Order-in-Review


Facts of the case:

2. The Petitioner obtained an EPCG authorization No. 3530001662 dated 31.03.2006 from RA, Madurai as per provisions of the Foreign Trade policy prevalent during the period for import of capital goods for a duty saved value of Rs. 5,97,696/- with an Obligation to export goods manufactured out of it for an FOB value of US$ 1,07,089.98 within a period of 8 years from the date of issue of authorization. As per conditions of the Authorisation, the petitioner was required to submit the prescribed export documents towards fulfilment of export obligation (EO) within the time frame as mentioned in the relevant FTP. The export obligation period expired on 30.03.2014.

2.1 The petitioner did not submit documents evidencing fulfilment of export obligation despite several reminders. A notice dated 01.05.2017 for action under Para 5.17 of HBP and under Rule 7(k) of Foreign Trade (Regulation) Rules, 1993
was issued to the petitioner. The petitioner was placed under Denied Entities List on 12.09.2017. A show cause notice was issued on 25.07.2017 as to why action should not be initiated under section 11 of FT(D&R) Act, 1992 for adjudication. But, petitioner neither submitted the documentary evidence for redemption of EO nor appeared for personal hearing. The Adjudication Authority passed Order-in-Original No.35/21/021/00372/AM06/5725 dated 26.10.2017 imposing a penalty of Rs.11,95,392/-.

2.2 The petitioner filed an appeal before the Appellate Authority against Order-in-Original dated 26.10.2017. The Appellate Authority observed that the petitioner voluntarily regularized by payment of customs duty with interest and hence it did not have any intention of defrauding the government. But, it remains that the documents were not submitted on time. The Appellate Authority therefore ordered the following: (i) reduction in penalty to Rs. one lakh and (ii) de-novo examination, vide Order-in-Appeal dated 21.12.2018.

3. The petitioner has now submitted a review petition dated 25.01.2019 before DGFT praying to set aside the penalty of Rs. one lakh. The petitioner has inter-alia submitted the following:

(i) It has already paid duty along with interest due to be paid for non completion of export obligation.

(ii) It has installed the machinery in its factory and submitted the installation certificate and the said machinery is still available in its factory premises.

(iii) Appellate Authority in his Order-in- Appeal dated 21.12.2018 observed that the petitioner did not have any intention of defrauding the government, but it remained that the documents were not submitted on time.

(iv) It is case of bonafide default in EO due to general recession in the industry which can be regularised as per HBP of FTP.

(v) In order to impose heavy penalty criminal intent or 'mensrea' is a necessary constituent as per law laid down by Hon'ble Supreme Court in various cases. Mere failure (mere non submission of documents on time) cannot be equated with mensrea or malafide intention or wilful contravention. Therefore heavy penalty imposed is not justifiable.

4. The petitioner was afforded an opportunity of personal hearing on 4th April 2019 and again on 25th April 2019. Mr. A. Seetharaman appeared and reiterated the points as mentioned in para 3 supra. I have gone through the facts and records carefully. It is observed that the petitioner voluntarily regularized by payment of customs duty with interest and hence it did not have any intention of defrauding the
government. However the fact remains that the documents were not submitted on time for which I am inclined to take a lenient view.

5. I, therefore, in exercise of powers vested in me under section 16 of Foreign Trade (Development & Regulation) Act, 1992 as amended pass the following order:

ORDER

The penalty of Rupees one lakh imposed on the petitioner is quashed. Review Appeal is accepted to this extent only. Case is remanded back to the Adjudicating Authority for De-Novo consideration.

(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

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(2) Addl. DGFT, Chennai
(3) RA Madurai.
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(Rajbir Sharma)
Jt. Director General of Foreign Trade