

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

F. No. 18/36/2022-23/ECA.I/ 206

Date of Order : 20 .11.2023

Date of Despatch: 21 .11.2023

Name of the Petitioner:

M/s Daejung Moparts Pvt. Ltd.
Plot No. 6, Sengundram Indl. Estate,
Melrosapuram Post,
Kancheepuram District : 603 204.

IEC No.

0402016106

Order Reviewed against:

Order-in-Review of Appeal order
No.A(03)/Addl.DGFT/ECA/Chen/AM18/Chennai
dated 14.11.2018 passed by Addl. DGFT,
Chennai.

Order-in-Review passed by:

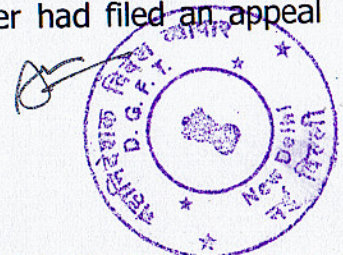
Santosh Kumar Sarangi, DGFT

Order-in-Review

M/s Daejung Moparts Pvt. Ltd., Chennai (here-in-after referred to as 'the petitioner') having IEC No. 0402016106 filed Review Petition dated 14.12.2022 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Review of Appeal Order No. A(03)/Addl.DGFT/ECA/Chen/AM 18/Chennai dated 14.11.2018 passed by Addl. DGFT, Chennai ordered that the prayer to reconsider the order in appeal based on the additional affidavit filed, is dismissed, since there is no provision in the FTDR Act to consider the same.

Brief of the Case

2. The Petitioner obtained an EPCG Authorization No. 0430001649 dated 21.04.2004, for Rs. 1,01,13,549/- from RA, Chennai for import of Capital Goods, with export obligation to export of sophisticated rubber and polymer components, 'O' rings and gaskets for automotive FMGC & Heavy Industry with the Export Obligation to be fulfilled within a period of 8 years from the date of issue of authorization. The Petitioner had not submitted documents evidencing fulfillment of export obligation after the completion of export obligation period. Therefore, Order-in-Original No. 04/21/021/008/AM05 dated 05.02.2013 was passed imposing a penalty of Rs. 3,04,92,816/- to the Petitioner and the Petitioner was also placed under Denied Entity List (DEL) by the Adjudicating Authority. The Petitioner had filed an appeal



which was dismissed by the Appellate Authority vide order of even number dated 09.11.2017, as the same was filed beyond the condonation period.

3. Aggrieved by the above said Order-in-Appeal, the petitioner had filed a Writ Petition in Hon'ble High Court of Madras seeking to quash the order issued by the Appellate Authority. The Hon'ble High Court disposed off the petition at the admission stage, without going into the merits of the case stating that the Petitioner can file additional affidavit explaining the reasons for delay in filing the appeal and it is for the Appellate Authority to consider the application on merits, after satisfying itself of the reasons given therein. The Court has thus closed the case.

4. The Petitioner accordingly filed the additional affidavit giving the reasons for delay in filing of appeal and requested to consider the same. The petitioner has given the following reasons among others for the delay in filing of appeal:

(i) that the management of the company was vested with Korean MD who was not well versed in English language and not aware of the existing issues in the company and also that the middle management employees did not have knowledge about legal issues;

(ii) that the accounts department on receipt of the O-I-O did not inform the higher officials;

(iii) that only on receipt of intimation from the revenue authorities, did the accounts department inform the higher ups who were not well versed in English language, and Action taken;

(iv) that consequent to the action taken to search files, it was seen that the original licence and other records had been misplaced;

(v) that, due to loss of original documents, there was delay in responding to O-I-O.

5. RA, Chennai passed the order vide Order-in-Review of Appeal Order No. A(03)/Addl. DGFT/ECA/Chen/AM 18/Chennai dated 14.11.2018 that, the prayer to reconsider the order in appeal based on the additional affidavit filed, is dismissed, since there is no provision in the FTDR Act to consider the same.

6. Now, the petitioner has filed Review Petition dated 14.12.2022 on the following grounds:-

(i) The impugned order dated 14.11.2018 passed by the RA, Chennai is erroneous on facts and in law. The penalty imposed of Rs. 3,04,92,816/- is liable to be set aside, as the applicant has met their export obligations under the EPCG license through direct as well as third-party exports.



(ii) It is submitted that the order passed by the RA, Chennai is an ex-parte order imposing exorbitant penalty at 300% of license value for mere non-submission of documents. The amount of penalty availed on imports of capital goods. There is no justification or basis for imposition of such an exorbitant penalty.

(iii) The applicant could not submit the documents due to procedural lapses in the export documents. The applicant has obtained Shipping Bills of Hyundai, as evidence for the third party exports. The applicant has further filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), for amendment of the Shipping Bills for endorsement of their EPCG license no. on their Shipping Bills. The Export Obligations of the applicant would be met, as Shipping Bills are amended by the Customs, accordingly.

(iv) The ex-parte order was challenged before the Hon'ble Madras HC in WP No. 28989 of 2017. The Hon'ble Court vide its order dated 14.11.2017 directed the applicant to file an additional affidavit along with reasons for delay and case to be decided on merits. In clear violation of the order of the High Court, the RA, Chennai has passed the impugned order reiterating the earlier order of the adjudicating authority. The impugned order passed is thus contrary to the directions of the High Court.

(v) RA, Chennai has dismissed our appeal on the grounds of limitation without any consideration of the reasons given in the additional affidavit. No opportunity of hearing was provided by the RA, Chennai in the second round of proceedings as well.

(vi) If the EPCG license is redeemed by the office of the DGFT and EODC is issued, the O-I-O passed under presumption of non-fulfilment of export obligation shall become null and void.

(vii) The redemption documents have been filed before the Office of the DGFT by the applicant on August 10, 2017. However, same is pending to be processed. The impugned order passed is thus pre-emptive and the Appellate Authority should have awaited the decision of the Office of the DGFT in this regard. The order is therefore liable to be set-aside.

(viii) The applicant approached the customs for amendment of third-party shipping bills vide application dated July 24, 2019. The application for amendment was rejected by customs by order dated September 10, 2020. The applicant has filed an appeal against the said order of customs before the customs, Excise and Service Tax Appellate Tribunal (CESTAT) under various grounds. The appeal is pending before the CESTAT and thus, the matter is sub-judice before the Tribunal. RA Chennai was duty bound to await the order of the Tribunal before proceeding with deciding the matter. The impugned order is therefore liable to be set-aside.



7. The Petitioner has prayed as under:-

(i) The impugned Order-in-Appeal dated 14.11.2018 imposing penalty of Rs. 3,04,92,816/- on the applicant, may be set-aside.

(ii) To grant any such other relief, as may be deemed appropriate by the authority, in facts and circumstances of the present case.

8. The Reviewing Authority granted the personal hearing to the petitioner on 17.10.2023. Shri Vinod Kumar Saxena and Shri Vishal Dhiman, Authorised Representatives of the firm attended the PH. The Petitioner stated that between 2002 and 2006 they have obtained 7 EPCG licenses. Out of 7, in case of 4 EPCG licenses there is no direct export and export is through third party. The subjected EPCG license No. 0430001649 dated 21.04.2004 is one of these 4 EPCG licenses. Parallel litigation was going on with customs regarding these 4 EPCG licenses which are involved in third party exports. Out of these four, only one is disputed here in this review petition. They made a request to The Commissioner Customs in July, 2019 that amendment of the shipping bills for third party exports should be allowed, but Customs rejected. Now, they had filed an appeal before CESTAT, Customs Tribunal in Chennai and the matter is sub-judice. Therefore, the Petitioner has requested (i) to wait for the outcome of their appeal filed before the CESTAT, Customs Tribunal in Chennai and (ii) Since, there are 4 EPCG licenses involving third party exports all 4 EPCG licenses be taken up and settled together.

8.1 Shri Vishwas BN, Jt.DGFT along with Shri Kaladi Hrushikesh Reddy, DDG, RA, Chennai attended the meeting. It stated that the case was adjudicated in 2013 and the Petitioner had filed an Appeal in 2017. The appeal was dismissed as time barred. The Petitioner is being supplying gaskets and other rubber parts to Hyundai and Hyundai exporting car. Further, stated that the name of the company and EPCG license number are not there in the shipping bills.

9. I have gone through the facts and records of the case carefully. The Petitioner had obtained an EPCG Authorization No. 0430001649 dated 21.04.2004, for Rs. 1,01,13,549/- from RA, Chennai for import of Capital Goods, with export obligation to export of sophisticated rubber and polymer components, 'O' rings and gaskets for automotive FMGC & Heavy Industry with the Export Obligation to be fulfilled within a period of 8 years from the date of issue of authorization. The petitioner had failed to submit documents evidencing fulfillment of export obligation after the completion of export obligation period. Therefore, the Adjudicating Authority passed Order-in-Original dated 05.02.2013 imposing penalty of Rs.3,04,92,816/-. The Petitioner had already filed an appeal before the CESTAT, Customs, Tribunal in Chennai for amendment of the Shipping Bills and the matter is sub-judice.



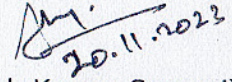
10. I therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:-

ORDER

F.No. 18/36/2022-23/ECA.I/206

Dated : 21.11.2023

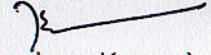
The Review Petition dated 14.12.2022 is admitted. The Order-in-Review of Appeal No.A(03)/Addl.DGFT/ECA/Chen/AM 18/Chennai dated 14.11.2018 and Order-in-Original No.04/21/021/008/AM05 dated 05.02.2013 passed by RA, Chennai are stayed till the outcome of the appeal filed before the CESTAT, Customs, Tribunal in Chennai. Till that time no coercive action is to be taken in the matter. Applicant to approach DGFT again once CESTAT Appeal is decided, for final decision in the matter.


20.11.2023

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. M/s Daejung Moparts Pvt. Ltd., Plot No. 6, Sengundram Indl. Estate, Melrosapuram Post, Kancheepuram District : 603 204.
2. The Addl. Director General of Foreign Trade, Chennai.
3. Central Economic Intelligence Bureau, 1st, 6th& 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
4. DGFT Website.



(Jaykeshaw Kumar)
Foreign Trade Development Officer

