

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. 18/55/2017-18/ECA-I/175

Date of Order August, 2018

Date of Dispatch 27th August, 2018

- Name of Appellant : M/s Bajaj Carpet Industries Ltd.,
Village-Suthyana, P.O.-Kulsara,
Noida Dadri Highway, Greater Noida,
Distt.-Gautam Buddh Nagar (U.P.)-201304.
- Order Appealed against : Orders-in-Appeal passed by the Addl. DGFT, CLA, New
Delhi:
- (i) No. 05/16/140/0099/AM15/Appeal/CLA
Dated 26.05.2017
- (ii) No. 05/16/140/00103/AM15/Appeal/CLA
Dated 26.05.2017
- (iii) No. 05/16/140/00155/AM15/Appeal/CLA
Dated 26.05.2017
- Order-in-Review passed by : Shri Alok Vardhan Chaturvedi, Director General of
Foreign Trade

Order-in-Review

M/s Bajaj Carpet Industries Ltd., Village-Suthyana, P.O.-Kulsara, Noida Dadri Highway, Greater Noida, Distt.-Gautam Buddh Nagar (U.P.)-201304 has filed Review Petitions against the following Orders-in-Appeal passed by Additional Director General of Foreign Trade, CLA, New Delhi:

- (i) No. 05/16/140/00099/AM15/Appeal/CLA dated 26.05.2017
- (ii) No. 05/16/140/00103/AM15/Appeal/CLA dated 26.05.2017
- (iii) No. 05/16/140/00155/AM15/Appeal/CLA dated 26.05.2017

Facts of the case:

2. M/s Bajaj Carpet Industries Ltd., Greater Noida obtained following Advance Authorizations from CLA, New Delhi with the condition that the firm would fulfil export obligation in free foreign exchange:

Sl. No.	Advance Authorization No. & Date	CIF Value	FOB Value	Date of Expiry of Export Obligation Period
(i)	No. 0510134120 Dated 03.08.2004	Rs. 43,52,656/-	Rs. 80,77,887/- (US\$ 173718)	02.08.2006
(ii)	No. 0510139053 Dated 27.09.2004	Rs. 46,45,099/-	Rs. 53,60,985/- (US\$ 115290)	26.09.2006
(iii)	No. 0510152934 Dated 11.03.2005	Rs. 53,81,097/-	Rs. 58,40,625/- (US\$ 131250)	10.03.2007

2.1 The export obligation period expired but the firm did not submit any evidence in the requisite manner supported with the Bank Certificate / shipping bills towards fulfilment of the export obligation.

2.2 Show Cause Notices dated 07.05.2010 and 21.07.2010 under Section 14 for action under Section 11(2) of FTDR Act, 1992 were sent to the firm. Also opportunities for submission of original export documents were given on 10.09.2010, 22.11.2010, 12.01.2011 and 29.04.2011 but the firm submitted only photocopies of Shipping Bill. As regards imports, the firm did not submit original advance authorization and other required documents. Hence, import might be treated as 100% and last letter had been issued on 14.06.2011 advising the firm to pay duty + interest and amount equivalent to 3% of the CIF value of unutilized imported materials through TR / DD. But the firm failed to comply with the same. Therefore, name of the firm was placed under DEL.

2.3 Following Orders-in-Original were passed by the Deputy Director General of Foreign Trade (Adjudicating Authority), CLA, New Delhi imposing penalties on the firm as mentioned below holding the firm guilty of defaulting willfully on their export obligation commitment:

Sl. No.	Advance Authorization No. and Date	Order-in-Original No. & Date	Amount of penalty imposed
1.	No. 0510134120 Dated 03.08.2004	No. 05/88/40/122/AM-05/ZALC/CLA Dated 26.07.2011	Rs. 25,00,000/-
2.	No. 0510139053 Dated 27.09.2004	No. 05/88/40/162/AM-05/ZALC/CLA Dated 26.07.2011	Rs. 25,00,000/-
3.	No. 0510152934 Dated 11.03.2005	No. 05/88/40/251/AM-05/ZALC/CLA Dated 26.07.2011	Rs. 25,00,000/-

In addition to the payment of penalties, the firm, as per order, was to pay duty saved amount along with interest thereon @15% from the date of first import till the date when dues were paid to the Government as undertaken unconditionally and irrevocably in the LUT/Bond executed by the firm against the Advance Authorizations.

3. Aggrieved by the Orders-in-Original as mentioned in Para 3 above, the applicant filed appeal on 08.09.2011 under Section 15 of FT (DR) Act, 1992, as amended, before the Additional Director General of Foreign Trade (Appellate Authority) Hqr, New Delhi.

3.1 It is noted that the cases were initially fixed for personal hearings by the Addl. DGFT, Udyog Bhawan, New Delhi and an opportunity of personal hearing on 21.12.2012 was given to the appellant. There was no response to this. Another opportunity for hearing was given on 04.02.2013. Shri Prabhat Kumar, Advocate appeared on this date and submitted that the appellant had been able to fulfill only part of its export obligations.

3.2 The Authorised Representative sought time of two weeks to deposit the Custom Duty and interest on excess import and to produce the documents as Para 4.30 of the HBP. The matter was adjourned to 04.03.2013. On this date, Shri Pratul Jain, CEO and Shri Sanjay Kumar Verma attended and sought time of one month to pay the CD and interest. The matter was adjourned to 17.04.2013. The appellant did not appear on this date.

3.3 A letter was sent to the appellant granting time till 30.05.2013 to submit evidence of payment of CD and interest. There was no response to this letter. Another letter was sent to the appellant granting time till 15.07.2013 for submission of original documents relating to redemption of the authorizations and to submit proof of payment of CD and interest. There was no reply to this letter. A reminder was sent by email on 19.09.2013 and again on 24.12.2013. There was no response.

3.4 A letter was sent on 09.01.2014 informing the appellant about Public Notice No. 22 dated 12.08.2-13 and Policy Circular No. 8 dated 25.10.2013. There was no response to this also.

3.5 Subsequently, on transfer of the appeal to Addl. DGFT, CLA, New Delhi, notice for personal hearing on 19.09.2016 was issued. This notice was returned unserved by the postal authorities with the remark "Left RT". A fresh notice was issued at all the available addresses of the appellant, fixing the hearing for 07.11.2016. Shri P.K. Katiyar, Manager (Accounts and Finance) of the appellant appeared on this date and submitted that exports had been made through four shipping bills of which one shipping bill and relevant BRC were available and these would be submitted for redemption. Since other three shipping bills were not available, the appellant would pay the CD and interest for the balance excess imports. The AR was advised to file the original documents for redemption and to submit copy of acknowledgement to the Appellate Authority for information. The matter was adjourned to 08.11.2016 and later to 21.11.2016.

3.6 Shri S. Makharia, CEO and Shri P.K. Katiyar attended Personal Hearing on 21.11.2016 and submitted that there were a total of three appeals filed by the appellant and all were pending. In all the three cases, EO had been partly fulfilled. The appellant had applied to the bank for issue of e-BRC. Documents for redemption would be submitted after receipt of e-BRC from the banks and the CD portion of the liability would be paid by 30.11.2016.

3.7 The matter was adjourned to 12.12.2016. There was no response on this date. A fresh letter was issued to the appellant, fixing the hearing on 17.04.2017. Shri P.K. Katiyar attended on this date and submitted that CD and interest had been paid and the BRCs were still awaited from the banks. As requested, the matter was adjourned to 01.05.2017.

3.8 Shri P.K. Katiyar attended on 01.05.2017 and sought further adjournment. It was pointed out to Authorised Representative that several adjournments had been given in the case and the request for adjournment was denied.

3.9 Despite several opportunities during the appellate proceedings, the appellant failed to submit the documents required for redemption of the authorizations.

3.10 The Appellate Authority further observed that the appellant was given adequate opportunity, through as many as six communications, spread over a period of one whole year, before the adjudication order was passed.

3.11 The appellant was thereafter given several opportunities during the appellate proceedings to comply with the requirements for redemption. The appellate proceedings similarly went on for more than four years, beginning with the first notice for PH on 21.12.2012.

3.12 At each and every stage, the appellant merely reiterated that it was willing to comply and needed more time to do so. In the process, it failed to furnish the requisite documents in support of its EO fulfillment even ten years after the expiry of the EOP.

3.13 Keeping in view the above, the Appellate Authority dismissed the appeals holding that the appellant had failed to discharge the stipulated export obligation under the impugned authorizations.

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

4.1 In terms of the conditions prescribed under the advance authorizations, they have imported the goods and materials allowed to them vide bill of entry. The total value of materials imported against the value of materials allowed is as below:

Sl. No.	Advance Authorization No. and Date	Value of materials imported	Value of materials allowed
1.	No. 0510134120 dated 03.08.2004	US\$ 137851.526	US\$ 165662.00
2.	No. 0510139053 dated 27.09.2004	US\$ 93874.20	US\$ 99894.00
3.	No. 0510152934 dated 11.03.2005	US\$ 110273.67	US\$ 120923.68

4.2 In accordance with the terms and conditions for export of subject goods, the applicant also exported those goods and materials under various shipping bills. The total value of materials exported against export obligation is as below:

Sl. No.	Advance Authorization No. and Date	Value of materials exported	Against export obligation
1.	No. 0510134120 dated 03.08.2004	US\$ 60095.61	US\$ 173718.00
2.	No. 0510139053 dated 27.09.2004	US\$ 117471.32	US\$ 115290.00
3.	No. 0510152934 dated 11.03.2005	US\$ 131119.64	US\$ 131250.00

4.3 In respect of Advance Authorization No. 0510134120 dated 03.08.2004, there is partial compliance of the terms and conditions of the advance authorization have been made. Against total import allowed for US\$ 165662; import was made only for US\$ 137851.526. Thus import made only 83.21% against export fulfilled for 34.59%.

4.4 In respect of Advance Authorization No. 0510139053 dated 27.09.2004, there is a total compliance of the terms and conditions of the advance authorization, since the value of exports made is more than the value of export obligation. Moreover, the value of admissible imports was not utilized.

4.5 In respect of Advance Authorization No. 0510152934 dated 11.03.2005, there is a near total compliance of the terms and conditions of the advance authorization, since nearly full exports have been made. However, imports were also not fully utilized as against a total import allowed for US\$ 120923.68, import was made only for US\$ 110273.67. Thus import made only 91.12% against export fulfilled for 99.90%. Since the entitlement of import was not fully utilized, the export commitment is liable to be reduced proportionately. The applicant has made a higher quantum of exports than the imports made.

4.6 Meanwhile the ownership of the company changed hands and the new owners were not fully briefed on the liability towards exports and documents that were required to be submitted to the Customs authorities as well as before DGFT towards fulfillment of the conditions under the advance authorizations. The documents left behind by the previous owners were also not complete. There was also a problem with CHA who was engaged for making export shipments. Further, difficulty arose on account of the fact that considerable time had lapsed since the activity of import and exports were completed. There is also difficulty in obtaining the details of remittances received and the GR forms, since the bank concerned also shifted to a new building and old documents are warehoused in other premises, where details are not available.

4.7 On receipt of certain notices for fulfilment of export obligation, the applicant submitted certain photocopies of export documents, namely, shipping bills etc. However, the original advance authorizations were not submitted since the same were also required for completing the accounts before the customs authorities. Neither was the applicant specifically directed to submit the original copies of the advance authorizations instead of the attested photocopies.

4.8 The applicant has further stated that no penalty is possible for a negligible / partial shortfall in fulfillment of export obligation particularly in the circumstances when in real terms the exports made exceed the utilized value of the advance authorizations.

4.9 In view of the above, the applicant has requested for setting aside the impugned orders.

5. The applicant was granted Personal Hearing on 06.06.2018 at 4.00 PM to be heard by the Reviewing Authority. Dr. Prabhat Kumar (Advocate), Shri Arjun Malik (Advocate) and Shri S. Makharia, CEO of the firm appeared before the undersigned on the given date on behalf of the applicant and explained their case.

5.1 I have heard the firm and read the review application and the related documents. The firm should have submitted relevant documents evidencing fulfillment of export obligation and proof of payment of custom duty plus interest before the appellate authority who allowed ample time and opportunity to do so. But the firm failed to furnish the requisite documents even after lapse of more than ten years. The Appellate Authority has clearly recorded in the Appellate Order stating that "At each and every stage, the appellant has merely reiterated that it was willing to comply and needed more time to do so. In the process, it has failed to furnish the requisite documents in support of its EO fulfillment even ten years after the expiry of the EOP.I, therefore, hold that the appellant has failed to discharge the stipulated export obligation under the impugned Licence." I do not find any reason to interfere with the Appellate Order.

6. I, therefore, in exercise of powers vested in me under FTDR Act, 1992, as amended, pass the following order

Order

Date of despatch: 27.08.18

F. No. 18/55/2017-18/ECA-I/176

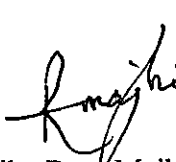
Date of Order August, 2018

The Review Application is dismissed and Orders-in-Appeal dated 26.05.2017 are upheld.


Alok Vardhan Chaturvedi
Director General of Foreign Trade

To

1. M/s Bajaj Carpet Industries Ltd.,
Village-Suthyana, P.O.-Kulsara,
Noida Dadri Highway, Greater Noida,
Distt.-Gautam Buddh Nagar (U.P.)-201304.
2. Addl. Director General of Foreign Trade (CLA),
A-Wing, Indraprastha Bhawan, I.P. Estate,
New Delhi-110002.


Tika Ranj Majhiin
Deputy Director General of Foreign Trade