

Government of India
Ministry of Commerce & Industry
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi -110011

F.No. 18/04/2018-19/ECA-I/13

Date of Order: 8 . 04.2019

Date of Dispatch: 9 .04.2019

Name of the Appellant:

M/s United India Corporation, Mumbai.
375, Nareshi Natha Street, Mumbai-400009

IEC Number

0397008627

Order reviewed against:

Order-in-Appeal No. 03/16/144/00019/AM18 dated
22.03.2018 passed by Addl. DGFT, Mumbai.

Order-in-Review passed by:

Shri Alok Vardhan Chaturvedi, DGFT

Order-in-Review

M/s United India Corporation, Mumbai filed a Review Petition on 15/05/2018 in terms of Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 against Order- in-Appeal No. 03/16/144/00019/AM18 dated 22.03.2018 passed by Addl. DGFT, Mumbai.

Facts of the case

M/s United India Corporation, Mumbai obtained an Adv. Authorization No. 0310121385 dated 25.01.2002 for a CIF value of Rs. 4,99,18,000/- for import of Synthetic Fabric duty free with a condition to export Ladies Dress for FOB value of Rs.5,44,79,000/- One of the Condition of the Authorization was that the firm would fulfil stipulated export obligation within 18 months from the date of issue of the authorization and would submit original documents towards discharge of said obligation within a month from the date of expiry of export obligation period.



2. The applicant firm failed to submit the required export documents even after the expiry of the original/extended export obligation period. Adjudicating Authority passed an Order-in-Original No. 03/01/002/00060/AM10 dated 05.09.2017 imposing a fiscal penalty of Rs.10,00,000/- and also directing the applicant and its prop. to pay Customs Duty plus interest to the concerned Custom Authorities on the goods left unutilised with them.

3. Aggrieved by the Adjudication Order dated 05.09.2017 passed by Dy. DGFT, Mumbai, the applicant filed appeal under section 15 of the FT (D&R), Act, 1992.

4. During the Appeal proceedings personal hearing was granted to the applicant on 19.12.2017. The firm stated that no imports have been made. M/s United India Corporation was a proprietary concern and the prop. passed away on 24.04.2006. Proceedings are not maintainable against a person who is no longer alive.

5. However the Appellate Authority rejected the appeal mainly on the grounds that the appellant failed to produce any documentary evidence showing non utilisation of the authorisation.

6. The applicant filed the present review petition mainly on the following grounds:-

- a) The orders of the lower authorities are contrary to the settled law that penalty abates with death.
- b) RA failed to appreciate that the power and jurisdiction to recover customs duty is solely with Customs Authorities and in this case, Customs authority did not confirm any duty demand.
- c) RA failed to appreciate that fulfilment of export obligation will be relevant only in cases where the advance authorisation was utilised for making duty free imports. RA was unable to show that even one import had taken place under the said authorisation. In the absence of any import the question of discharging of export obligation would not arise.

7. An opportunity of personal hearing was granted to the firm on 17.01.2019. Mr. Anil Balani, Advocate appeared and explained the case.

8. I have gone through the facts of the case carefully. From the documents submitted it is seen that the applicant firm had executed a bond with the customs at Ballard Estate, Mumbai. The customs had issued a notice to the firm asking it to submit Export Obligation Discharge Certificate. In response, rather than sorting out the matter with the customs, the applicant feigned ignorance regarding any such imports and asked the customs to provide him the details. The applicant firm had the option to submit either the unutilised Advance Authorisation in original or Non-



Utilization Certificate from customs if no imports were made by them against this Authorization which it failed to submit. Even at review stage, the firm has failed to submit any evidence of having not made any imports. Govt. revenue cannot be forgone even if the proprietor expires. The liability remains of the firm and its successors along with legal heir(s) of the proprietor.

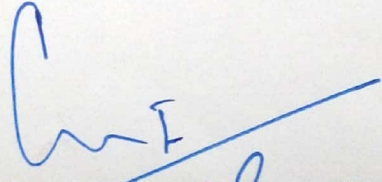
I, therefore in exercise of the powers vested in me under section 16 of the FT (DR) Act, 1992, as amended, pass the following order:

Order

F.No. 18/04/2018-19/ECA-I

Dated: 04. 2019

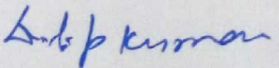
Order-in-Original No. 03/01/002/00060/AM10 dated 05.09.2017 and Order-in-Appeal No. 03/16/144/00019/AM18 dated 22.03.2018 are upheld. The Review Appeal is dismissed.


(Alok Vardhan Chaturvedi)
Director General of Foreign Trade



Copy To:

- ✓ 1. M/s United India Corporation, Mumbai
2. Addl. DGFT, Mumbai with reference to Appellate Order no. 03/16/144/00019/AM18 dated 22.03.2018 with an advice to make recovery.
3. Mr. Asish Ravani
4. DGFT website


(Dilip Kumar)
Dy. Director General of Foreign Trade