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GOVERNMENT OF INDIA / MINISTRY OF COMMERCE & INDUSTRY
OFFICE OF ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE
No.302, 3rd FLOOR, CGO TOWERS, KAVADIGUDA
HYDERABAD - 500 080

F.No. 09/36/021/00424/AM05

Dated

Name of the firm : M/s. Shanthari Exports Pvt. Ltd.,
3-5-908, 402, Mahavir Lok,
Himayath Nagar, Hyderabad - 500 029.

Appeal filed against : Order-in-Original dt.07.12.2022 passed by
Shri Akshay S C, Joint DGFT,
O/o. Addl. DGFT, Hyderabad

Order-in-Appeal

Order passed by : Shri S.B.S.Reddy,
Additional Director General of Foreign Trade

1. M/s. Shanthari Exports Pvt. Ltd., 3-5-908, 402, Mahavir Lok, Himayath Nagar, Hyderabad - 500 029 filed an Appeal dated 16.2.2023 against the Order-in-Original dt.07.12.2022 passed by Shri Akshay S C, Joint DGFT, O/o. Addl. DGFT, Hyderabad and requested for urgent hearing of the case. Accordingly, Personal Hearing was granted for 20.4.2023.

2. Mr. S.A. Razack, Accountant, representing the company appeared before me on 20.4.2023. He has informed me that they have not utilised the licence. On verification of the file, it is noticed that they have submitted a copy of the letter dt. 15.2.2023 issued by Air Cargo Complex, New Delhi stating that the licence is not registered at their Port.

4. They have informed that Order in Original was sent to the wrong address, which was not received by them. However, they have received a copy of the Order in Original through their registered email id.

5. They have stated that they have submitted a letter dt.28.12.2022 informing that they have fulfilled the export obligation and they are not able to submit the documents since the transactions are more than 17 years old and they are trying to locate the documents. They have requested for additional time to submit the proof/evidence of the fulfillment of export obligation.

6. The Order in Original was passed on 7.12.2022 and the Appeal is filed on 16.2.2023, with a delay of 70 days. The Appeal is to be filed within 45 days. Hence, there is a clear delay of 25 days.

7. The Appellant has stated in their Appeal dt. 16.2.2023 that as the records are relating old period and also due to approaching the Customs Authorities at New Delhi to get the Utilisation Certificate, the delay occurred and requested for condonation of delay.

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8. The Appellant has already filed a written request for additional time and also explained the reasons for delay in filing the Appeal, it is satisfied that the Appellant was prevented by sufficient cause from preferring the Appeal within the prescribed time and the delay is condoned in terms of Section 15 (1) (b) of the Foreign Trade (Development & Regulation) Act, 1992, as amended.


9. I have verified the file. It was stated in the Order in Original that a Show Cause Notice was issued to the firm on 4.10.2017 with an opportunity of personal hearing. It was also stated in the order that the firm has not availed the opportunity of attending the personal hearing nor submitted the EO documents.

10. It is noticed that the Show Cause Notice was issued by the then Asst. Director General of Foreign Trade on 4.10.2017 and the Order in Original is passed by the Joint Director General of Foreign Trade on 7.12.2022, i.e. after a period of 5 years, which is not in accordance with the principles of natural justice. The Adjudicating Authority should have given a fresh Show Cause Notice with one more opportunity of personal hearing before adjudicating the case.

11. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5th December, 2014, I pass the following Order:

Order

Appeal is admitted. Order in Original dt. 07.12.2022 is set aside and directed the concerned EPCG Section to examine the matter de-novo in terms of Foreign Trade Policy and Procedures.


(S.B.S. Reddy)

Additional Director General of Foreign Trade

Copy to :

1. M/s. Shanthari Exports Pvt. Ltd.,
3-5-908, 402, Mahavir Lok,
Himayath Nagar, Hyderabad - 500 029.
2. The Director General of Foreign Trade, Udyog Bhawan, Maulana Azad Road,
New Delhi - 110 107
3. Computer Cell for uploading the Order-in-Appeal