

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

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F.No. 18/67/2019-20/ECA-I/305

Date of Order: 28 .01.2021

Date of Dispatch: 28 .01.2021

Name of the Applicant:

Swarnamukhi Hotel (P) Ltd.,  
No.17, Museum Road, Bangalore - 560025

IEC No.

0707022614

Order reviewed against:

Order-in-Appeal No. 07/ Addl.DG/ Appeal/  
00055/AM20 dated 07.02.2020 passed by Addl.  
DGFT, Bangalore.

Order-in-Review passed by:

Amit Yadav, DGFT

**Order -in- Review**

Swarnamukhi Hotel (P) Ltd., Bangalore (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 28.02.2020 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 (OIA) No. 07/Addl. DG/Appeal/00055/AM20 dated 07.02.2020 passed by Addl. DGFT, Bangalore upholding the Order-in-Original (OIO) dated 18.09.2019 passed by Asstt. DGFT, Bangalore imposing a penalty of Rs. 24,19,298.21, on the Petitioner.

**Facts of the case:**

2.1 The Petitioner obtained an EPCG Authorisation No. 0730007183 dated 15.07.2008 from the office of Additional DGFT, Bangalore, as per provisions of the Foreign Trade Policy (FTP) prevalent during that period, for import of capital goods for a Duty Saved Value of Rs. 24,19,298.21 with an obligation to export products for an FOB value of US\$ 448018.18 (Rs.19,354,385.68) within a period of 8 years from the date of issue of the Authorization. As per condition of the Authorization, the Petitioner was required to



submit the prescribed documentary evidence of having fulfilled its export obligation (EO) within three months of the expiry of export obligation period.

2.2 The export obligation period expired on 14.07.2016. The Petitioner did not furnish any document showing fulfilment of export obligation. A Show Cause Notice dated 28.02.2019 was issued to the Petitioner under Section 14 for taking action under Section 11(2) of the Act. The Petitioner neither submitted the prescribed documents nor regularised the case by paying amount of customs duty exemption obtained by it plus interest thereon. The Adjudicating Authority passed an OIO No.07/21/021/00316/AM09 dated 18.09.2019 imposing a fiscal penalty of Rs. 24,19,298.21, cancelling the licenses ab-initio, payment of customs duty + interest as applicable and directed that no further license shall be issued to the Petitioner or to any other firm/company in which the Proprietor/Partner/Director of the petitioner's company directly or indirectly involved on the Petitioner.

2.3 The Petitioner filed an Appeal dated 06.01.2020 before the Appellate Authority against the OIO dated 18.09.2019. The Appellate Authority, vide OIA dated 07.02.2020, dismissed the Appeal as time barred.

3. The Petitioner submitted a Review Petition dated 28.02.2020. The Petitioner submitted that:

- (i) That the default in meeting the export obligation is the cumulative effect of inordinate delay in the project taking off the ground arising out of factors beyond its control and continued recessionary trend in hospitality industry and related factors.
- (ii) That the Order in Original (OIO) was passed before the decision on the Petitioner's representation for extension of block period and extension of Export Obligation period was taken by DGFT and communicated to the Licensing Authority.
- (iii) That there is no mention of the DGFT letter dated 3<sup>rd</sup> September, 2019 in the Order in Original (OIO) dated 18<sup>th</sup> September, 2019 and that the imposition of penalty without waiting for a decision from DGFT, New Delhi was improper.
- (iv) That there is no diversion of the imported goods and the same are in use. The imposition of penalty as high as Rs.24,19,298.21 is highly improper and disproportionate under the facts and circumstances of the case.

*Jmy*



- (v) That the OIO dated 18.09.2019 and OIA dated 07.02.2020 be set aside and hold the imposition of penalty as improper and to permit extension of export obligation period.

4.1 The Petitioner was granted a Personal Hearing (PH) on 11.12.2020 which was attended by Shri R. Rangaswamy, Consultant of the Petitioner. The Consultant, in his oral submissions during the hearing re-iterated the grounds which were earlier submitted in writing.

4.2 I have gone through the facts and records carefully and observe that the Petitioner, admittedly, failed to fulfill export obligation imposed on it. The Petitioner neither submitted any document for the exports made by it nor got its duty-free imports regularized by paying the amount of custom duty exemption obtained by it on the import of capital goods. Its request for treating the period of March 2009 to April 2013 as "no obligation" period was rejected and it also did not obtain any extension in the export obligation period as per the extant policy provisions. The Petitioner pleaded that the default in fulfillment of export obligation was not intentional. However, in case of bonafide default, the conditions of the Authorisation provide for a regularization procedure which the Petitioner did not comply. Hence, the Petitioner made imports in contravention of the conditions of the Authorization and in violation of the Foreign Trade Policy.

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

**ORDER**

F.No. 18/67/2019-20/ECA-I/306

Dated: 28 .01.2021

The Review Petition dated 28.02.2020 is dismissed. Order-in-Appeal No. 07/Addl.DG/Appeal/00055/AM20 dated 07.02.2020 and Order-in-Original 07/21/021/00316/AM09 dated 18.09.2019 are upheld.



*(Signature)*

(Amit Yadav)

Director General of Foreign Trade

**Copy To:**

- (1) Swarnamukhi Hotel (P) Ltd., No.17, Museum Road, Bangalore - 560025.
- (2) The Addl. Director General of Foreign Trade, Kendriya Sadan, 6<sup>th</sup> Floor, C & E Wing, 17 Main Road, Koramangala 2<sup>nd</sup> Block, Bangalore-560 034 with an advice to make recoveries.
- (3) DGFT Website.



*Dilip Kumar*

(Dilip Kumar)

Dy. Director General of Foreign Trade

*o/c issued*