

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

F.No. 18/28/2019-20/ECA.I/265 Date of Order: 05.01.2021
Date of Dispatch: 07.01.2021

Name of the Applicant: Ostern Pvt. Ltd.,
Raj-Veena, 2nd Floor, 50-A, Block-C,
New Alipore, Kolkata - 700053

IEC No. : 0299003108

Order Reviewed against: Order-in-Appeal No. 18/46/19-
20/ECA/KOL/Appeal-249/251
dated 03.09.2019 passed by Addl.
DGFT, Kolkata.

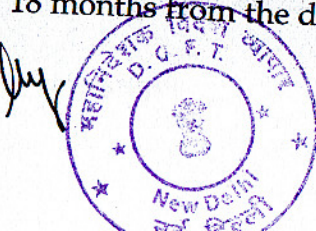
Order-in-Review passed by: Amit Yadav, DGFT

Order-in-Review

Ostern Pvt. Ltd., Kolkata (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 05.09.2019 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against Order-in-Appeal (O-i-A) No.18/46/19-20/ECA/KOL/Appeal-249/251 dated 03.09.2019 passed by the Appellate Authority i.e. Addl. DGFT, Kolkata upholding the Order-in-Original (O-i-O) dated 02.05.2019, imposing a penalty of Rs. 50.00 lakh in addition to payment of Customs duty and interest thereon, on the Petitioner.

Brief Facts of the Case

2.1 The Petitioner obtained an Advance Authorization No. 0210205413 dated 02.01.2015 for a CIF value Rs. 12,84,36,000/- (US\$ 21,40,600.00) with an export obligation for a FOB value of Rs. 17,40,00,000/- (US\$ 29,00,000.00) within a period of 18 months from the date of issue of the Advance Authorization. As per conditions of



the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO).

2.2 The EO Period expired on 01.07.2016. The Petitioner did not submit the prescribed documents. A Show Cause Notice dated 03.08.2017 under Section 14 for action under Section 11(2) of the Act was issued to the Petitioner. It was also granted an opportunity of Personal Hearing. The Petitioner neither submitted documents nor appeared for Personal Hearing. As the Petitioner failed to submit complete requisite documents, an O-i-O dated 02.05.2019 was passed by Joint DGFT, Kolkata imposing a penalty of Rs.50.00 lakhs in addition to payment of customs duty and interest thereon, on the Petitioner. The IEC of the Petitioner was suspended on 23.09.2019.

2.3 The Petitioner filed an appeal on 27.08.2019 before the Appellate Authority against O-i-O dated 02.05.2019. The Appellate Authority, vide Order-in-Appeal (O-i-A) dated 03.09.2019, dismissed the appeal as time-barred.

3. The Petitioner submitted a Review Petition dated 05.09.2019 to the undersigned stating that:

(i) It made export for an FOB value of Rs. 17,40,00,000/-.

(ii) Vide its letters dated 16.06.2017 and 03.07.2017, it intimated RA, Kolkata its intention to file for redemption of present Authorization by clubbing it with other 4 Authorizations. That it filed for redemption by clubbing the following Authorizations:

(a) Authorisation No.0210205413 dated 02.01.2015

(b) Authorisation No.0210203104 dated 08.05.2014

(c) Authorisation No.0210203394 dated 21.05.2014

(d) Authorisation No.0210205647 dated 17.03.2015

(e) Authorisation No.0210206089 dated 25.08.2015

(iii) The penalty imposed by the Adjudicating Authority is excessively high.

(iv) Adjudication order was passed not because of its failure to meet export obligation, but due to its inability in timely filing of documents/responses/redemption applications.

4.1 The Petitioner was granted a Personal Hearing on 20.12.2019 which was attended by Shri Soumen Dutta, Vice President-Export of the Petitioner. The Reviewing Authority advised the Petitioner to submit all documents towards fulfilment of EO to RA, Kolkata under intimation of this Directorate. RA, Kolkata was also requested to examine the export documents on receipt of the same from the Petitioner and furnish a report to this Directorate vide letter dated 24.12.2019. It was



also decided that IEC suspension order issued by RA, Kolkata against the Petitioner shall be kept in abeyance for a period up to 31.03.2020 so that the Petitioner could continue its export/import activities.

4.2 RA, Kolkata, vide their e-mail dated 3rd July, 30th July and 7th October 2020, informed that the Petitioner submitted required export documents with a request for clubbing of five Authorizations including Authorization No. 0210205413. It has also paid an amount of Rs.3.75 lakhs on account of Customs duty and interest on the material left unutilised with it after accounting for the imports and exports made under these Authorizations. That all these Authorizations can be closed but for the subject O-i-O.

5. Keeping in view the above clarifications of RA, Kolkata, another PH was granted to the Petitioner on 10.12.2020. The meeting was conducted through VC and attended by Shri Soumen Dutta, Vice President, Export of the Petitioner. He informed that that the Petitioner has already completed its obligations and submitted all the requisite documents for closure of the cases after clubbing.

6. I have gone through the facts and records carefully. The Petitioner has reportedly submitted the requisite export documents to RA Kolkata. It has also paid duty on the material left unutilised with it after clubbing this Authorization with four other Authorizations obtained by it. RA Kolkata has confirmed the position.

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

Order

F.No. 18/28/2019-20/ECA-I/266

Dated: 05.01.2021

The Review Petition dated 5th September, 2019 is admitted and the Order-in-Original dated 02/05/2019 and Order-in-Appeal No. 18/46/19-20/ECA/KOL/Appeal-249/251 dated 03.09.2019 are set aside.



(Signature)

(Amit Yadav)

Director General of Foreign Trade

Copy To:

- (1) Ostern Pvt. Ltd., Raj-Veena, 2nd Floor, 50-A, Block-C, New Alipore, Kolkata - 700053
- (2) Addl. DGFT, 4, Esplanade East, Kolkata -700069.
- (3) DGFT website



Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade

o/c

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