

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

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F.No. 18/21/2018-19/ECA-I | 284  
Date of Order: 15 .01.2021  
Date of Dispatch: 15 .01.2021

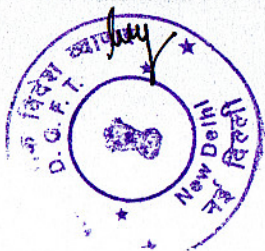
Name of the Appellant: M/s Varalaxmi Exports,  
No.7, Mission Road,  
Bangalore - 560027.

Order reviewed against: Order-in-Appeal No. 11/81/99-2000-  
ECA.I dated 16.07.2002 passed by Addl.  
DGFT, DGFT, New Delhi.

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

**Order-in-Review**

M/s Varalaxmi Exports, Bangalore (here-in-after referred to as the 'Petitioner') filed a Review Petition under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as 'the Act'), before the Appellate Committee, Department of Commerce against Order-in-Appeal No. 11/81/99-2000-ECA.I dated 16.07.2002 passed by Addl. DGFT, DGFT, New Delhi upholding the Order-in-Original (OIO) No. 07/95/199/00130/AM98/533 dated 17.01.2000 passed by the Adjudicating Authority imposing a penalty of Rs.97,94,000/-- on the Petitioner. The Appellate Committee, vide orders dated 21.06.2018, directed the undersigned to hear the case and take a decision based on its merit, since the Petitioner had deposited a Bank Guarantee of Rs. 11.29 lakhs on 17.06.2009. Hence the case before me.





### **Brief facts of the case**

2.1 The Petitioner obtained a Value Based Advance Licence No. 1990762 dated 17.07.1991 from RA, Bangalore for a CIF value of Rs. 1,04,36,497/- with an obligation to export specified products for an FOB value of US\$ 869360 to be completed within a period of 9 months from the expiry of 30 days from the date of importation of the first consignment. The FOB Value and CIF Value were scaled down to US\$ 815900/- and Rs. 9794727/- respectively vide the amendment dated 23.06.1995. The export obligation period was repeatedly extended and the last extension was up to 30.11.1996. On 05.02.1997, the Petitioner's request for further extension of the export obligation period was rejected and they were asked to furnish the export documents. The Petitioner did not respond. As per conditions of the Licence, 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 Vide letters dated 13.03.1997 and 22.12.1998, the Petitioner was requested to furnish the export documents and pay amount of customs duty exemption availed by him along with interest to regularize the excess imports, if any. The Petitioner did not respond. The Petitioner's unit was inspected on 03.09.1998 and 30.11.1998 to ascertain the extent of exports made and verification of Consumption Register and other related documents. The Petitioner did not furnish any details, including Consumption Register, to the inspection team.

2.3 A Show Cause Notice dated 25.03.1999 was issued to the Petitioner under Section 14 for action under Section 11(2) of the Act. The Petitioner requested for 30 days' time to reply the Show Cause Notice. The Petitioner, vide the letter dated 10.05.1999, was again requested to furnish the export documents and regularise the case. Another Show Cause Notice dated 23.08.1999, under Section 14 for action under Section 11(2) was issued to the Petitioner. The Petitioner was also granted a Personal Hearing. The Petitioner neither replied





to this Show Cause Notice nor attended Personal Hearing. It was observed by the Adjudicating Authority that the Petitioner utilized the Licence fully by making imports free of custom duties but did not make any exports. Therefore, the Adjudicating Authority passed O-i-O dated 17.01.2000 imposing a penalty of Rs. 97,94,000/- on the Petitioner. The Petitioner was also debarred from obtaining any kind of licences, customs clearance, permits, obtaining allotment of imported goods from STC/MMTC or any other canalising agency till the penalty amount is paid.

2.4 Against the O-i-O dated 17.01.2000, the Petitioner filed an Appeal dated 05.02.2000 before the Addl. DGFT, DGFT, New Delhi. As per section 15(1) of the Act, the Petitioner was required to pre-deposit the penalty amount before filing the appeal. Vide the order dated 28.02.2000, the Appellate Authority reduced the pre-deposit amount to Rs.15 lacs and directed the Petitioner to deposit a sum of Rs.15 lacs within 4 weeks failing which the case would be liable to be rejected. The Petitioner was reminded in April 2000.

2.5 Against the order dated 05.02.2000, the Petitioner filed a Writ Petition No.14949/2000 in the Karnataka High Court. The High Court, vide its order dated 11.06.2001, dismissed the Writ Petition and granted one-month time to the Petitioner to pay Rs.15 lacs as pre-deposit. The Petitioner did not deposit this amount stating that it did not have money.

2.6 The Appellate Authority observed that the Petitioner neither in its appeal nor during the hearing indicated about any exports made. The Petitioner was granted enough time to make the pre-deposit. Instead of making pre-deposit, it went to the High Court where the High Court did not rule in its favour. In spite of court's order, the Petitioner did not make any pre-deposit. The Appellate Authority rejected the appeal vide the O-i-A dated 16.07.2002.

3.1 The Petitioner filed a Review before the Appellate Committee, Department of Commerce against the O-i-A dated 16.07.2002. The Appellate Committee reduced the pre-deposit amount to Rs.11.29 lacs to be given as Bank Guarantee. The representative of the





Petitioner, during the personal hearing on 12.01.2004, expressed inability to furnish the Bank Guarantee of Rs.11.29 lacs. On being asked to intimate the turnover of the firm, he could not give any satisfactory reply. He simply requested for waiver of the penalty amount. The Appellate Committee considered the case on the basis of available records and, vide the order dated 19.01.2004, dismissed the Appeal in default for not furnishing the pre-deposit amount in the form of Bank Guarantee.

3.2. The Petitioner again filed a Writ Appeal No. 40/2009 on 05.01.2009 before the Hon'ble High Court of Karnataka against the order dated 19.01.2004. The Court disposed the Writ Appeal on 29.11.2012 stating that since the Petitioner furnished the Bank Guarantee on 17.06.2009, the Appellate Committee may review the Appeal of the Petitioner.

3.3. Consequent upon the directions given by the High Court of Karnataka, the Appellate Committee called the Petitioner for hearing before on 04.09.2013, 05.11.2014 and 30.05.2017. However, the Petitioner requested for adjournment each time citing some reason or other and finally appeared before the Appellate Committee on 10.01.2018. The Appellate Committee, after examining the facts of the case submitted by the Petitioner and considering the view of the DGFT, passed an order dated 21.06.2018 directing DGFT to hear the case and take a decision based on its merit, since the Petitioner deposited Bank Guarantee of Rs. 11.29 lakhs on 17.06.2009.

4. DGFT granted Personal Hearings to the Petitioner on 14.02.2019, 04.04.2019, 30.05.2019, 22.05.2019, 17.01.2020, 20.02.2020, 23.04.2020, 17.07.2020 and 18.09.2020. The Petitioner, through its representative Shri Kirit S. Javali, Advocate, attended hearing on 04.04.2019, 17.01.2020, 17.07.2020 and 18.09.2020. The Petitioner during the PH on 17.01.2020 stated that the case records are with DRI and it will take steps for getting these documents from DRI. In the PH on 17.07.2020, the Petitioner's representative stated that it tried to obtain records from DRI, Bangalore, but was unable to do so. He was directed to submit written application filed by the Petitioner to DRI giving complete





details. The Petitioner did not submit any documents and requested to proceed with the matter on merits. During the PH on 18.09.2020, the Petitioner reiterated whatever was given in the written submissions and requested to decide its case on the basis of written submissions.

5. I have gone through the facts and records carefully. It is observed that the Petitioner did not submit any document evidencing fulfilment of export obligation despite repeated requests. Nor it submitted any documentary evidence of having paid customs duty along with interest on the material left unutilised with it. The Petitioner imported duty free inputs for the full value of the Licence and mis-utilised the same. A team of DGFT officers inspected the Petitioner's unit on 03.09.1998 and 30.11.1998 to ascertain the extent of export obligation fulfilled and verification of Consumption Register and other related documents. The Petitioner did not furnish any details including Consumption Register to the Inspection Team. After Adjudication Order was passed, the Petitioner filed two Writ Petitions in the High Court and delayed the proceedings. The Petitioner delayed the case by absenting from several Personal Hearings granted to it before the Appellate Committee. It further delayed the proceedings by absenting several times from the Personal Hearings before the undersigned. In nutshell, the Petitioner made every attempt to delay the proceedings. The findings indicate that the Petitioner has not made any attempt to fulfil its obligation nor submitted the necessary documents evidencing export and therefore violated Section 11(2) of the Act. It did mention about the exports made but at no point of time, it submitted any export documents to any authority. In its submissions, it is indicated that it disputed the amount of customs duty liability as calculated by the customs authorities. Hence, it has also not paid any customs duty and interest till date during the last 30 years.

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





**Order**

F.No.18/21/2018-19/ECA-I/285

Dated: 15.01.2021

The Order-in-Original No. 07/95/199/00130/AM98/533 dated 17.01.2000 and Order-in-Appeal No. 11/81/99-2000-ECA.I dated 16.07.2002 are upheld.

*(Signature)*

(Amit Yadav)

Director General of Foreign Trade

**Copy To:**

- (i) M/s Varalaxmi Exports, No.7, Mission Road, Bangalore - 560027.
- (ii) Addl. DGFT, Kendriya Sadan, 6<sup>th</sup> Floor, C & E Wing, Koramangala 2<sup>nd</sup> Block, 17 Main Road, Bangalore - 560034 with directions to: -
  - (a) Invoke the Bank Guarantee executed by the firm.
  - (b) make recoveries of the balance amount of penalty.
  - (c) examine criminal angle involved in misutilising the duty-free imported goods and take action under IPC.
- (iii) DGFT website.

*(Signature)*

(Dilip Kumar)

Dy. Director General of Foreign Trade



*o/c*  
Issued