

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

F.No. 18/32/2019-20/ECA.I(E)/225 Date of Order: // .12.2020
Date of Dispatch: // .12.2020

Name of the Applicant: Shalimar Paints Limited,
Stainless Centre, 4th Floor, Plot
No.50, Sector-32, Gurugram-122001.

IEC No.: 0288014511

Order reviewed against: Order-in-Original No. 030100200234
AM13 dated 10.04.2018 passed by
Asstt. DGFT, Mumbai.

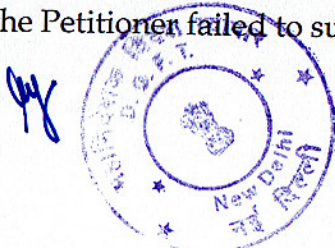
Order-in-Review passed by: Amit Yadav, DGFT.

Order-in-Review

Shalimar Paints Ltd., Gurugram (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 19.09.2019 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against Order-in-Original (OIO) No. 030100200234AM13 dated 10.04.2018 passed by the Adjudicating Authority imposing a penalty of 28.00 lakh in addition to payment of Customs duty plus interest thereon on the Petitioner.

Brief Facts of the Case

2.1 The Petitioner obtained an Advance Authorization No.0310449519 dated 07.11.2007 for import of duty-free raw materials for a CIF value of Rs.5486745.46 (US\$123297.66) with an obligation to export specified export product for an FOB value of US\$ 213483/- within a period of 24 months from the date of issue of said Authorization. As per conditions of the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO) and to pay duties on the imported raw materials left unutilized with it. However, the Petitioner failed to submit the prescribed documents.



2.2 A Demand Notice dated 10.10.2011 was issued to the Petitioner to pay Customs duty + interest or produce the documents showing the fulfilment of EO. The Petitioner, vide its letter submitted on 11.11.2011, stated that it had misplaced the original authorization and submitted a copy of FIR. It further submitted that it had not imported any item under the Authorization. The Licensing Authority directed the Petitioner to submit non utilization certificate from the Customs. A Show Cause Notice dated 07.08.2012 was issued by the Licensing Authority under Section 14 for action under Section 11(2) of the Act. The Petitioner, vide its letter dated 23.08.2012, submitted to the Licensing Authority, original utilization certificate dated 14.02.2012 from Customs. As per the certificate, the Petitioner made an import of US\$51603. The Petitioner further stated that Norms Committee rejected its case for norms fixation and it will pay full duty with interest to Customs and submit the documentary evidence. The Petitioner was reminded for paying Customs duty and interest thereon vide the letter dated 11.11.2013. The Licensing Authority advised the Petitioner to avail benefit of clubbing as per Public Notice No.34 dated 24.10.2107 and granted a personal hearing on 24.01.2018. The Petitioner did not avail the opportunity of personal hearing. As the Petitioner failed to submit the requisite documents, an OIO dated 10.04.2018 was passed by the Adjudicating Authority (Asstt. DGFT, Mumbai) imposing a penalty of Rs.28.00 lakh, in addition to payment of Customs duty and interest thereon, on the Petitioner and its Directors.

3. The Petitioner did not file an appeal against the OIO dated 10.04.2018. It submitted a Review Petition dated 19.09.2019. It submitted the following:

(i) There was heavy fire in two to its plants i.e. Kolkata and Nashik in 2014 and 2016. It has been facing difficult financial problems for last many years. It is still in the process of recovering from difficulties caused by the fire.

(ii) The Petitioner made the declaration for not having imported any goods against the Authorisation as it was not aware of the facts of already making imports. Later on, it came to know the factual position when it obtained the utilization certificate from the Customs authorities.

(iii) There has been frequent shifting of registered office and corporate office and also major change in management teams and the persons handling imports and exports. These frequent changes made it almost impossible to trace any past records by the current management.

(iv) It exported certain items of the Authorisation but couldn't co-relate the documents and submit the evidence of export obligation fulfilment. The Norms committee also rejected its application for fixation of norms.

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(v) It has now commenced the production in Nashik plant and is in the position to fulfil its export obligation and it has requested DGFT to grant export obligation for a period of two years vide its letter dated 16.07.2019.

(vi) It did not receive the letter for personal hearing on 24.01.2018 due to fire incidence in the intervening period. As such, it was deprived of the right of personal hearing and also there is breach of principles of natural justice.

(vii) Harsh penalty has been imposed on it without considering its financial health.

4.1 The Petitioner was granted a Personal Hearing on 01.10.2020 which was attended by Shri Akshaya Kumar, Manager, Finance and Accounts. I have gone through the facts and records carefully and the submission made by the Petitioner in the Personal Hearing. The Petitioner initially misrepresented to the Licensing Authority, Mumbai that it had not made any imports. On being asked by the Licensing Authority, Mumbai to submit non utilization certificate from Custom, it admitted that it had made an import of \$51603. It also claimed to have made an export of 21528 kg for Rs.3127767. The Petitioner obtained this Authorization for import of duty free materials as applied for on self-declaration basis. Input/Output Norms of such items were required to be ratified by the Norms Committee. However, the Norms Committee in its meeting No. 12/83 dated 18.6.2008 rejected the ad-hoc norms submitted by the Petitioner. As per Handbook of Procedures, in case of self-declared Authorizations where SION does not exist, the applicant (in this case the Petitioner) shall pay duty and interest as notified by the Department of Revenue on the imported items where fixation of such norms is rejected by the Norms Committee.

4.2 The Petitioner has neither got its case regularized by making payments of the due duties and interest nor has submitted the prescribed documents. The Petitioner has made imports in contravention of the conditions of the Authorization and in violation of the policy and procedures 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. 18/32/2019-20/ECA-I(E)

Dated: 11.12.2020

The Review Petition dated 19.09.2019 is dismissed.



(Handwritten signature)

(Amit Yadav)

Director General of Foreign Trade

Copy To:

- ✓(1) Shalimar Paints Limited, Stainless Centre, 4th Floor, Plot No.50, Sector-32, Gurugram-122001.
- (2) Addl. DGFT, Nishta Bhavan, New C.G. Building, New Marin Lines, 48, Vithaldas Thackersey Marg, Churchgate, Mumbai-400020, with a direction to make due recoveries.
- (3) DGFT website.



Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade

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