

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

F.No. 18/31/2021-22/ECA.I/

Date of Order : 31.01.2023

Date of Dispatch: 01.02.2023

Name of the Applicant:

Vee Care Hospital, 106, Pillaiyar Koil Street,  
Anna Nagar West, Chennai – 600 040

IEC No.

0407029559

Order Reviewed against:

Order-in-Appeal No. 04/95/A(56)/AM21-Che  
dated 10.11.2021 passed by Additional DGFT,  
Chennai

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

**Order-in-Review**

Vee Care Hospital, Chennai (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 23.12.2021 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. 04/95/A(56)/AM21-Che dated 10.11.2021 passed by Additional DGFT, DGFT, New Delhi upholding the Order-in-Original (OIO) dated 04.12.2020 imposing a penalty of Rs. 50 lacs on the Petitioner, in addition to payment of customs duty (duty saved value utilized) and interest thereon, on the Petitioner.

**Brief of the case**

2.1 The Petitioner obtained an EPCG Authorization No. 0430006543 dated 26.08.2008 under 3% concessional duty EPCG Scheme from the office of the Additional DGFT, Chennai as per the provisions of the Foreign Trade Policy (FTP) prevalent during that period, for import of capital goods for a Duty Saved value of Rs. 11,55,710/-with an obligation to export for an FOB value of US\$ 217,289.77 to be completed within a period of 8 years from the date of issue of the Authorization. As per conditions of the Authorization, the Petitioner



was required to submit the prescribed documents showing fulfillment of export obligation within three months from the date of expiry of Authorization.

2.2 Export Obligation Period expired on 25.08.2016. The Petitioner did not submit prescribed export documents towards fulfillment of export obligation. RA, Chennai issued a cautionary letter on 17.01.2019 to the Petitioner to submit the export documents in case the export obligation is met, or otherwise regularize the case by paying the customs duty/duty saved value along with interest and submit documentary proof within a period of 10 days. The Petitioner did not reply. It was issued a Show Cause Notice (SCN) dated 06.06.2019 with an opportunity of personal hearing was granted on 24.06.2019. The SCN was returned undelivered. Hence, copies of the said SCN were sent to all Partners with another opportunity of personal hearing on 10.03.2020. The Petitioner neither replied to the SCN nor attended personal hearing. The Adjudicating Authority observed that the Petitioner had misutilized the EPCG Scheme and willfully defaulted fulfillment of export obligation liable for action under the Act and Foreign Trade (Regulation) Rules, 1993, as amended and imposed a penalty of Rs.50 lacs on the Petitioner in addition to payment of customs duty (duty saved value utilized) and interest thereon vide OIO No. 04/21/021/00595/AM09 dated 04.12.2020. It was also ordered that no further license / authorization /export incentives etc should be granted to the Petitioner and its partners or to any other firms in which the partners are directly involved in the capacity of Proprietor/Partners/Directors. The Petitioner's IEC was also placed in Denied Entity List (DEL) vide Order dated 13.07.2019.

2.3 The Petitioner filed an Appeal on 11.01.2021 before the Appellate Authority against the OIO dated 04.12.2020. It submitted that it could not fulfill the export obligation and hence, the Bank Guarantee executed by them had already been invoked by the Commissioner of Customs, Chennai, towards the duty and interest to be paid by them. The Petitioner further informed that after invoking of the Bank Guarantee, a balance amount of Rs. 6,15,995/- only, to be paid by it. The Appellate authority, in the absence of any tangible effort by the Petitioner to fulfill the export obligation, dismissed the appeal vide OIA dated 10.11.2021.

3.1 The Petitioner submitted a Review Petition dated 23.12.2021 and subsequent letter dated 16.11.2022 to the undersigned stating that: -





(i) Chennai Metro Rail Limited acquired a significant part of its land on which the hospital was supposed to be constructed, leading to curtailment of intended size of the hospital project. The Hospital could not commence operations as per the plan.

(ii) Commencement of metro rail construction also led to diversion and blockage in the approach / access road to the land and premises of the proposed hospital which prevented smooth flow of traffic and access. This resulted in delay in construction of hospital and commencement of its function.

(iii) It could not commence hospital's operation due to this force majeure despite its best intention. It could not fulfill export obligation due to reasons beyond its control.

(iv) Customs Authority encashed the Bank Guarantee equivalent to 100% duty saved amount on 04.12.2018. It deposited interest and penalty imposed by the Commissioner of Customs Chennai. It enclosed copies of Canara Bank's letter dated 04.12.2018, Challans dated 14.10.2022, Customs letters dated 11.10.2022 and 04.11.2022.

3.2 The Petitioner has prayed to set aside the OIA dated 20.09.2012 and condone the penalty.

(i) Quash and set aside the OIA dated 10.11.2021.

(ii) Set aside the penalty of Rs. 50,00,000/- imposed on it

(iii) Set aside the bar of issuing any license/authorization scrips or any instrument bestowing financial or fiscal benefits on it.

4. The Petitioner was granted personal hearing on 17.01.2023 which was attended by Shri A. Raja, Chartered Accountant of the Petitioner. He informed that the Petitioner could not fulfill export obligation mainly because its hospital's functions did not commence as Chennai Metro Rail Limited took a part of its hospital project's land. Further, the Petitioner deposited entire duty save amount plus interest and penalty imposed by the Customs Authority. Shri K. Hrushikesh Reddy, DDG, Chennai was also present during the personal hearing. He informed that the Petitioner did not deposit entire customs dues before passing OIA dated 10.11.2021. Shri Raja informed that the Customs authority executed BG of Rs.12,72,000/- in December 2018 and the Petitioner deposited in October 2022, balance interest of Rs.7,27,586/- and penalty amount of Rs.70,000/- imposed by the Customs authority.



5. I have gone through the facts and records carefully. It is observed that the Petitioner could not fulfill export obligation due to reasons beyond its control and deposited entire customs duty saved alongwith interest thereon.

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

**ORDER**

F.No. 18/31/2021-22/ECA.I/461

Date: 31.01.2023

The Review Petition dated 23.12.2021 is admitted. Order-in-Appeal No. 04/95/A(56)/AM21-Che dated 10.11.2021 and Order-in-Original No. 04/21/021/00595/AM09 dated 04.12.2020 are set aside.



(Santosh Kumar Sarangi)  
Director General of Foreign Trade

Copy to:-

- (I) Vee Care Hospital , 106, Pillaiyar Koil Street, Anna Nagar West, Chennai-600040.
- (II) Additional DGFT, 26, Haddows Road, Shastri Bhawan, Annexe, Chennai-600006
- (III) CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
- (IV) DGFT Website.

*Dilip Kumar*  
(Dilip Kumar)  
Dy. Director General of Foreign Trade