

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. 18/62/2017-18/ECA-I/76

Date of Order 5th June, 2018

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

Name of Appellant : M/s Krillo Garments,
36- M.P. Nagar Main Road, Sppachi Nagar,
Tirupur-641607.

Order Appealed against : Order-in-Appeal No. I (98) / Addl. DGFT / ECA / Che /
AM17 / CBE / 330 dated 28.11.2017 passed by Addl.
DGFT, Chennai.

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

Order-in-Review

M/s Krillo Garments, 36-M.P. Nagar Main Road, Appachi Nagar, Tirupur-641607 has filed a Review Petition u/s 16 of FT(DR)Act, vide letter dated 12.03.2018 against Order-in-Appeal No. I(98) / Addl. DGFT / ECA / Che / AM17 / CBE / 330 dated 28.11.2017 passed by Addl. DGFT, Chennai.

Facts of the case:

2. M/s Krillo Garments, Tirupur obtained an Advance Authorization No. 3210049869 dated 14.09.2011 for Rs. 65,198/- (US\$ 1407) from RA, Coimbatore for import of 100% Polyester Micro polar fleece with an export obligation to export Knitted Children (Girls) seat shirt full sleeve made out of 100% Polyester Micro polar fleece for a FOB value of US\$ 1650 within a period of 36 months from the date of issue of authorization.

3. An Order-in-Original dated 07.02.2017 was passed by the Deputy Director General of Foreign Trade being Adjudicating Authority, in exercise of the powers vested in him u/s 13 of FT(DR)Act and as per Notification No. SO 24 E dated 20.01.1999 issued by Central Government, imposing fiscal penalty of Rs. 65,198/- upon the firm and its Partners as there was no reply to the RA's letters issued to them on various dates.

3.1 It was noted that the firm failed to submit documents in original as per Para 4.46 of Handbook of Procedures. i.e. original Advance Authorization, Bill of Entry, copy of original EP, copy of Shipping Bill, Bank realization certificate, Statement of Import & Export duly self certified, Consumption Statement as per Appendix-23 /Appendix 4H.

3.2 Accordingly, a Demand-cum-Show cause Notice dated 04.01.2017 under Section 14 for action under Section 11(2) of FT (DR) Act, 1992, as amended, was issued to the firm. PH was also afforded but no one appeared for Personal Hearing. No response was also received from the firm. Therefore, the order in original came to be issued.

4. Aggrieved by the Order-in-Original dated 07.02.2017, the firm filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Appellate Authority, Chennai.

4.1 Personal Hearing was given on 28.08.2017, 05.10.2017 and 03.11.2017 to the firm. The appellant did not avail any of the opportunity of Personal Hearings. Instead, vide letter dated 28.09.2017, the appellant had requested that the case might be decided on merits. The firm had also requested to waive the pre-deposit of penalty amount as they were in financial hardship. However, they did not submit any further documents necessary for considering the appeal.

4.2 In the absence of any valid submissions or evidence necessitating considering of the appeal, the Appellate Authority dismissed the appeal.

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

5.1 They have completed the E.O. well within the EO period. However they could not submit the document on time before RA, Coimbatore. Due to non submission of the EO documents the RA put firm's IEC under DEL list.

5.2 Based on the Order-in-Original, they had approached Zonal Jt. DGFT, Chennai for set aside the case. Since their lawyer could not appear for PH on time the Appellate Authority rejected the appeal and asked to pay duty + Interest.

5.3 They submit the copy of advance authorization with EO fulfillment documents for consideration of the Review Petition.

5.4 Their MEIS authorizations are withheld for want of clearance of Order-in-Original.

5.5 The Applicant has requested to accept their Review Petition and consider favourably and set aside the order passed by Adjudicating Authority.

6. The applicant was afforded Personal Hearing before me on 04.05.2018 at 5.00 PM. Shri K.R. Veerappan, President of the company appeared before the undersigned. During the personal hearing, the Applicant has submitted that:

6.1 They have submitted application on ANF 4F vide acknowledgement dated 14.12.2017 to RA, Coimbatore for issue of EODC against the Authorisation in question. Vide shipping Bill No 9696241 dated 04.07.2012 they have exported 360pcs of 100% polyester ladies pyzama of 175GSM consuming 1598.600 sqm 100% polyester micro polar fleece of 175 GSM. And they have realised Euro 1620 equal to Rs. 1,12,267/- on 31.08.2012 against export obligation of 1000Nos children sweat shirt full sleeve for FOB \$ 6500 and Rs 3,00,625/-. However, they could not submit documents in time. He, therefore, requested to set aside the order in original and order in appeal.

7. I have gone through the facts of the case as well as submissions made by the applicant, carefully. It is observed that the Authorisation in question was issued to allow duty free inputs to export resultant product. The Authorisation was issued with Actual User condition and to achieve minimum 15% value addition. The Authorisation holder was put under obligation to fulfill stipulated export obligation within 36 months from the issue of the Authorisation and would submit documents towards discharge of EO within two months from the expiry of export obligation period. The applicant has imported 1598sqm 100% polyester micro polar fleece for CIF value of Rs. 65,198/- The Authorisation was obtained to export 1000nos of knitted children (girls) sweet full sleeve shirts whereas the applicant has exported 360 pcs of 100% polyester

ladies Pyzama for EURO 1620 equal to Rs. 1,12,267/- using same imported raw materials. Though the export obligation in terms of value has been fulfilled but export obligation in terms of quantity cannot be calculated unless wastage norms for different export product i.e. knitted ladies Pyzama is ascertained. The applicant did not indicate the SION-SI No of export item knitted ladies Pyzamas. Therefore, the case needs to be examined again in light of export item actually exported. Since the order in original is passed without giving personal hearing to the petitioner, the following order is passed.

Order

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Date of Order 5th June, 2018

6th

- (i) The Review Appeal is admitted.
- (ii) Order-in-Original dated 07.02.2017 and Order-in-Appeal dated 28.11.2017 are set aside.
- (iii) The case is remanded to RA, Coimbatore for de novo consideration and issue of EODC after affording an opportunity of being heard in person.


Alok V. Chaturvedi
Director General of Foreign Trade

To

1. M/s Krillo Garments,
36-M.P. Nagar Main Road, Appachi Nagar,
Tirupur-641607.
2. Addl. Director General of Foreign Trade,
26-Haddows Road, Shastri Bhawan Annexe,
Chennai-600006.
3. Joint DGFT
1544, India life Building, (Annex. 1st Floor),
Tiruchy Road, Coimbatore.641018


(Tika Ram Majhi)
Dy. Director General of Foreign Trade