

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

F. No. 18/41/2023-24/ECA.I/E-38714/280 Date of Order : 02 .03.2024

Date of Dispatch: 03 .03.2024

Name of the Petitioner:

M/s Kibro Elbert Glove Company Pvt. Ltd.  
New No. 123, Old No. 68, Wallajah Road,  
Mount Road, Chennai – 600002,  
Tamilnadu

IEC No.

0488037697

Order Reviewed against:

Order-in-Appeal No.  
CHNECAAPPEAL00000566AM24  
dated 06.09.2023 passed by Additional DGFT,  
Chennai.

Order-in-Review passed by:

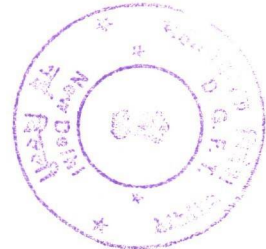
Santosh Kumar Sarangi, DGFT

**Order-in-Review**

M/s Kibro Elbert Glove Company Pvt. Ltd., Chennai (here-in-after referred to as 'the petitioner') having IEC No. 0488037697 filed Review Petition dated 14.10.2023 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. CHNECAAPPEAL00000566AM24 dated 06.09.2023 passed by Additional DGFT, Chennai dismissing the appeal as being time barred and against the Order-in-Original No. 04/21/021/00916/AM08 dated 01.08.2022 passed by Asst. DGFT, Chennai imposing a fiscal penalty of Rs.50,000/- in addition to the customs duty and interest thereon and placing the firm in the Denied Entity List (DEL).

**Brief of the Case**

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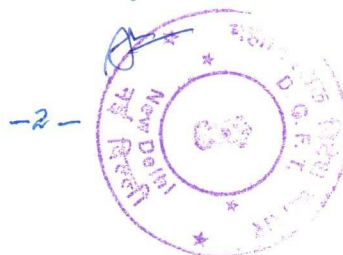
M/s Kibro Elbert Glove Company Pvt. Ltd., Chennai had obtained an EPCG Authorization No. 0430005703 dated 17.01.2008 for a total duty saved value of Rs.3,76,005/- under 5 % concessional duty EPCG scheme for import of capital goods listed with the said license, with an obligation to export "Industrial Leather Gloves" manufactured out of imported capital goods to the tune of F.O.B value of US\$75,673.96, i.e. 8 times of the Duty Saved Value equivalent to free foreign currency over and above the annual average of the past export performance fixed for Rs.30,862,937/- within a period of 8 years from the date of its issue, subject to the condition that 50% export obligation should be met in the first block within six years from the date of issue of license and balance 50% export obligation in the next two years.

2. The export obligation period expired on 16.01.2016. The licensee had furnished export documents along with ANF-5B vide their letter dated 19.11.2018. On scrutiny of the EO documents submitted, several deficiencies were raised and when the deficiencies were not rectified then a Show Cause Notice (SCN) dated 31.05.2022 was issued. Since, the petitioner had neither replied to the SCN nor submitted export obligation fulfilment documents and did not regularize the EO default by paying the entire Customs Duty saved value with interest, Order-in-Original F.No. 04/21/021/00916/AM08 dated 01.08.2022 imposing a fiscal penalty of Rs.50,000/- to the petitioner was passed by the Adjudicating Authority.

3. Aggrieved by the above-said Order-in-Original, the petitioner filed an appeal dated 04.09.2023 stating that they had fulfilled the export obligation and requested to the Appellate Authority to consider the documents evidencing fulfilment of the export obligation. The petitioner had also produced proof of payment of the penalty amount imposed. The appeal had been filed with a delay of more than 11 months. Therefore, Order-in-Appeal No. CHNECAAPPEAL00000566AM24 dated 06.09.2023 passed by Additional DGFT, Chennai dismissing the appeal as being "Time Barred".

4. Now, the Petitioner has filed the present review petition on 14.10.2023 and stated that they have fulfilled the export obligation well within the EO period.

5. The petitioner has stated that they had fulfilled the export obligation on 02.05.2013 which is well within the first block period for a value of EURO 69,428.56 and the entire value has been fully realised. The petitioner has further stated that they had also maintained the Annual Average EO at Rs.3,15,35,211.84 which is in excess of the actual AEO imposed at Rs.3,08,62,937/-.



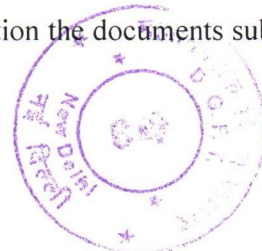


6. The petitioner has further stated that they had submitted EO documents vide letter dated 19.11.2008. RA, Chennai had raised certain queries on 18.12.2008 on the export done prior to the installation of the capital goods and disallowed the exports as if the EO had to be completed only after installation of the capital goods. The petitioner has further stated that this is contrary to the condition as stipulated in S.No.-2 of Annexure-A attached to the license. This clearly indicates that EO could be fulfilled from the date of the issue of the authorisation. Though the petitioner had completed the EO in 4 shipping bills, RA, Chennai issued an SCN dated 19.06.2019 stating that they had not fulfilled the EO which was not replied to due to the resignation of the Export Manager who had switched over to another company without notice. The appeal dated 04.09.2023 preferred before the Appellate Authority had been dismissed being time-barred vide Order-in-Appeal dated 06.09.2023. Thereafter, they submitted all relevant documents duly certified by CA on 11.09.2023. The petitioner has stated that the impugned Order of Addl. DGFT, Chennai issued without considering their EO documents and the same was issued on technical and procedural grounds and requested for PH to the Competent Authority vide review petition dated 14.10.2023.

7. The Reviewing Authority had granted a personal hearing to the petitioner on 20.03.2024. Shri M.Gopi Nath, Legal Advisor attended the personal hearing on behalf of M/s Kibro Elbert Glove Company Pvt. Ltd. and stated that the petitioner has fulfilled the export obligation well within the EO period and submitted all the requisite documents.

8. Shri Vishwas B N, Joint DGFT RA Chennai attended the meeting and provided the inputs on behalf of RA Chennai and stated that the EO has been fulfilled by the petitioner/authorization holder within the first block of EO itself. The view taken by the adjudicating authority regarding the fulfillment of EO by using the imported Capital Goods as allowed in the authorization is of her own view which may be based on wrong audit objection raised in the past.

9. I have gone through the facts and entire records of the case carefully. M/s Kibro Elbert Glove Company Pvt. Ltd., Chennai had obtained an EPCG Authorization No.0430005703 dated 17.01.2008 for a total duty saved value of Rs.3,76,005/- under 5 % concessional duty EPCG scheme for import of capital goods listed with the said license, with an obligation to export "Industrial Leather Gloves" to the tune F.O.B value of US\$75,673.96, i.e. 8 times of the Duty Saved Value equivalent to free foreign currency over and above the annual average of the past export performance fixed for Rs.30,862,937/- within a period of 8 years from the date of its issue, subject to the condition that 50% export obligation should be met in the first block within six years from the date of issue of license and balance 50% export obligation in the next two years. After hearing the representative of the authorization holder and representative of the RA Chennai in PH and taking in to consideration the documents submitted by the

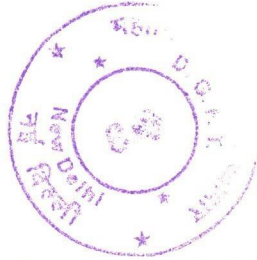


Petitioner, it appears that the adjudicating authority has erred in not accepting the exports made from the date of issuance of the EPCG authorization. Para 5.1 of chapter 5 of the FTP 2007-08 relevant for this authorization provides for reckoning/counting of export obligation from the date of EPCG authorization issue-date. Further, the EPCG scheme envisages fulfillment of export obligation, over and above, the average level of exports (the arithmetic mean of export performance in last 3 years) achieved by applicant in preceding three licensing years in terms of the provisions of Para 5.4 of the FTP 2007-08. This provision also requires the authorisation holder to start fulfilling its average as well specific export obligation from the date of issuance of the authorisation. Even the Appellate Authority has rejected the appeal only on technical grounds i.e. time barred without going in to the merits of the case.

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

**ORDER**

The Review Petition dated 14.10.2023 filed by the petitioner is admitted. Order-in-Original No. 04/21/021/00916/AM08 dated 01.08.2022 and Order-in-Appeal No. CHNECAAPPEAL00000566AM24 dated 06.09.2023 passed by Additional DGFT, RA, Chennai are set aside. The case is remanded back to RA, Chennai for de-novo consideration.



*Am.*  
2.4.2024

(Santosh Kumar Sarangi)  
Director General of Foreign Trade

Copy to:

1. M/s Kibro Elbert Glove Company Pvt. Ltd. New No. 123, Old No. 68, Wallajah Road, Mount Road, Chennai – 600002, Tamilnadu.
2. The Asst. Director General of Foreign Trade, Chennai.
3. The Addl. Director General of Foreign Trade, Chennai.
4. Central Economic Intelligence Bureau, 1st, 6th & 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
5. DGFT Website.

*For Sarangi*  
2.4.24

(Manoj Kumar Meena)  
Dy. Director General of Foreign Trade