

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

F.No. 18/11/2018-19/ECA.I

Date of Order: 28 .02.2022

Date of Dispatch: 28 .02.2022

Name of the Applicant:

United Engineering (Eastern)
Corporation, Shantiniketan, Suite
No. 2 & 3, 10th Floor, 8, Abanindra
Nath Tagore Sarani, (Camac Street),
Kolkata -700017

IEC No. :

0288009436

Order reviewed against:

Order-in-Appeal No. 18/95/16-
17/ECA/ KOL/Appeal-182 dated
20.02.2018 passed by Addl. DGFT,
Kolkata

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

Order-in-Review

United Engineering (Eastern) Corporation, Kolkata (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 02.06.2018 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. 18/95/16-17/ECA/ KOL/Appeal-182 dated 20.02.2018 passed by Addl. DGFT, Kolkata upholding the Order-in-Original (OIO) dated 10.02.2016 passed by the Adjudicating Authority (Joint DGFT, Kolkata), imposing a penalty of Rs.20,00,000/- in addition to payment of Customs duty plus applicable interest on the Petitioner.

Brief of the Case

2.1 The Petitioner obtained an Advance Authorization No. 0210170116 dated 01.12.2011 for a CIF value of Rs. 1,11,68,000.00 (EURO 160000) with an Export Obligation to export for an FOB value of Rs.1,95,44,000.00 (EURO 280000) to be completed within a period of 36 months from the date of issue of the Authorization. As per conditions of the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO).



2.2 After the expiry of the EO period the Petitioner did not submit complete documents evidencing fulfilment of export obligation. A Show Cause Notice (SCN) dated 15.09.2015 was issued to the Petitioner under Rule 7 of the Foreign Trade (Regulation) Rules, 1993. The Petitioner was also granted an option to come personally or depute a person along with proper authorization within 15 days of issue of the SCN. As the Petitioner failed to submit the complete export documents, the Adjudicating Authority passed an OIO No. ALS-C/02/24/40/00151/AM12 dated 10.02.2016 imposing a fiscal penalty of Rs. 20,00,000/- on the Petitioner in addition to payment of Customs Duty plus applicable interest on the Petitioner.

2.3 The Petitioner filed an appeal on 06.09.2016 before the Appellate Authority. The Appellate Authority dismissed the appeal as time barred vide OIA dated 20.02.2018.

3.1 The Petitioner has now submitted a review petition dated 02.06.2018 to the undersigned stating that:

- (i) it has imported the raw material for a total value of Rs.9465221.28 and made exports of 2 nos. of Oil Extraction Machine made out of the entire imported raw material with FOB value of exports of Rs.10871450.00 (US\$181800),
- (ii) it received SCN cum Demand Notice dated 15.09.2015 (received on 26.09.2015 by petitioner) and submitted reply on 08.10.2015 with all relevant supporting documents,
- (iii) It did not submit documents like ANF-4F, Appendix-4H etc for redemption of licence due to non-receipt of ratification of Norm.

3.2 The Petitioner has prayed that :

- (i) the Order-in-Original No. ALS-C/02/24/40/00151/AM12 dated 10.02.2016 imposing penalty of Rs. 20,00,000.00 passed by the Joint Director General of Foreign Trade, Kolkata and Order-in-Appeal bearing F.No. 18/95/16-17/ECA/KOL/Appeal-182/484 dated 20.02.2018 passed by the Additional Director General of Foreign Trade, Kolkata, dismissing Petitioner's Appeal be struck down,
- (ii) the IEC suspension Order NO. 18/95/2016-17/ECA/CAL/148 dated 17.05.2018, passed by the Joint Director General of Foreign Trade, Kolkata be struck down,
- (iii) the Petitioner's name be removed from Denied Entity List (DEL),
- (iv) Norm against the subject Advance Authorisation be ratified at the earliest.



4.1 Norms Committee-1 (NC-I) Section was requested to intimate the status of fixation norms of the said advance authorization. NC-1 vide their ID Note dated 16.09.2019 intimated that the norms have been fixed in its meeting dated 14.09.2018. Norms were earlier rejected by NC-1 in its meeting dated 03.01.2012 due to non-furnishing of reply by the Petitioner.

4.2 Comments from RA, Kolkata were also sought. RA, Kolkata vide their letter dated 17.11.2020 and 16.12.2021 informed that the Petitioner fulfilled export obligation and submitted all documents. However, the Petitioner failed to meet accountability clause i.e. the imported items were not endorsed in shipping bills.

5. The Petitioner was granted an opportunity of Personal Hearing on 14.02.2022 which was attended by Mrs. R. Das, representative of the Petitioner. She informed that the Petitioner fulfilled export obligation and submitted complete export documents. The Petitioner could not indicate all the imported items in the two shipping bills dated 26.06.2014 & 25.09.2014 due to technical problems in Customs website. Shri Arjun Upadhyay, DDG, Kolkata also attended the hearing. He informed that as per norms fixed, the Petitioner failed to meet the accountability clause. He also informed that he was not aware about any technical problem in customs website during that period which prevented all the components filed in the shipping bill to be displayed.

6. I have gone through the facts and records carefully. The norms have been fixed in the meeting held on 14.09.2018. The Petitioner has completed its export obligation and submitted complete export documents towards fulfilment of export obligation but did not indicate all the imported items in the shipping bills.

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

Order

F.No. 18/11/2018-19/ECA.I / 509

Dated: 28.02.2022

The Review Petition dated 02.06.2018 is admitted. The Order-in-Appeal No. 18/95/16-17/ECA/KOL/Appeal-182 dated 20.02.2018 and the Order-in-Original No. ALS-C/02/24/40/00151/AM12 dated 10.02.2016 are set aside and the case is remanded to RA, Kolkata for de-novo consideration.



[Signature]
28.2

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy To:

- (1) United Engineering (Eastern) Corporation, Shantiniketan, Suite No. 2 & 3, 10th Floor, 8, Abanindra Nath Tagore Sarani, (Camac Street), Kolkata -700017
- (2) The Addl. Director General of Foreign Trade, 4, Esplanade East, Kolkata-700 069. It is requested to initiate recovery the penalty amount from the Petitioner and outcome be intimated to this Directorate.
- (3) CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- ✓(4) DGFT Website.

Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade