

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

F. No. 18/31/2022-23/ECA.I/149

Date of Order : 15 .09.2023

Date of Despatch: 18 .09.2023

Name of the Petitioner:

M/s Attire Creation Company
304, M.T.H. Road, Villivakam,
Chennai – 600 049.

IEC No.

0494013117

Order Reviewed against:

Order-in-Appeal No. 11/23/2015-16/ECA.I
dated 17.10.2016 passed by Addl. DGFT,
DGFT (Hqrs.)

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Review

M/s Attire Creation Company, Chennai (here-in-after referred to as the 'Petitioner') having IEC No.0494013117 filed Review Petition dated 12.09.2022 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. 11/23/2015-16/ECA.I dated 17.10.2016 passed by Addl. DGFT, DGFT (Hqrs.) dismissing the appeal against the Order-in-Original No. 04/36/21/00124/AM04 dated 31.01.2013 passed by RA, Chennai imposing a penalty of Rs.12,48,150/- on the Petitioner and its partners.

Brief of the Case

2. M/s Attire Creation Company, Chennai obtained an EPCG Authorization No.0430001218 dated 31.07.2003 at 5% Customs Duty for a duty saved value of Rs.5,81,014.00/- with an export obligation for export of Readymade Garments with Embroidery to be fulfilled within a period of 8 years from the date of issue of authorization.

3. The export obligation period (EOP) had expired on 30.07.2011. The Petitioner did not submit the documents evidencing fulfillment of export obligation. A Show Cause Notice dated 10.04.2012 was issued to the Petitioner. Documents for



redemption were furnished on 24.04.2012. Proof of maintenance of Annual Average was not provided and the product exported also is different to the item allowed in the authorization. Defects in the application was informed to the Petitioner vide letter dated 01.05.2012 and subsequent reminder on 10.12.2012. But reply did not received.

4. In view of the above, the adjudicating authority passed Order-in-Original No. 04/36/21/124/AM04 dated 31.01.2013 (OIO) imposing a penalty of Rs.12,48,150/- (being one time CIF value) on the petitioner and on the Partners as no reply to the SCN, Demand Notice and also no appearance of personal hearing granted to him.

5. Aggrieved by the OIO dated 31.01.2013, the petitioner filed an appeal stating that they have fulfilled the export obligation the only problem being non-mentioning of the word 'embroidered' in the export products. Shri Ashok Kumar Nair appeared for PH and pleaded that the authorization was used for Duty saved amount of Rs.2,69,639/- only as such the export obligation should have accordingly been reduced before passing the OIO. There are just four shipping bills involved in respect of export obligation fulfilment against the subject authorization. 'Embroidery' word is missing in shipping bills due to oversight. The Petitioner has submitted affidavit in this respect along with CA certificate in terms of Policy Circular No. 7/2002. He handed over a set of documents to prove that the items exported under the four shipping bills were manufactured in their embroidery unit.

6. Policy Circular No. 07/2002 is not applicable in this case where shipping bills or customs attested invoice does not mention the word 'embroidered'. There seems to be a correlation between the invoice, shipping bills and delivery challan but one cannot sure whether the goods were embroidered when it came out of the embroidery unit. If a look given at delivery challan No. 108387 dt. 17.03.2004, it is observed that 8000 pieces of an article have entered at 9.11AM on 17.03.2004 and was out at 11.50 A.M. It is difficult to believe that 8000 pieces of the articles were embroidered is less than three hours. Similarly, time taken in respect of other delivery challan is also very little and hence the same could not be accepted. In view of above, the Appellate Authority passed an Order-in-Appeal No. 11/23/2015-16/ECA.I dated 17.10.2016 and dismissed the appeal.

7.1 The Petitioner submitted a Review Petition dated 12.09.2022 to the undersigned stating that :-

(i) Duty saved amount on the authorization is Rs.5,81,014.00/- whereas the duty saved used for Rs.2,69,639.00/-,



(ii) The Petitioner has explained the non declaration of word ' Embroidery' in shipping documents with documentary evidence of EPCG authorization copies where in one copy of the word Embroidery is missing and in another copy is having the word embroidery. While making the shipping documents the authorization copy without embroidery was referred and prepared pre-shipment documents and file the shipping bills accordingly in customs.

(iii) The export obligation was completed on 02.03.2005 i.e. within the stipulated time and period and have maintained annual average of past export performance of Rs.4,96,39,624.66 over and above imposed and due to renovation work at factory/office all the files /documents were mixed up and not traceable easily and were failed to submit the redemption application well in time and applied only on 24.04.2012.

(iv) Embroidery work is the small portion on the garments and not declaring the same in shipping documents was not intentional and by oversight this has happened. Moreover, the petitioner has submitted the evidences and affidavit/undertaking duly certified by the chartered accountant in terms of Policy Circular No. 7/2002 confirming that the garments exported were manufactured utilizing the embroidery machine which imported under the said authorization.

(v) The Petitioner has paid penalty amount of Rs.12,48,150/- vide TR6 Challan No.28 dated 29.01.2020 and submitted the proof of this payment with necessary documents at RA, Chennai office.

(vi) The petitioner claims that there is no other case pending of export obligation with DGFT or any RA's and never have been put in DEL.

7.2 The Petitioner has prayed :-

(i) to review the petition and revise the penalty which has been wrongly claimed and issue obliging decision and refund order to them.

8. The Reviewing Authority had granted the personal hearing to the Petitioner on 28.08.2023 (in Physical), wherein Shri Ashok Kumar Nair, Manager – Exports and Imports of the firm attended the meeting on behalf of the firm. The Petitioner submitted that the actual duty saved amount for Imported CG were used only Rs.2,69,639.00 and cleared the CG under BE No.37572 dated 08.10.2003. They have completed the EO worth US\$ 99,106.86 prior to the expiry date within the stipulated time and have maintained the annual average of past export performance Rs.4,96,39,624.66 over and above imposed by RA, Chennai. Now, they have received EODC /Redemption letter from RA, Chennai under the Amnesty Scheme as per policy Circular No.1/2023-24 dated 17.04.2023. They have paid the penalty of



Rs.12,48,150/- imposed in the OIO vide TR6 Challan No.28 dated 29.01.2020 and submitted the proof of payment to RA, Chennai and revoke the IEC suspension.

7. I have gone through the facts and records of the case carefully. The Petitioner had obtained the EPCG Authorization No.0430001218 dated 31.07.2003 at 5% Customs Duty for a duty saved value of Rs.5,81,014.00/- with an export obligation for export of Readymade Garments with Embroidery to be fulfilled within a period of 8 years from the date of issue of authorization. The Petitioner did not submit the documents evidencing fulfillment of export obligation. The adjudicating authority passed Order-in-Original No. 04/36/21/124/AM04 dated 31.01.2013 (OIO) imposing a penalty of Rs.12,48,150/-. The Petitioner have paid the penalty vide TR6 Challan No.28 dated 29.01.2020 and submitted the proof of payment to RA, Chennai and revoke the IEC suspension. The Petitioner had already received the EODC /Redemption letter from RA, Chennai.

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

ORDER

F.No. 18/31/2022-23/ECA.I/149

Dated : 15.09.2023

The Review Petition dated 12.09.2022 is dismissed. The Order-in-Appeal No. 11/23/2015-16/ECA.I dated 17.10.2016 and the Order-in-Original No. 04/36/21/124/AM04 dated 31.01.2013 are upheld.

[Signature]
15.9.2023

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. M/s Attire Creation Company, 304, M.T.H. Road, Villivakam, Chennai – 600 049.
2. The Addl. Director General of Foreign Trade, Chennai.
3. Central Economic Intelligence Bureau, 1st, 6th& 8th Floor, 'B' Wing, JanpathBhawan, Janpath, New Delhi – 110001.
4. DGFT Website.

[Signature]

(A.S. Lungreishang)
Dy. Director General of Foreign Trade

