

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

F.No. 18/88/2018-19/ECA-I | 291 Date of Order: 18 .01.2021
Date of Dispatch: 18 .01.2021

Name of the Appellant: Kopran Ltd.,
Parijat House, 1076, Dr. E. Moses Road,
Worli, Mumbai - 400018.

IEC No. 0388066989

Order reviewed against: Order-in-Appeal No. 03/16/144/00010/AM19/802
dated 30.08.2018 passed by Addl. DGFT, Mumbai.

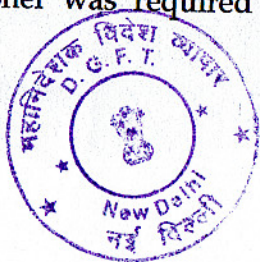
Order-in-Review passed by: Amit Yadav, DGFT

Order-in-Review

Kopran Ltd., Mumbai (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 06.02.2019 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as 'the Act'), against Order-in-Appeal No. 03/16/144/00010/AM19/802 dated 30.08.2018 passed by Addl. DGFT, Mumbai upholding the Order-in-Original (O-i-O) dated 12.02.2018 passed by the Adjudicating Authority i.e. imposing a penalty of Rs.8,50,000/- on the Petitioner in addition to payment of customs duty on material imported against the subject Authorization as lying unutilised and applicable interest thereon.

Brief facts of the case

2.1 The Petitioner obtained an Advance Authorisation No. 0310323675 dated 29.03.2005 from RA, Mumbai for import of specified products, free of customs duty, for a CIF value of Rs.2,34,73,692/- (US\$ 5,33,493) with an obligation to export specified products for an FOB value of US \$ 5,49,700 to be completed within a period of 24 months from the date of issue of the Authorisation. As per conditions of the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having



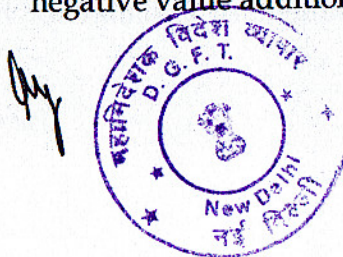
fulfilled its export obligation (EO) within two months from the date of expiry of the export obligation. However, the Petitioner failed to submit the prescribed documents.

2.2 A Show Cause Notice dated 12.09.2012 was issued to the Petitioner under Section 14 for action under Section 11(2) of the Act. The Petitioner submitted documents towards discharge of export obligation. On scrutiny of the documents, it was found that the Petitioner made excess import and therefore it was asked to regularize the case in terms of para 4.49 of Handbook of Procedure 2015-20 by making payment of the applicable duty and interest thereon. The Petitioner failed to regularize the excess imports. The Adjudicating Authority passed O-i-O dated 12.02.2018 imposing a penalty of Rs. 8,50,000/- on the Petitioner in addition to payment of customs duty and applicable interest thereon.

2.3 The Petitioner filed an Appeal on 03.04.2018 before the Appellate Authority against O-i-O dated 12.02.2018. The Appellate Authority granted Personal Hearing on 01.08.2018. The Appellate Authority observed that the Petitioner failed to regularize the matter for excess import and therefore, vide the Order-in-Appeal dated 30.08.2018, dismissed the Appeal.

3.1 The Petitioner filed, with the undersigned, a Review Petition dated 04.02.2019 along with an application for stay on recovery of fiscal penalty imposed vide Order-in-Appeal dated 30.08.2018. It submitted that: -

- (i) It exported 27,010 kg of the specified product. Out of this, export of 1000 kg of export was made through a Merchant Exporter vide Shipping Bill No. 2009807 dated 24.06.2005. The Merchant Exporter entered into litigation with the foreign buyer on non-receipt of payment. As the merchant exporter did not get his payment, it did not get Bank Realization Certificate (BRC). It submitted all documents, except the BRC in respect of Shipping Bill No. 2009807 dated 24.06.2005 in respect of 1000 kg export. The Adjudicating Authority did not recognise this export of 1000 kg.
- (ii) It imported 24300 Kg of Para Hydroxy Phenyl Acetamide under the Authorization and accordingly it was required to export 27000 kg. of Atenolol whereas it exported 27010 kg.
- (iii) Even if value of export made vide Shipping Bill No. 2009807 dated 24.06.2005 is excluded, it had achieved a value addition of 1.98%. Whereas, the Adjudicating Authority has erred in holding that the Petitioner achieved a negative value addition.



- (iv) Its case is covered under para 4.28 of Handbook of Procedure 2004-09, which specifically deal with the regularization of the Advance Authorization in case of bonafide default in fulfilment of export obligation.
- (v) It cannot be penalized for litigation issues of third party i.e. Merchant Exporter. As per latest information received from the Merchant Exporter, the matter of non-receipt of payment in respect of Shipping Bill No. 2009807 dated 24.06.2005 is still pending in International Court of Justice.
- (vi) Quantum of penalty imposed on the Petitioner is un-specific and un-quantified as the Adjudicating Authority imposed a penalty of Rs. 8,50,000/- on the Petitioner and its Directors, without providing any bifurcation as to who will pay how much.

4. Comments on the Review Petition were called from the RA Mumbai which vide letters dated 23.08.2019, 06/10/2020 and 14/10/2020 responded that:

- (i) Export of 1000 Kg. made vide Shipping Bill No. 2009807 could not be recognized for want of Bank Realisation Certificate.
- (ii) Export of 50 kg. for US \$ 13,500/- made against Shipping Bill No. 5718874 could not be counted as it is a different export product and the export has been made against some other Authorization.
- (iii) After excluding the above exports, the Petitioner has made export of 25960 kg of the specified product. Compared to its import entitlement on export of 25960 Kg, the Petitioner has made excess import of three import items for which it was required to pay duty and interest. However, no such payment has been made. In value terms, the Petitioner has made imports for US\$ 4,75,978 and realized US \$ 4,71,893.19 and hence there is a negative value addition. Again, such negative value addition has not been regularized as per the extant provisions of the Hand Book of Procedures.

5. The Petitioner was granted an opportunity of Personal Hearing on 09.01.2020. Mr. Ashutosh Mishra, Advocate, appeared and explained the matter. He re-iterated what was given in writing in the Review Petition.

6. I have gone through the facts and records carefully. It is observed that:

- (i) The Petitioner claimed to have exported 27010 kg of export item. Whereas, one shipping bill No. 5718874 dated 03.08.2005 for export of 50 kg for \$13,500 does not pertain to this Authorization. No submissions have been made by the Petitioner regarding this shipment.



- (ii) Regarding exports of 1000 kg made through Merchant Exporter against shipping bill No.2009807 dated 24.06.2005, both quantity and value are independent factors for fulfilment of export obligation. There is no doubt on genuineness of such exports. Therefore, the Petitioner would not have any raw material in stock corresponding to such exports. Hence, no duty can be asked on such quantities from the Petitioner and no penalty can be imposed for this quantitative part. Any value wise shortfall has to be regularised in terms of para 4.28(ii) of HBP 2004-09.

6. I, therefore, in exercise of the powers vested in me under Section 16 of the Act pass the following order:

Order

F.No. 18/88/2018-19/ECA-I | 292

Dated: 18.01.2021

Review Petition dated 06.02.2019 is admitted. Order-in-Appeal No. 03/16/144/00010/AM19/802 dated 30.08.2018 and Order-in-Original No. 03/01/002/00068/AM.13 dated 12.02.2018, in so far as it pertains to Kopran Limited, is set aside and the matter is remanded back for *denovo* consideration. A separate order is being made for the penalty imposed against the Directors.



(Signature)

(Amit Yadav)

Director General of Foreign Trade

Copy To:

- (i) Kopran Ltd., Parijat House, 1076, Dr. E. Moses Road, Worli, Mumbai - 400018.
- (ii) Addl. DGFT, Nishtha Bhawan (New C.G.O. Complex), 48, Vithaldas Thackersey Marg, New Marine Lines, Churchgate, Mumbai-400020 for further necessary action.
- (iii) DGFT website.

(Signature)

(Dilip Kumar)

Dy. Director General of Foreign Trade

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