

**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. 18/57/2017-18/ECA-I / 81

Date of Order 5th June, 2018

Date of Dispatch.....May, 2018
06.06.2018

Name of Appellant : Ms. S. Vishnu Ganga,
Partner,
M/s Sri Ganga Mills,
241, South Marret Street,
Madurai-625001.

Order Appealed against : Order-in-Appeal No. A (02) / Addl / DGFT / ECA / Chen/
AM 17 / Madurai /184 dated 10.08.2017 passed by Addl.
DGFT, Chennai.

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

Order-in-Review

Ms. S. Vishnu Ganga, Partner, M/s Sri Ganga Mills, 241, South Marret Street, Madurai-625001 has filed a Review Petition against Order-in-Appeal No. A (02) / Addl / DGFT / ECA / Chen / AM 17/Madurai / 184 dated 10.08.2017 passed by Addl. DGFT, Chennai.

Facts of the case:

2. M/s Sri Ganga Mills, Madurai obtained an EPCG Authorization No. 3530002321 dated 23.01.2007 from RA, Madurai for duty saved amount of Rs. 2,33,596 for import of Capital Goods with export obligation to export 'Cotton Yarn' for a FOB value of US\$ 31,355.16 within a period of 8 years from the date of issue of authorization.

3. An Order-in-Original dated 12.07.2016 was passed by the Joint Director General of Foreign Trade being Adjudicating Authority, in exercise of the powers vested in him u/s 13 of FT(DR)Act, imposing penalty of Rs. 8,00,000/- upon the firm and its Partners towards non-fulfillment of export obligation.

3.1 It was noted that the firm had not submitted statement of exports evidencing fulfillment of export obligation in spite of repeated reminder issued by RA, vide letters dated 14.06.2010, 12.07.2013, 03.11.2014 and 23.01.2015.

3.2 A Show Cause Notice dated 24.03.2015 with personal hearing on 06.04.2015 at 11.30 AM was issued to the firm and its Partners. The firm neither attended the personal hearing nor submitted documents evidencing fulfillment of export obligation.

3.3 A Demand Notice dated 08.09.2015 was also issued to the firm and its Partners with direction to pay duty saved amount along with applicable interest to the Customs Authorities and furnish challan to RA office. The RA did not receive documentary evidence for having paid

duty with interest. Hence the firm was placed under Denied Entities List, vide order dated 13.11.2015 and subsequently order in original came to be issued holding the firm guilty of violating the conditions of the authorization in question.

4. Aggrieved by the Order-in-Original dated 12.07.2016, the firm filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Appellate Authority, Chennai requesting to condone the delay in filing the appeal and waiving of penalty.

4.1 Accordingly, Personal Hearing was given to the firm on 01.08.2017 at 4.30PM. Shri T.S. Rajsekaran, Executive authorized by the firm attended the Personal Hearing.

4.2 He stated that the firm has regularized the imports by payment of Customs Duty with interest and requested to set aside the Order-in-Original.

4.2 He also requested to waive the penalty as the firm is running on losses.

4.3 The Appellate Authority observed that the last date of filing appeal in this case was 27.09.2016 whereas the appeal had been filed on 05.05.2017. Therefore, the Appellate Authority dismissed the appeal, as the same had been filed beyond the condonation period.

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

5.1 After import of the machinery, the same were installed in their factory and production commenced.

5.2 However, due to unforeseen market conditions that prevailed at that time, they were unable to fulfill the export obligation. In spite of their efforts, they could not get export orders for their product cotton yarn. Failing to complete in a highly volatile international market conditions, they had also face industry specific problems like high fluctuation in raw materials prices of cotton and power (electric) shortages. Moreover, being a small scale industry, they could not get orders due to stiff competition from Chinese and major domestic manufacturers of cotton yarn.

5.3 In addition, their family was terribly shattered with fatal road accident during 2008 in which their parents, Shri Sethuram and Mrs. Sethuram who were partners of the firm died, leaving them clueless about the affairs of the firm including the Export Obligation under the EPCG Authorization. She was 25 years old when her parents died.

5.4 It took them some times to recover from the trauma and concentrate on their business operations which were completely looked after by her late parents. After their sudden demise, the responsibility to run the unit fell on their daughters who were new to the business and somehow managing the unit till date. All these factors hugely impacted their business due to which they were unable to fulfill the Export Obligation.

5.5 Due to financial constraints, they were unable to pay the duty along with interest to Customs Authorities as per Demand Notice dated 08.09.2015. In the meantime, their firm was placed under Denied Entities List, vide order dated 13.11.2015.

5.6 Subsequently the Joint DGFT, Madurai passed Order-in-Original dated 12.07.2016 imposing a heavy penalty of Rs. 8,00,0000/- for duty saved amount of Rs. 2,33,596/-. Thus, the penalty was imposed approximately 3.5 times of the duty saved value on their firm.

5.7 They have paid the entire duty saved amount of Rs. 2,33,600/- vide SC 34 Receipt No. 76476 and interest amount of Rs. 3,89,107/- vide SC 34 Receipt No. 76649 on 09.03.2017. Thus, the entire revenue foregone to the Government in the form of duty + Interest have been fully settled for a value of Rs. 6,22,707/-.

5.8 The last date of filing appeal was on 27.09.2016 and the appeal was filed on 05.05.2017 resulting in the delay of approximately 8 months.

5.9 The delay in filing the appeal was always condonable on Bonafide Grounds which is an established practice of Appellate Proceedings. The default in EO is a Bonafide one and not a malafide default. However, the Appellate Authority did not condone the delay.

5.10 The payment of Custom Duty for non-fulfillment of EO under the EPCG Authorization has been permitted under the mandate of HBP relevant to their authorization which is called as exit method to come out of the EPCG Scheme.

5.11 The failure to fulfill the EO under the EPCG Authorization is not due to malafide intention but due to the facts and grounds beyond the control of the petitioner and as such this default squarely falls under a Bonafide default.

5.12 The Regularization of the default in Export Obligation had also been permitted by the DGFT's P.N. No. 22 (RE-2013) 2009-2014 dated 12.08.2013. Accordingly, when the entire custom duty plus interest had been settled by the petitioner, the case of the petitioner need to be regularized.

5.13 In view of the above fact and settle legal positions of law, the applicant has requested to review the impugned orders of penalty of Rs. 8,00,000/- and to set aside the impugned orders in the interest of Justice.

6. The applicant was granted Personal Hearing on 04.05.2018 at 5.00 PM before me being Reviewing Authority. Learned Shri Pulkit Tare and Ms Saumya Singh appeared before the undersigned on the given date on behalf of the firm. During the personal hearing, they submitted stating inter alia that:

6.1 They could not fulfill export obligation due to volatility and no demand of their product in the International market. However, they have paid duty plus applicable interest to the Customs Authority towards regularisation of bona fide default. The capital goods imported under EPCG Authorisation are otherwise freely importable on payment of applicable duties. Hence, there is no violation of any provisions of FTP. They invited attention towards Section 11(2) of FT(DR)Act, which speaks that penal action can be taken if any person makes or abets or attempt to make any export or import in contravention of any provisions of this act or any Rules or Order made thereunder or the Foreign Trade Policy. As they have not violated any provision of FTP or contravened any provisions of F.T.(DR)Act, the penalty imposed on them was not legal and justified.

6.2 They, therefore, requested to set aside the order passed by adjudicating Authority as well as appellate Authority and remand the case back to RA concerned for issue of EODC.

7. I have gone through the facts and record of the case as well as oral and written submissions made by the petitioner, carefully. It is a matter of facts that capital goods could be imported freely on payment of applicable duties. Under EPCG Authorisation, imports are allowed without payment of duties subject to export obligation to be fulfilled within stipulated

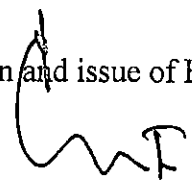
period. In the instant case, the petitioner has failed to fulfill export obligation but has paid duty and applicable interest on goods imported under the Authorisation but after the Adjudication order is passed. This unpleasant situation could have been avoided if proof of payment of duty were submitted in time by the applicant. I, therefore, pass the following order.

Order

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- (i) The Review Appeal is admitted.
- (ii) Order-in-Original dated 12.07.2016 and Order-in-Appeal dated 10.08.2017 are set aside.
- (iii) The case is remanded to RA, Madurai for de novo consideration and issue of EODC.


Alok V. Chaturvedi
Director General of Foreign Trade

To

1. Ms. S. Vishnu Ganga,
Partner,
M/s Sri Ganga Mills,
241, South Marret Street,
Madurai-625001.
2. Addl. Director General of Foreign Trade,
26-Haddows Road, Shastri Bhawan Annexe,
Chennai-600006.


Tika Ram Majhi
Deputy Director General of Foreign Trade