

Government of India/ भारत सरकार
Ministry of Commerce & Industry/ वाणिज्य और उद्योग मंत्रालय
Directorate General of Foreign Trade/ विदेश व्यापार महानिदेशालय
Udyog Bhawan, New Delhi/ उद्योग भवन, नई दिल्ली

F.No. 18/89/2018-19/ECA.I/

Date of Order: 28 .09.2021

Date of Dispatch: 29 .09.2021

Name of the Applicant:

Rutt Deen Pvt. Ltd., 21-B, Loudon Street,
Kolkata-700 016.

IEC No.

0288049845

Order reviewed against:

Order-in-Appeal No. 18/31/17-18/ECA/KOL/
Appeal-195 dated 10.12.2018 passed by
Addl. DGFT, Kolkata.

Order-in-Review passed by:

Amit Yadav, DGFT

Order-in-Review

Rutt Deen Pvt. Ltd., Kolkata (here-in-after referred to as 'Petitioner') filed a Review Petition dated 28.02.2019 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 No. 18/31/17-18/ECA/KOL/Appeal-195 dated 10.12.2018 passed by the Appellate Authority dismissing the appeal against Order-in-Original (OIO) No. 02/21/021/00756/AM07 dated 13.04.2017. The Adjudicating Authority had imposed a penalty of Rs. 5,00,000/- in addition of Customs duty and applicable interest on the Petitioner and its Directors for non fulfillment of export obligation vide OIO dated 13.04.2017.

Brief of the case

2.1 The Petitioner obtained an EPCG authorization No. 0230002202 dated 07.03.2007 from the office of Addl. DGFT, Kolkata as per provisions of Foreign Trade Policy (FTP) prevalent during that period, for import of Capital Goods for duty saved amount of Rs. 7,69,296/- with an obligation to export for FOB value of Rs. 61,54,368/- (US\$138,455.97) to be completed within a period of 8 years from the date of issue of the authorization. As per the conditions of the authorization, the Petitioner was required to submit the prescribed documents showing fulfillment of obligation within the time frame prescribed in the FTP. The export obligation period expired on 06.03.2015 but the Petitioner did not submit any documents evidencing fulfillment of export obligation.

2.2 A Show Cause Notice (SCN) dated 19.03.2015 for action under Rule 7(1)(k) of Foreign Trade (Regulation) Rules, 1993, as amended was issued to the Petitioner. It was also given an opportunity of personal hearing. The Petitioner did not respond to the Show Cause Notice. The Adjudicating Authority passed an OIO dated 13.04.2017 imposing a fiscal

penalty of Rs. 5,00,000/- on the Petitioner and its directors in addition to payment of Customs duty along with 15% interest per annum.

2.3 The Petitioner filed an Appeal on 14.06.2017 before the Appellate Authority against the OIO. The Appellate Authority observed that the Petitioner failed to submit the required documents and also failed to attend the personal hearings granted to it on different dates. The Appellate Authority dismissed the appeal vide the Order-in-Appeal (OIA) dated 10.12.2018

3.1 The Petitioner submitted a Review petition dated 28.2.2019 to the undersigned on the following grounds :-

(a) that it had submitted the application in ANF SB, Certificate from Chartered Accountant as stated in Appendix 5C, Installation certificate duly certified by Chartered Engineer, Statement of Net Foreign Remittance received in FY 2011-12 in IDBI bank & Amex bank along with Original FIRC, and Original EPCG authorization ,

(b) that the order passed by the Adjudicating and Appellate Authority are cryptic, bad in law, unjustified and violates the principal of natural justice as documents submitted by the Petitioner evidencing fulfillment of export obligation has neither been dealt with nor any finding recorded against the same,

(c) that the Petitioner had submitted the documents called for by the RA, Kolkata vide letter dated 4.6.2018 on 27.6.2018 and therefore the allegation on non-submission of documents is baseless and arbitrary,

(d) that the Petitioner had submitted chartered accountant certificate certifying the earning of convertible foreign currency of Rs. 5,67,66,101/- during the period FY 2010-11 to 2014-15 which was not taken into cognizance by the Appellate Authority,

(e) that the Petitioner had submitted all the documents except for original copy of bill of entry since the original copy of bill of entry has been lost during shifting of office and that the Custom Department may be directed to give a certified copy of the same to the Petitioner.

3.2 The Petitioner has prayed that the order passed by the Additional Director General of Foreign Trade, Kolkata may be set aside as it is factually incorrect and inappropriate.

4.1 The Petitioner was granted personal hearing on 20.12.2019. Shri Ajay Sawariya, Managing Associate, Argus Partners attended on behalf of Petitioner. The Petitioner was asked to submit all the requisite documents before the RA, Kolkata within 30 days. RA, Kolkata vide their letter dated 17.12.2020 informed that the Petitioner has not submitted all export documents required for redemption in terms of public notice No 8/2015-20 dated 6.5.2016. The following documents were not submitted by the Petitioner :-

(a) Original installation Certificate not submitted. Copy of installation certificate furnished showing one (01) Bill of Entry number whereas two (02) nos. of Bill of Entry number endorsed on the back side of authorization,

(b) Average Export Statement submitted only for the year 2011-2012 whereas licence was issued on 07.03.2007. Hence, average E.O. statement for the year 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 are required to be furnished,

(c) Realized Export proceeds have been shown in INR, but realization of export proceeds should be in Free Foreign Exchange (in US\$) in terms of Condition Sheet.

4.2 Another PH was granted to the Petitioner on 16.4.2021. However on account of disruption caused by COVID during the months of April and May, 2021, the matter was refixed for 29.07.2021. The case was heard on 29.07.2021 over VC and the Counsel for the Petitioner was informed that all documents are to be submitted to RA, Kolkata by 3.8.2021. RA Kolkata was directed to forward the document along with their comments, which were submitted by the Petitioner to RA, Kolkata on 13.8.2021. Based on documents submitted, RA Kolkata has informed that the documents are still deficient due to following reasons:

(a) The Petitioner has not submitted the complete statement of Annual Average Export Obligation for the period AM07 to AM12 ,

(b) The Petitioner has not submitted Installation Certificate against Bill of Entry No 441901 dated 28.04.2007 ,

(c) Revised ANF-5B alongwith a statement of Service Exports, showing value in FEE as per conversation rate endorsed in the individual FIRC duly certified by CA has not been submitted.

5. I have gone through the records and submission made and it is observed that the Petitioner has not submitted the complete export documents even after sufficient time was granted to the Petitioner.

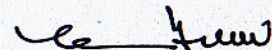
6. I, therefore, in exercise of powers vested in me under Section 16 of the Act pass the following orders:

ORDER

F.No.18/89/2018 -19/ECA.I/270

Dated: 28.09.2021

The Review Petition dated 28.02.2019 is rejected and Order-in-appeal No. 18/31/17-18/ECA/Kol/Appeal-195 dated 10.12.2018 is upheld.



(Amit Yadav)

Director General of Foreign Trade

Copy to:-

1. M/s Rutt Deen Pvt. Ltd., 21-B, Louden Street, Kolkata-700 016
2. The Addl. Director General of Foreign Trade, 4, Esplanade East, Kolkata-700 069
with the directions to recover the dues
3. CEIB, Janpath Bhawan, 8th Floor, B-Wing, Janpath, New Delhi-110 001.
- ✓ 4. DGFT Website.

Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade