

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

F. No. 18/41/2022-23/ECA.I/

Date of Order : 04.10.2023

Date of Despatch: 05.10.2023

Name of the Appellant :

M/s Vimal Fire Control Pvt. Ltd.  
19 & 20, Vardhaman Service Industrial  
Estate, Behind Punjab & Sind Bank,  
Vikhroli (W),  
Mumbai – 400 083.

IEC No.

0397015984

Order Appealed against:

Order-in-Original No.  
03/24/042/00116/AM99 dated 04.08.2009  
passed by Addl. DGFT, Mumbai.

Order-in-Appeal passed by:

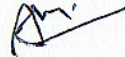
Santosh Kumar Sarangi, DGFT

**Order-in-Appeal**

M/s Vimal Fire Control Pvt. Ltd., Mumbai(here-in-after referred to as 'the Appellant') having IEC No. 0397015984 filed an Appeal dated 12.12.2022 under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Original (OIO) No. 03/24/042/00116/AM99 dated 04.08.2009 passed by Addl. DGFT, Mumbai imposing a penalty of Rs. 44,00,000/- on the Appellant and its Directors.

**Brief of the Case**

2. The Appellant obtained an Advance Authorization No. 0003028710 dated 01.04.1999 for export of 1 no. Foam Transport Vehicle and 2 nos. Equipment Tender Vehicle with FOB value of Rs.76,22,998/- and total CIF value of Rs. 8,87,770/-. One of the conditions of the license required that the firm would fulfill stipulated export obligation within eighteen months period from the date of issue of license and would submit the original documents towards discharge of said obligation within a month from the date of expiry of export obligation period.



3. After the expiry of the stipulated export obligation period on 01.10.2000, the notice firm failed to submit the proof of exports affected against the said license for redemption of the case. The adjudicating authority therefore, issued a Show Cause-cum Demand Notice dated 19.10.2001. No reply was received against the said Notice. Thereafter, the refusal order under Rule 7 of the FT(R) Rules, 1993 for refusal to grant new license and renewal of licenses already granted to them was issued on 09.04.2003, which was also not responded. As the firm failed to reply and/or submit the documents, action under the FTDR Act, 1992 was initiated and the show cause notice on 11.08.2006 issued under the FTDR Act, 1992.

4. In response to the show cause notice the Appellant vide letter dated 25.09.2006 intimated that the related documents are not traceable as the records got vanished fully during the flood. They further submitted that they were trying to get related papers from other department like Central Excise and Banks. They had therefore, requested that they may be given 30 days abeyance in the matter. As requested by them abeyance time up to 05.11.2006 was allowed by the adjudicating authority for the purpose.

5. In-spite of the time allowed to them, they have failed to submit any documents towards fulfillment of export obligation. Therefore, another PH was fixed on 09.04.2007 and 08.08.2008. Finally, a letter dated 08.07.2009 was issued to the Appellant giving them last opportunity of personal hearing. The Appellant neither appeared for PH nor did they submit any reply/documents to prove fulfillment of export obligation against the license.

6. In view of the above, the Adjudicating Authority passed an Order-in-Original No. 03/24/042/00116/AM99 dated 04.08.2009, imposing a penalty of Rs. 44,00,000/- on the Appellant and its Directors.

7.1 Now, the appellant has filed the present appeal dated 12.12.2022 on the following grounds:

(i) During 2004 due to unprecedented heavy rains entire Baroda city was affected by floods which has resulted in destruction of their assets, documents and records. Due to this natural calamity they could not produce the required deemed export records for closure of their license

(ii) In the absence of any evidence of export the case was decided ex-parte on basis of facts and information available on records.

(iii) Aggrieved with the action for recovery pending hearing of stay/appeal the company filed writ petition no 10654 of 2009 for stay of recovery with Hon'ble



Mumbai High Court and the Court gave directions that considering that the application for waiver is pending before respondent no 2, the respondents are directed not to take steps to make recovery till 15th January 2020.

(iv) They <sup>are</sup> again filing this appeal with a request to review the proceedings and to give justice to an MSME company which has been severely affected by natural calamity caused by unprecedented floods in their factory which has resulted in destruction of assets, documents and records.

7.2 The appellant has prayed as under:

- (a) To quash and set aside the penalty imposed as per the impugned order and be pleased to allow this appeal;
- (b) To remand the case for redemption of the license;
- (c) To allow personal hearing, so that the appellant can defend their case along with documentary evidence.
- (d) They requested to kindly waive off time limit for filing this appeal as the matter is still pending.

8.1 The Appellate Authority granted the personal hearing to the Appellant on 18.09.2023. Shri Yogesh Doshi, Director, Shri Mohan, Manager and Ms. Kirti, Export Assistant attended the PH. The Petitioner had submitted that though they have fulfilled the EO penalty was levied in 2009. They have submitted all the documents that they have complied and supplied the material, but unfortunately in between they have lost some records due to floods in Baroda. But, post that they have been able to pull out certain documents that they have supplied to Reliance and received the payment and submitted the certificate in this regard. Unfortunately no any communication came from the department. In the meantime, there was flood in Baroda, and after 2/3 years latter got a letter from the department that you have not complied. All the documents are completed, they got the payment, they got the completion certificate and all those documents are submitted. However, after all the submission they got as non-compliance after almost 10/12 years. They are supplying Hydraulic Tools and Cutter, which is huge product in those times. They can submit the delivery challan and they also got the CA certificate stating that the item for which they had supplied got paid. They have no particular balance sheet which they have submitted, but they could pull out the certain documents relating to the delivery of items that they had supplied to Reliance.

8.2 Shri Satya Raj Shekhar, DDG RA, Mumbai attended the meeting. It was intimated that as per the records on file, there have been no redemption documents submitted. Vide email dated 24.12.2021 the entire copy of documents that they have submitted earlier were given to the firm. But OIO also states that no documents were submitted.



8.3 During the hearing the Petitioner was advised to pull out as many as documents pertaining to delivery of the items and submit for taking the decision.

8.4 Petitioner vide mail dated 21.09.2023, submitted the following documents regarding delivery of the items;

- (i) Purchase Orders from Reliance;
- (ii) Delivery Challan from Vimal;
- (iii) Invoices;
- (iv) Payment advice/Cheque from Reliance;
- (v) Certificate from CA.

9. I have gone through the facts and records of the case carefully. The Petitioner had obtained an Advance Authorization No. 0003028710 dated 01.04.1999 for export of 1 no. Foam Transport Vehicle and 2 nos. Equipment Tender Vehicle with FOB value of Rs.76,22,998/- and total CIF value of Rs. 8,87,770/-. One of the conditions of the license required was that the firm would fulfill stipulated export obligation within eighteen months period from the date of issue of license and would submit the original documents towards discharge of said obligation within a month from the date of expiry of export obligation period. After the expiry of the stipulated export obligation period on 01.10.2000, the Petitioner had failed to submit the proof of exports affected against the said license for redemption of the case. Hence, the Adjudicating Authority passed an Order-in-Original No. 03/24/042/00116/AM99 dated 04.08.2009, imposing a penalty of Rs.44,00,000/- on the Appellant and its Directors. Now, as advised during the personal hearing, the Petitioner had furnished the documents as mentioned at para 8.4 above.

10. I therefore, in exercise of powers vested in me under Section 15 of the Act pass the following order:-

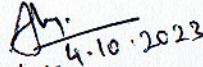
**ORDER**

F.No. 18/41/2022-23/ECA.I/160

Dated : 04.10.2023

The Appeal dated 12.12.2022 is admitted. The Order-in-Original No. 03/24/042/00116/AM99 dated 04.08.2009 passed by Addl. DGFT, Mumbai is set aside. The case is remanded back to RA, Mumbai along with documents submitted by the Petitioner vide mail dated 21.09.2023 for de-novo consideration and disposal of the case.



  
(Santosh Kumar Sarangi)  
Director General of Foreign Trade

Copy to:-

1. M/s Vimal Fire Control Pvt. Ltd., 19 & 20, Vardhaman Service Industrial Estate, Behind Punjab & Sind Bank, Vikhroli (W), Mumbai – 400 083.
2. The Addl. Director General of Foreign Trade, Mumbai.
3. Central Economic Intelligence Bureau, 1<sup>st</sup>, 6<sup>th</sup>& 8<sup>th</sup> Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
- ✓ 4. DGFT Website.



(A.S. Lungreishang)  
Dy. Director General of Foreign Trade