

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

F. No. 18/37/2022-23/ECA.I/198

Date of Order : 09.11.2023

Date of Despatch: 10.11.2023

Name of the Petitioner:

M/s R.D. Fashions  
Prop. Sri Prosanto Saha,  
119/1, P.G. Hossain Shah Road,  
City Green, 3<sup>rd</sup> Floor, 2,3G, Jadavpur,  
Kolkata – 700 032.

IEC No.

0209006854

Order Reviewed against:

Order-in-Appeal No. 18/32/21-  
22/ECA/KOL/Appeal-282 dated 06.08.2022  
passed by Addl. DGFT, Kolkata

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

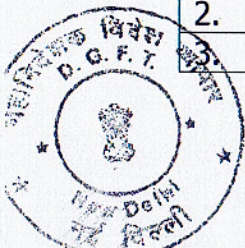
**Order-in-Review**

M/s R.D. Fashions, Kolkata(here-in-after referred to as 'the petitioner') having IEC No.0209006854 filed Review Petition dated 26.09.2022 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 No. 18/32/21-22/ECA/KOL/Appeal-282 dated 06.08.2022 passed by Addl. DGFT, Kolkata dismissing the appeal against the Order-in-Original No. KOLECAAPPLY00033136AM22 dated 09.11.2021 imposing a penalty of Rs. 26,00,000/- in addition to customs duty plus interest against the utilized FPS licences/scrips which have been cancelled for violation and misuse of the scheme on the petitioner and its Proprietor.

**Brief of the Case**

2. The petitioner obtained thirty (30) licences/scrips under Focus Product Scheme (FPS) during the year 2016 and 2017.

Sl.No.	License No.	Date	Sl.No.	License No.	Date
1.	0219029422	07.11.2016	16.	0219035991	22.05.2017
2.	0219029425	07.11.2016	17.	0219039053	18.08.2017
	0219029799	30.11.2016	18.	0219033142	28.02.2017



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4.	0219037618	07.07.2017	19.	0219030200	08.12.2016
5.	0219029419	07.11.2016	20.	0219029086	26.10.2016
6.	0219030458	16.12.2016	21.	0219029088	26.10.2016
7.	0219039052	18.08.2017	22.	0219029157	27.10.2016
8.	0219037619	07.07.2017	23.	0219029158	27.10.2016
9.	0219037620	07.07.2017	24.	0219029159	27.10.2016
10.	0219037041	21.06.2017	25.	0219029190	28.10.2016
11.	0219035997	22.05.2017	26.	0219029193	28.10.2016
12.	0219035996	22.05.2017	27.	0219029196	28.10.2016
13.	0219035995	22.05.2017	28.	0219029199	28.10.2016
14.	0219035994	22.05.2017	29.	0219029637	25.11.2016
15.	0219035993	22.05.2017	30.	0219029638	25.11.2016

3. During an internal audit of the files, it was found that the Petitioner had obtained the above FPS by showing HS Codes in the Shipping bills which differs from the HS Code used in the application leading to ineligible/excess claim for a total value of Duty Credit of Rs. 2,59,91,109/-.

4. A Demand Notice was issued to the petitioner on 27.07.2021 directing to refund the excess duty credit availed along applicable interest. The firm failed to reply to the same, therefore, Show Cause Notice (SCN) issued to the petitioner on 24.08.2021 giving an opportunity of Personal Hearing.

5. The petitioner requested for personal hearing on 16.09.2021 which was granted. The firm's representative attended personal hearing on the given date and expressed that he was not aware of the details of the case as he was new in the firm and requested for handing over of all the documents related to the case. The representative of the firm was explained that the matter is of mis-information and wrongful declaration in the application. The petitioner was also advised to inspect the documents in the office and that selective copies would be provided to the firm.

6. Lack of intent of the petitioner to comply the demand notice and show cause notice was noted, therefore, a DEL Order was issued to the petitioner and the operation of the IEC was suspended until further orders. Therefore, the Adjudicating Authority passed Order-in-Original dated 09.11.2021 imposing a fiscal penalty of Rs.26,00,000/- in addition to Customs Duty & interest against the utilized FPS licences/Scraps which have been cancelled for violation and mis-use of the scheme on the petitioner and its Proprietor.



7. Aggrieved by Order-in- Original No. KOLECAAPPLY00033136AM22 dated 09.11.2021, the petitioner filed an appeal on 24.12.2021 and the appeal was dismissed on 06.08.2022.

8.1 Now, the petitioner has filed Review Petition dated 26.09.2022 on the following grounds:-

(i) RA, Kolkata acted illegally, malafidely and with biased mind against the petitioner, which completely vitiates the demand notice dated 27.07.2021, show-cause notice dated 24.08.2021 and the adjudication order dated 09.11.2021.

(ii) Appellate Authority failed to understand that it was the incumbent part of the adjudicating authority to provide the documents based on which the allegation raised that "the petitioner obtained FPS by showing HS code in the shipping bills which differs 4 from the HS code used in the application", instead the Appellate Authority recorded in the Order in Appeal that the petitioner was advised to inspect the documents in the office and that selective copies of documents would be provided to them, if at all they desire so. But inspection of documents was allowed and not a single piece of relied upon documents was provided. Therefore, without providing relied upon documents any demand/ Order in Original/ Order in Appeal cannot be passed.

(iii) Appellate Authority failed to appreciate that the FPS licence issuing Authority issued the said licences after close verification of all eligible documents. FPS licence issuing authority could not detect that such voluminous (i.e. 30 nos.) numbers of FPS licences were obtained by the Petitioner doing mis-declared and used fraudulent means by mentioning different HS codes. However the adjudicating authority as well as the Appellate Authority without adducing any documentary evidence ipso facto arbitrarily passed the order. Therefore such order is void and must be re-examined.

(iv) The demand notice, show-cause notice and the adjudication order are absolutely without jurisdiction and in gross violation of the principles of natural justice.

(v) RA, Kolkata failed to appreciate that the demand was raised on the basis of very silly reason that HS code in Shipping Bills differs from the HS code mentioned in the application. The HS code mentioned in the Shipping Bills is only the authentic documents, based on which the application for FPS Authorization was submitted. It was incumbent part of the Authorization issuing Authority to verify whether Hs code mentioned in the Shipping Bills were eligible to get FPS Authorization or not, after a lapse of about five years the observation of internal Audit is not acceptable because



the authorization was issued after proper verification and each and every shipping bill has been mentioned in the Authorization itself regarding items eligible to import. Therefore, the observation of the internal Auditor as referred to the SCN has no basis to establish the demand.

(vi) The petitioner had repeatedly requested the concerned officer to kindly provide the detailed calculation sheet, Shipping bills, Audit observation Memo as to where they were wrong and how they have arrived at such a vague, large and enormous figure. The concerned officer never gave a fruitful reply. Moreover, no personal hearing was allowed by the adjudicating authority as well as by the appellate authority.

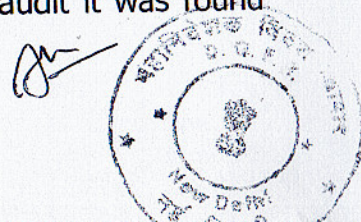
(vii) RA, Kolkata failed to appreciate that no question was raised to the Petitioner for any discrepancy in any application amongst the above eleven applications as because the petitioner was eligible to avail FPS Authorization, but after a gap of 5 years if the authority direct to repay the amount without proper valid reason nor supplying the documents based on which demand has been raised, hence it is beyond the spirit of promoting exports for which the incentive scheme was introduced.

(viii) Adjudicating Authority as well as the appellate authority failed to appreciate that as per the Handbook Procedure - 2009-2014, it is mandatory that before issuing of any authorisation, Shipping bills, ITC codes and description has to be matched by the concerned RA. The department had verified the contents of the shipping bills and being satisfied with the documentation the Authorization was issued. Therefore, it proves that the petitioner was entitled to get the authorization.

8.2 The Petitioner has prayed as under:-

- (i) Examination the demand notice, Show Cause Notice, Adjudication Order and the Order in Appeal;
- (ii) Examination the record of proceeding to find out correctness, legality and propriety of such decision or Order;
- (iii) Make such Order to petitioner as may be deemed fit;
- (iv) To allow personal hearing, so that the petitioner can defend their case.

11. The Reviewing Authority granted the personal hearing to the Petitioner on 06.11.2023. Shri R.N. Bandyopadhyay, Authorised Representative attended the PH on behalf of the firm. He stated that they have been granted the subjected Focus Product Scheme (FPS) Authorisations (30 nos.) in 2016 and 2017 against exports made under various shipping bills and got registered those licenses before the Customs Authority and transferred all authorizations to other parties during the period 2016-2017 as permitted to be imported under respective scheme. They received a demand notice dated 27.07.2021 informing that during internal audit it was found



that HS code in shipping bills differs from HS code used in application. It was directed to refund the excess duty credit availed with applicable interest. Thereafter the Petitioner received OIO dated 09.11.2021 considering that licenses were obtained by mis-declaration and imposed a fiscal penalty of Rs.26,00,000/- in addition to payment of customs duty and interest. The HS code in shipping bills is only the authentic documents, based on which the application for FPS authorization. It was incumbent part of the authorization issuing authority to verify whether HS code mentioned in the shipping bills were eligible to get FPS authorization or not. But after lapsed of about 5 years the observation of internal audit is not acceptable because the authorization was issued after proper verification and mentioning eligible items to import in each authorization itself. They have repeatedly requested the concerned officer to provide the detailed calculation sheet, shipping bills, audit observation several time to provide documents but never get a fruitful reply. After verified the contents of the shipping bills and being satisfied with the documentations the authorizations have been issued by the concerned RA.

11.1 Ms. Dona Ghosh, JDG, RA, Kolkata attended the Meeting. She stated that the basic contention of that time was the Petitioner has made that the justice has not been given to them. However, from RA, Kolkata the opportunity of personal hearing had been given at every stage, but the representative could not represent the facts of the case. Therefore, the Adjudicating Authority passed Order-in-Original dated 09.11.2021 imposing penalty of Rs.26,00,000/- in addition to Customs Duty & interest against the utilized FPS licences/Scripts which have been cancelled for violation and mis-use of the scheme on the petitioner and its Proprietor.

12. I have gone through the facts and records of the case carefully. The Petitioner had obtained the above mentioned thirty (30) Focus Product Scheme (FPS) licences/scripts during the year 2016 and 2017 against exports made under various shipping bills. During an internal audit, it was found that the Petitioner had obtained the above FPS by showing HS Codes in the Shipping bills which differs from the HS Code used in the application leading to ineligible/excess claim for a total value of Duty Credit of Rs. 2,59,91,109/- under the FPS scheme and claimed FPS on ineligible items as per FPS schedule. A Demand Notice was issued to the Petitioner on 27.07.2021 directing to refund the excess duty credit availed along applicable interest. The Petitioner failed to reply. Therefore, the Adjudicating Authority passed Order-in-Original dated 09.11.2021 imposing a fiscal penalty of Rs.26,00,000/- in addition to Customs Duty & interest against the utilized FPS licences/Scripts which have been cancelled for violation and mis-use of the scheme on the petitioner and its Proprietor.



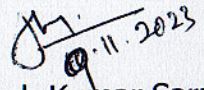
13. I therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:-

**ORDER**

F.No. 18/37/2022-23/ECA.I/Dated :

09.11.2023

The Review Petition dated 26.09.2022 is dismissed. The Order-in-Appeal No. 18/32/21-22/ECA/KOL/Appeal-282 dated 06.08.2022 and the Order-in-Original No. KOLECAAPPLY00033136AM22 dated 09.11.2021 are upheld.

  
(Santosh Kumar Sarangi)  
Director General of Foreign Trade

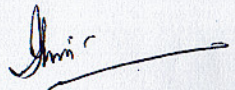
Copy to:-

1. M/s R.D. Fashions, Prop. Sri Prosanto Saha, 119/1, P.G. Hossain Shah Road, City Green, 3<sup>rd</sup> Floor, 2,3G, Jadavpur, Kolkata – 700 032.

2. The Addl. Director General of Foreign Trade, Kolkata.

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

