

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

F.No. 18/49/2019-20/ECA.I

Date of Order: 14.07.2022

Date of Dispatch: 14.07.2022

Name of the Petitioner:

Shri Nitin Moreshwar Bendre, 4, Kalshree,  
6<sup>th</sup> lane Prabhat Road, Pune - 411004

Order reviewed against:

Seven Orders-in-Appeal dated 04.11.2019  
passed by Addl DGFT, Mumbai as follows:

1	03/16/144/00260/AM19
2	03/16/144/00097/AM19
3	03/16/144/00168/AM19
4	03/16/144/00166/AM19
5	03/16/144/00167/AM19
6	03/16/144/00176/AM19
7	03/16/144/00172/AM19

Order-in-Review passed by:

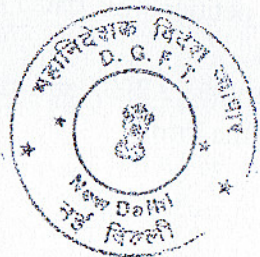
Santosh Kumar Sarangi, DGFT

Order-in-Review

Shri Nitin Moreshwar Bendre, Ex-Director (here-in-after referred to as the 'Petitioner') of M/s. Fontasey Engineering Exports Pvt. Ltd., Pune (here-in-after referred to as the 'Firm') having IEC No. 3198005167 filed seven Review Petitions dated 18.12.2019 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against seven Orders-in-Appeal all dated 04.11.2019 passed by Addl. DGFT, Mumbai dismissing seven appeals against seven Orders-in-Original (OIO) detailed in para 2.1 below. The Adjudicating Authority ordered that no further license shall be issued to any firm in which the Petitioner is directly or indirectly involved in the day to day activities under Rule 7(1) of Foreign Trade Regulations Rules, 1993 for non-fulfilment of export obligation against duty free imports of items under Advance Authorization scheme.

Facts of the Case

2.1 The Firm M/s. Fontasey Engineering Exports Pvt. Ltd., Pune in which the Petitioner was holding office as a Director obtained seven Advance Authorizations during November 1998 to February 2003. The Firm had to fulfil export obligation within a period of 18 months from the date of issue of Authorization. The Firm did not submit prescribed export documents. RA, Pune issued demand notices and granted personal hearing in between 2004 to 2007 against all the seven Advance Authorisations, but, the Firm did not respond. Consequently, the Firm was placed in Denied Entity List between



*[Handwritten signature]*

2004 to 2008 in respect of all seven cases. The Firm was issued show cause notices (SCNs) and granted personal hearing in 2018 but the Firm did not respond. The Adjudicating Authority, Joint DGFT, Pune passed seven OIO in respect of all seven Authorizations. The details (here-in-after referred to as 'the Table') of seven Advance Authorizations are as follows:

S.No.	Adv. Authori- zation No. & Date	CIF value (Rs.)	FOB value US\$	OIO No. and Date	Penalty imposed (Rs.)	Order in addition to financial penalty
1	0031002863 dt. 27.11.1998	41,22,840	\$ 2,17,000	31/80/40/188/AM99 dt. 21.08.2018	41,22,840/-	No further license shall be issued to the firm or any other firm in which the Proprietor/Partners/Directors of this firm is directly or indirectly involved in the day to day activities of that Firm under Rule 7(1) of Foreign Trade Regulations Rules, 1993
2	3110002447 dt. 02.11.2000	US\$1,55,381	\$2,74,000	31/80/40/379/AM01 dt. 10.04.2018	71,47,548/-	
3	3110007216 dt. 11.06.2002	82,20,235	\$4,80,000	31/80/40/065/AM03 dt. 05.06.2018	82,20,235/-	
4	3110008218 dt. 18.09.2002	78,14,209	\$4,80,000	31/24/40/181/AM03 dt. 05.06.2018	78,14,209/-	
5	3110008859 dt. 21.11.2002	78,68,832	\$5,40,150	31/24/40/250/AM03 dt. 05.06.2018	78,68,832/-	
6	3110009923 dt. 21.02.2003	1,49,62,000	\$8,27,900	31/80/40/349/AM03 dt. 05.06.2018	1,49,62,000/-	
7	3110009872 dt. 13.02.2003	17,34,000	\$44,500	31/24/40/351/AM03 dt. 25.06.2018	17,34,000/-	

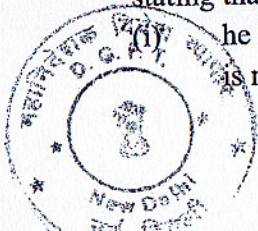
2.2 The Petitioner filed seven appeals against the seven OIO indicated in the Table. The Appellate Authority observed that the Firm did not furnish proof of fulfilment of export obligation even after the expiry of export obligation period. Hence, a Demand Notice dated 02.06.2004 was issued with a personal hearing on 28.06.2004. As there was no response from the Appellant Firm it was placed under Denied Entity List (DEL).

2.3 The Appellate Authority also observed that the Memorandum of Understanding (MoU) and specifically Para 7 of the MoU, indemnifies the Directors from any claim against the outgoing Directors as the ex-Directors/Directors or the shareholders of the company. Further, even in the Civil liabilities, the company and continuing Directors can indemnify the outgoing Directors against claim. However, that does not amongst others absolve them from any quasi-judicial proceedings arising out of the Act, Deed, Omission, Commission of the Directors who are responsible to and/or in charge of the affairs of the company ('Firm') at particular time. In view of the above, the Ex-Directors can be proceeded against as per Foreign Trade (Development & Regulation) Act 1992 as amended, for offences/violations conducted during the period of holding office as Directors or officer on default or continuation of the same.

2.4 The Appellate Authority dismissed all the Appeal vide Order-in-Appeal (OIA) dated 04.11.2019.

3.1 The Petitioner has now submitted seven review petitions all dated 18.12.2019 stating that:

he resigned from the post of Director of the Firm on 05.12.2005 and since then he is neither concerned nor involved in any activity of the Firm,



- (ii) clause 7 of the MoU (signed among outgoing Directors, continuing Directors and the Firm) states that the company ('Firm') and continuing Directors have agreed that the outgoing directors are fully absolved from all the liabilities in respect of entire financial, contractual, tortious, civil, criminal, tax liability or any other obligations whatsoever as the director of the company ('Firm'),
- (iii) if any action under the Act or Rules or Regulations there under is required to be taken, the same be initiated only against the Firm or the continuing directors and not against the Petitioner,
- (iv) the Firm communicated resignation of the Petitioner to the Bank and the Bank discharged the Petitioner from the liability of the guarantee,
- (v) the Firm also intimated Joint DGFT, Pune about the resignation of the Petitioner and the composition of Board of Directors thereafter on 09.01.2006 and 09.03.2008,
- (vi) he requested the Firm and the continuing directors to get amended IEC deleting his name. Once this process completes his name will be removed and thereby any action against the Petitioner will be unwarranted,
- (vii) refusal of any future benefit under Foreign Trade Policy has been ordered against him without establishing against the Petitioner any act in adding and abetting the non compliance of the Act and Rules or Regulations made there under,
- (viii) neither SCN was issued nor personal hearing was granted to him before passing OIO and thus principles of natural justice were violated,
- (ix) it is a settled position in law that wherever no specific period of limitation is provided in the law, a reasonable period of limitation is still applicable and whereas, OIO were passed after 15 years i.e. beyond the reasonable period of limitation.

3.2 The Petitioner has prayed to set aside all seven OIAs be set aside.

4. RA, Mumbai furnished para-wise comments vide their letters dated 14.12.2020 on all review petitions.

5.1 The Petitioner was granted personal hearing on 17.12.2021 which was attended by Shri Deepak Naik, Authorised representative of the Petitioner. The Reviewing Authority sought the details of the SCNs issued by RA, Pune and the legal opinion. RA, Mumbai have furnished the details of SCNs issued and legal opinion in the matter vide its e-mail dated 24.12.2021. They have intimated that SCN has been issued to the Petitioner in respect of only one authorisation at Sl. No. 01 in the Table. The Legal opinion has been rendered by the Government counsel.

5.2 The Petitioner was again granted personal hearing on 04.07.2022 which was attended by Shri Deepak Naik and Shri Sunil Javalekar, Authorised representatives of the Petitioner. They reiterated the submissions made in the review petitions. They informed that the Petitioner resigned as Director of the Firm on 05.12.2005 and this fact was informed to all concerned including DGFT. In the MOU, it is clearly mentioned that



company (Firm) and continuing directors have agreed that the outgoing directors are fully absolved from all the liabilities in respect of entire financial, contractual, tortious, civil, criminal, tax liability or any other obligations whatsoever as the director of the company (Firm). The Petitioner is not aware of any affairs of the Firm after 2005. All of a sudden, OIO were passed in 2018. Neither SCN was issued and nor personal hearing was granted before passing OIO. Nothing specific has been pointed out against the Petitioner in the OIO or OIA. Shri Satya Raja Sekhar, DDG, Mumbai was also present during the personal hearing. He informed that in one out of seven authorizations, SCN was issued to the Petitioner. He also referred the legal opinion given by the Government Counsel in the case.

6. I have carefully gone through the records and submissions made and it is observed that export obligation period in respect of seven Advance Authorizations expired during May 2000 to August 2003. The firm was placed in DEL in 2004 but the Adjudication proceedings were initiated in 2018 after a gap of 15 years. SCNs were issued and personal hearings were granted to the Firm and not to the Petitioner. The OIO was issued to the Firm and was endorsed to all the eight Directors including the Petitioner. Specific SCN was not issued to each and every Director. The financial penalties were imposed on the Firm and not on the Petitioner. However, the Adjudicating Authority ordered that no further license shall be issued to any firm in which the Petitioner is directly or indirectly involved in the day-to-day activities of that firm under Rule 7(1) of Foreign Trade Regulations Rules, 1993. The Petitioner resigned from the Firm in December 2005. Clause 7 of the MoU (signed among outgoing directors, continuing directors and the Firm) indicates that the Firm and continuing directors have agreed that the outgoing directors are fully absolved from all the liabilities in respect of entire financial, contractual, tortious, civil, criminal, tax liability or any other obligations whatsoever as the Director of the company. The Firm has also filed an Appeal to the Appellate Authority which is under consideration of the Appellate Authority.

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

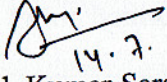
**Order**

F.No. 18/49/2019-20/ECA.I | 179

Dated: 14.07.2022

The seven Review Petitions all dated 18.12.2019 are admitted. The orders passed in the OIOs directing that no further license shall be issued to any firm in which the Petitioner is directly or indirectly involved in the day-to-day activities of that firm under Rule 7(1) of Foreign Trade Regulations Rules, 1993 vide OIO and OIA are set aside.



  
14.7.  
(Santosh Kumar Sarangi)  
Director General of Foreign Trade

**Copy To:**

- (1) Shri Nitin Moreshwar Bendre, 4, Kalshree, 6<sup>th</sup> Lane Prabhat Road, Pune - 411004.
- (2) Addl. Director General of Foreign Trade, Nishta Bhavan, Marin Lines, Churchgate, Mumbai - 400020 with the direction to decide on the Appeal of the Firm M/s. Fontasey Engineering Exports Pvt. Ltd., within 03 months of issue of the order.
- (3) Central Economic Intelligence Bureau, 1st, 6th & 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi -110001
- ✓(4) DGFT website



*Dilip Kumar*

(Dilip Kumar)

Dy. Director General of Foreign Trade