amount.
2. However, the petitioner is allowed to pay Customs duty with applicable interest on unutilised imported goods in proportion of shortfall to the Customs Authority.


Alok V. Chaturvedi

Director General of Foreign Trade

To

1. M/sM/s Cepham Milk Specialities Ltd.,
Village-Bhagwas, 6 K.M. Stone DeraBassi-Barwala Road,
DeraBassi, District-Mohali,
Punjab-140507
2. Addl. DGFT,
I.P. Estate, InderprashthaBhawan, New Delhi.
3. Commissioner of Customs, ICD, Tuglakabad, New Delhi
4. Chief Commission of Customs, JNPT, NehvaSeva, Mumbai


(TikaramMajhi)

Dy. Director General of Foreign Trade