

**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. 18/53/2017-18/ECA-I / 87

Date of Order 1<sup>st</sup> June, 2018

Date of Dispatch.....May, 2018

06.06.2018

Name of Appellant : M/s Frontier Textiles Pvt. Ltd.,  
40/3, Madan Biswas Lane,  
Salkia,  
Howrah-711106.

Order Appealed against : Order-in-Appeal No. 18/99/16-17/ECA/KOL/Appeal-  
192/84 dated 21.09.2017 passed by Addl. DGFT, Kolkata.

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

**Order-in-Review**

M/s Frontier Textiles Pvt. Ltd., 40/3, Madan Biswas Lane, Salkia, Howrah-711106 has filed a Review Petition u/s 16 of FT(DR)Act against Order-in-Appeal No. 18/99/16-17/ECA/KOL/Appeal-192/84 dated 21.09.2017 passed by Addl. DGFT, Kolkata.

**Facts of the case:**

2. M/s Frontier Textiles Pvt. Ltd., Howrah obtained an Advance Authorization No. 0210152614 dated 23.12.2010 from RA, Kolkata for exports of trousers (pants). One of the conditions of the Authorization was that the firm would deliver or cause to deliver export documents as prescribed under Para 4.25 of HBP Vol.-I 2009-2014 to the RA within 2 months from the date of expiry of the export obligation period evidencing fulfillment of export obligation imposed on the Authorization.

3. An Order-in-Original dated 06.10.2016 was passed imposing penalty of Rs. 14,00,000/- upon the company and also its Directors by the Deputy Director General of Foreign Trade, Kolkata being Adjudicating Authority in exercise of the powers vested in him under Section 13 of the FT (DR) Act, 1992. In addition, the company and its Directors would also be liable to pay Custom Authority, the entire amount of custom duty saved and applicable interest thereon.

3.1 It was noted that the applicant had contravened the conditions of the authorization willfully.

4. Aggrieved by the Order-in-Original dated 06.10.2016, the applicant filed appeal under Section 15 of FT (D&R) Act, 1992, as amended, before the Appellate Authority, Kolkata.

4.1 The Appellate Authority dismissed the appeal on the ground that the appeal was filed beyond the prescribed time limit.

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

5.1 They had obtained two Advance Authorizations bearing Nos. 0210152614 dated 23.12.2010 and 0210157215 dated 01.04.2011 for import of Woven Nylon Stretch Fabric with obligation for exporting the goods of certain quantities and values for an export order received from M/s Williamson Dickies Europe, United Kingdom.

5.2 They were required to export trousers (pants) all type containing woven nylon stretch fabric. The applicant was required to fulfill the export obligation within a period of 36 months for a quantity of total 2114 pcs of trousers against actual quantity of imported fabric made, if both the authorizations were clubbed together i.e. 1022 pcs against advance authorization No. 0210152614 and 1092 pcs against advance authorization 0210157215.

5.3 Against the authorization No. 0210152614 dated 23.12.2010, the permissible quantity allowed for imports was 660 sqm.; towards quantity imposed for exports was 1200 pcs trousers, based on a consumption of 0.55 sqm. per trouser. However, actual quantity imported was 562.48 sqm. Against this imported quantity and based on 0.55 sqm consumption per trouser, 1022 pcs trousers could be made, however the total quantity made and exported against this authorization was 510 pcs. Therefore, there was a short shipment of 512 pcs and excess availability of imported fabric of 281.98 sqm.

5.4 Against the Authorization No. 0210157215 dated 01.04.2011, the permissible quantity allowed for imports was 850.30 sqm; towards quantity imposed for exports was 1560 pcs trousers, based on a consumption of 0.55 sqm per trouser. However, actual quantity imported was 601 sqm. Against this imported quantity and based on 0.55 sqm consumption per trouser, 1092 pcs trousers can be made. However, the total quantity exported against this authorization was 1560 pcs. Therefore, there was an excess exports of 468 pcs, evidently made from the excess fabric (281.98 sqm) available from the short shipment made against advance authorization No. 0210152614 dated 23.12.2010.

5.5 From the above, one can deduce that there was less export made against advance authorization No. 0210152614 dated 23.12.2010, which was offset by excess exports made against the authorization No. 0210157215 dated 01.04.2011. Therefore, total exports against the two authorizations were 2070 pcs (510 + 1560) instead of 2114 pcs as imposed on actual imports. And thus, there was a shortfall of 44 pcs resulting excess import of 25 sqm. Therefore, it is contended that if the total export quantity against the two authorizations are taken into consideration, there would be a shortfall of exports by 44 pcs trousers, resulting excess import of 25 sqm, which is negligible in comparison with the performance of the applicant. As such, ideally, duty on this excess import should be levied, if any. Ideally, more or less, they have fulfilled their export obligation both in quantity wise and value wise.

5.6 The export obligation in respect of both the authorizations were made, however, on one set of export documents containing 1560 pcs trousers, covering both the authorizations obligations, by mistake only one authorization No. 0210157215 dated 01.04.2011 was mentioned, whereas both the authorization Nos. should have been mentioned. They exported the finished goods, against both the authorizations, to a single buyer namely, M/s Williamson Dickies Europe, United Kingdom.

5.7 While exporting the goods, the applicant had mentioned the authorization No. 0210157215 dated 01.04.2011 in the invoice and export documents of the 1560 pcs. Though the export obligation was made against the two authorizations, the applicant mentioned, by mistake, only one authorization i.e. 0210157215 dated 01.04.2011 in the export documents and authorization No. 0210152614 dated 23.12.2010 was inadvertently omitted. Though, practically, the export obligations in respect of both the authorizations were made but the export documents contained only one authorization No. There was less export made against authorization No. 0210152614 dated 23.12.2010 and the shortfall was offset with excess exports made from the excess fabric.

5.8 They submitted the Authorization No. 0210157215 dated 01.04.2011 before the authorities for issuance of EODC and the authorities after considering the applicant's obligation in respect of authorization dated 01.04.2011 issued the discharge certificate without noticing that excess quantity was exported. Subsequently, the DGFT authorities issued letters to the applicant for submitting return and / or for taking other steps for non-submission of documents showing fulfillment of export obligation in respect of authorization No. 0210152614 dated 23.12.2010. They upon noticing the inadvertent mistake of not mentioning both the authorizations nos. in the export documents of which the EODC was obtained, made representation explaining the actual state of affairs and requested for considering the entire export against the fulfillment of their export obligation in respect of both the authorizations but the DGFT authorities did not consider the same and rejected the applicant's prayer for clubbing.

5.9 The order was passed also for refusing renewal of the authorization for failure of the applicant to furnish the stipulate document in fulfillment of export obligation in respect of advance authorization No. 0210152614 dated 23.12.2010. Proceeding was also initiated by issuing a Show Cause Notice for imposition of penalty under Section 11 (2) of the FT (DR) Act, 1992 for violation of the condition of the authorization and import of goods duty free for violation of exim policy.

5.9 They approached the authorities of DGFT and requested for regularizing the case. It was contended that if the total export quantity against two authorizations are taken into consideration, there would be a little shortfall of 44 pcs and excess import of 25 sqm which is almost negligible in comparison to the quantity exported. They had also submitted all the documents in support of their contention but they did not receive any communication from the department. They were handed over the Adjudication Order dated 06.10.2016 imposing penalty of Rs. 14 lacs on the Director / Proprietor.

5.10 They received the Adjudication Order dated 06.10.2016 on 27.03.2017 by hand and appeal was filed on 18.04.2017 before the Appellate Authority, mainly on the ground that the

6. The applicant was granted Personal Hearing on 04.05.2018 at 4.15 PM before me. Shri Anirudh Singh, Director of the company appeared before the undersigned on the given date and reiterated the same facts as explained in the written submissions.

6.1 The applicant has sent an email dated 17.05.2018 attaching a letter (regarding utilization of Shipping Bills) dated 17.05.2018 of RA, Kolkata in which the RA, Kolkata has certified that Shipping Bill No. 9729255 dated 05.07.2012 has been utilized against Authorization No. 0210152614 dated 23.12.2010. Shipping Bill No. 1304675 dated 14.08.2012, 7155858 dated 17.01.2012, 7231017 dated 21.01.2012, 7565376 dated 14.02.2012 and 9673727 dated 02.07.2012 have been utilized against Authorization No. 0210167259 dated 03.10.2011.

6.2 They requested to set aside the order passed by adjudicating Authority as well as reviewing Authority without affording personal hearing to them.

7. I have gone through the facts and record of the case, carefully. It is observed that the applicant has obtained two Advance Authorisations under duty exemption scheme for same resultant product. Exports obligation seems to have been completed if exports made under both the Authorisations are put to gather. However, the request for clubbing of Authorisation was not made by the applicant and Authorisation No 0210167259 dated 03.10.2011 has been closed on the request made by the petitioner itself. Therefore, surplus exports made under the said Advance Authorisation cannot be taken into account for clubbing. In other word, an Authorisation, which is redeemed, is not allowed to be clubbed with live (unredeemed) Authorisation.

7.1 Apart from the above facts, whatever the situation could have been, quasi-judicial order cannot be issued without affording reasonable opportunity of personal hearing. And, in the present case Order in original as well as Order in appeal were passed without giving opportunity of personal hearing to the petitioner, which indicates violation of set principle of natural justice and section 14 of F.T.(DR)Act. I therefore, pass the following order.

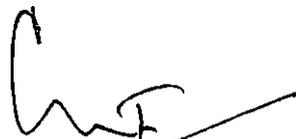
### Order

F. No. 18/53/2017-18/ECA-I / 88

Date of Order 1<sup>st</sup> June, 2018

6<sup>th</sup>

- i. The Review Appeal is admitted.
- ii. Order-in-Original dated 06.10.2016 and Order-in-Appeal dated 21.09.2017 are set aside.
- iii. The case is remanded for de novo consideration to RA concern<sup>ed</sup> with direction to take action after affording reasonable opportunity of personal hearing for meeting the end of natural justice.

  
Alok V. Chaturvedi

Director General of Foreign Trade

To

1. M/s Frontier Textiles Pvt. Ltd.,  
40/3, Madan Biswas Lane,  
Salkia, Howrah-711106.
2. Addl. Director General of Foreign Trade,  
4, Esplanade East,  
Kolkata-700069.



Tika Ram Majhi  
Deputy Director General of Foreign Trade