

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. 18/44/2017-18/ECA-I / 2402

Date of Order 04th March, 2018

Date of Dispatch^{6th April} March, 2018

Name of Appellant : M/s SHB Apparels,
C-3/66, Satsang Complex,
Upper Govind Nagar, Malad East,
Mumbai-400097.

Order Appealed against : Order-in-Appeal No. 03/16/144/00064/AM.15/07 dated
27.03.2017 passed by Addl. DGFT, Mumbai.

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

Order-in-Review

M/s SHB Apparels, Mumbai has filed a Review Petition vide letter dated 06.05.2017 against Order-in-Appeal No. 03/16/144/00064/AM.15/07 dated 27.03.2017 passed by Addl. DGFT, Mumbai u/s 16 of FT(D&R)Act, 1992, as amended.

Facts of the case:

2. M/s SHB Apparels, Mumbai obtained an Advance Authorization No. 031095483 dated 17.04.2003 with an obligation to export 1807 Nos. of Children Nikars/Shorts for an-FOB value of Rs. 1,90,816/- (US\$ 3,894). Against the authorization the firm was allowed to import 903.500 sq. metres of Relevant Fabrics for a total CIF value of Rs 1,32,790/- (US\$ 2,710). One of the conditions of the authorization was that the firm would fulfill stipulated export obligation within 24 months period from the date of issue of the authorization and would submit prescribed documents towards discharge of EO within a month from the date of expiry of export obligation period.

3. An Order-in-Original dated 25.07.2011 was passed by Joint DGFT, Mumbai (Adjudicating Authority) imposing fiscal penalty of Rs. 5,00,000/- on M/s SHB Apparels, Mumbai and its Proprietor under Section 11(2) of FT (DR) Act, 1992, holding the firm guilty of non- submission of the required documents towards fulfillment of exports obligation, which

attracts the provisions of Rule 10, 13 and 14 of the Foreign Trade (Regulations) Rules, 1993 and Section 11(2) of FT (DR) Act, 1992.

3.1 It is noted that the firm failed to submit non-utilization certificate from the Customs authority to prove that they have not made any import and export against the authorization and that the same has not been registered with any port. Further, the notices issued to the firm by the RA have been received back undelivered from the Postal authorities with the remarks "LEFT". The Adjudicating Authority has no reason but to presume that the firm and its Proprietor have left the premises without leaving any clue to frustrate the efforts to be made by the Licensing Authority. Therefore, the Adjudicating Authority has prima facie reasons to believe that the authorization was obtained with malafide intention to misuse the duty exemption scheme. Similarly, in the absence of any evidence of non-utilisation, it is also concluded that the authorization has been fully utilized for the purpose of imports.

4. Aggrieved by the Order-in-Original dated 25.07.2011, the appellant filed appeal under Section 15 of F.T. (D&R) Act, 1992, as amended, before the Appellate Authority, Mumbai.

4.1 A personal Hearing was given on 21.09.2016 by the Appellate Authority. Nobody turned up for the hearing. Another opportunity of personal hearing was given on 19.10.2016. Shri Sandeep Bansal, Proprietor of the appellant firm appeared before the Appellate Authority on 20.10.2016 for Personal Hearing.

4.2 Shri Bansal stated that they had not utilized the authorization and had not made any import against the authorization as the original papers and authorization were destroyed in the flood in Mumbai in 2006. They had submitted Affidavit-cum-Indemnity Bond and also approached Customs Authorities for obtaining Non Utilization Certificate. Shri Bansal was asked to submit non-utilization certificate or an affidavit regarding loss of original authorization stating that the appellant firm would be liable for further action in case the authorization was found utilized, in future.

4.3 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 appellant had not submitted unutilized original Authorization or Non-utilization Certificate from the Customs Authorities.
- (ii) They approached Customs, JNPT and obtained acknowledgement on 16.04.2012 for submission of their letter requesting for issuing Non-utilization Certificate supported with copy of FIR dated 13.04.2012, an Affidavit and Indemnity Bond duly notarized.
- (iii) No reply received from the Customs in response to letter No. 03/67/40/6/AM04 dated 15.03.2012 issued by the RA.

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 the Appellate Authority, the applicant has filed the present Review Petition stating inter alia that:

5.1 They have submitted documents along with the Non-Utilization Certificate in a sealed envelope for reference of Reviewing Authority, issued by the Assistant Commissioner of Customs, License Section JNCH Nhava Sheva.

5.2 They also indemnify the government by executing an Affidavit-cum-Indemnity Bond for the loss, cost consequences and financial losses, arrive if any on account of the authorization.

5.3 They hopes that with this Non-Utilization Certificate issuance, their file will be closed and in accordance a letter will be issued to them.

6. The applicant was granted Personal Hearing on 30.01.2018 at 3.30 PM before the Reviewing Authority. Shri Haricharan Bansal, Representative of M/s SHB Apparels, Mumbai appeared before the undersigned and reiterate the same facts, as per review appeal.

6.1 I have gone through the facts of the case, carefully. It is observed that the petitioner has obtained Advance Authorisation for import of duty free inputs to be incorporated in the resultant products, which has to be exported within 24 months from the date of issue of the Authorisation. One of the conditions imposed to the Authorisation was that the applicant will submit prescribed documents evidencing fulfilment of stipulated export obligation within two months from the date of expiry of said obligation period. If Authorisation is not utilised, the same should have been surrendered unutilised immediately after expiry of validity, which was 12 months from the date of issue. In case Authorisation is lost or misplaced, there is set law and procedure to lodge FIR immediately when it comes to the notice of the holder of the Authorisation. However, the petitioner did not take any pain to inform the position to the Licensing Authority within the prescribed time. This situation of penal action could have been avoided by submitting information in time. This act of negligence has resulted unnecessary exercise and wastage of valuable time of the Authorities.

6.1 The petitioner has now submitted unutilised certificate from the Customs Authority. The Customs Authority at JNPT has certified that as per their EDI record, the Authorisation was not registered with them. However, they have suggested RA to check record whether any amendments in the Authorisation was made. As per prevalent procedure, there was option to get the port of registration amended for making import from port other than indicated in the Authorisation or get Invalidation/ARO to procure raw material from domestic sources without payment of applicable duties. And, being very old issue, it is difficult to cross check these aspects at this stage after laps of 15 years. However, taking into consideration the CIF value of the Authorisation i.e. Rs. 1,32,790/- only and quantum of duty forgone i.e. approximately 32%

and non-utilisation certificate issued by Customs Authority, I am inclined to pass the following order.

Order

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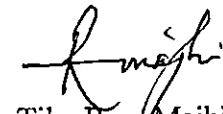
6th April
Date of Order 4th March, 2018

Amount of penalty imposed under order-in-original dated 27.03.2017 is reduced from Rs. 500000/- to Rs. 1,00,000/- (Rupees one lakh only).


Alok V. Chaturvedi
Director General of Foreign Trade

To

1. M/s SHB Apparels,
C-3/66, Satsang Complex,
Upper Govind Nagar, Malad East,
Mumbai-400097.
2. Addl. Director General of Foreign Trade,
CGO Complex, Nishtha Bhawan,
New Marine Lines, Churchgate,
Mumbai-400020.


Tika Ram Majhi
Dy. Director General of Foreign Trade