

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

F.No. 18/63/2019-20/ECA.I/

Date of Order : 18 .11.2022

Date of Dispatch: 21 .11.2022

Name of the Applicant:

Cleanfoods Ltd., No. 5AC-510, HRBR
Layout, 2nd Block Kalyan Nagar, Outer
Ring Road, Bangalore - 560043.

IEC No.

0790007495

Order Reviewed against:

Order-in-Original No. 07/21/021/ 00340/
AM05 dated 18.09.2014 passed by Joint
DGFT, Bangalore.

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

Order-in-Review

Cleanfoods Ltd., Bangalore (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 07.02.2020 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Original (OIO) No. 07/21/021/00340/AM05 dated 18.09.2014 passed by Joint DGFT, Bangalore imposing a penalty of Rs. 2,59,69,539.14 in addition to payment of customs duty and applicable interest, on the Petitioner.

Brief of the case

2.1 The Petitioner obtained an EPCG Authorization No. 0730002028 dated 17.08.2004 from RA, Bangalore as per the provisions of the Foreign Trade Policy (FTP) prevalent during that period, for import of capital goods for a duty saved value of Rs. 1,29,847,69/-with an obligation to export of "Fruits and Vegetable pulps and Concentrates, Juices, Pastes, Purees, Squashes, Sauces, Jams, Jellies, Marmalades, etc." for a FOB value of US\$ 22,33,938.92 to be completed within a period of 8 years from the



date of issue of the Authorization. The Petitioner was required to maintain annual average of Rs.11,03,62,000/-. As per conditions of the Authorization, the Petitioner was required to submit the prescribed documents showing fulfillment of export obligation within three months from the date of expiry of Authorization.

2.2 Export Obligation Period (EOP) expired on 16.08.2012 but the Petitioner did not submit any documents towards fulfillment of export obligation. A cautionary letter and Show Cause Notice (SCN) were issued on 18.09.2013 and 03.02.2014 respectively but the Petitioner did not respond to them. The Adjudicating Authority observed that the Petitioner and its directors had obtained the EPCG Authorisation by misrepresentation, did not comply with the conditions of EPCG Authorisation and did not regularize the authorization by payment of Customs Duty with interest as a bonafide default and thereby committed a breach of law and procedure relating to the Act. The Adjudicating Authority imposed a penalty of Rs.2,59,69,539.14 on the Petitioner and debarred the Petitioner and its Chairman and CEO, and directors from obtaining any kind of license, customs clearance permits, allotment of imported goods from any licensing authorities or STC/MMTC or any other agency till the penalty amount is paid vide OIO No. 07/21/021/00340/AM05 dated 18.09.2014. Its IEC was also suspended till the payment of penalty.

3. The Petitioner filed an appeal on 23.01.2020 against the OIO dated 18.09.2014 after five years. RA, Bangalore informed vide the letter dated 29.01.2020 that its appeal is time barred as the same was submitted after the prescribed limit of 75 days.

4.1 The Petitioner submitted a Review Petition dated 07.02.2020 to the undersigned stating that: -

- (i) it imported capital goods for values Rs.1,28,89,700/- against the import allowed of Rs.1,29,84,770/- and the export obligation as per actual import was US\$ 22,17,582.79. As per para 5.9 of FTP 2009-14, the export obligation to be fulfilled is @75% and therefore the export obligation is US\$ 16,63,187.09 whereas it made export of US\$ 17,43,512.35,
- (ii) its' manufactured products being agricultural based and due to vagaries of nature, it could not sustain the continued productions for many years and was compelled to stop business operation since September 2009,
- (iii) it could not attend to the procedural requirement of updating records, timely action to address the notices from DGFT due to stoppage of its business operations, its concerned staff left, change of its registered office, etc. ,



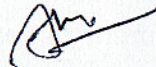
- (iv) as the matter stood, it learnt that its product mango pulp is agri product, there is no requirement to maintain average export obligation in terms of para 5.7.6 of HBP 2009-14.
- (v) the Customs Authorities at Chennai had passed an adjudication order (i) denying the duty exemption availed by it, (ii) demanding customs duty of Rs.1,28,89,700/-, (iii) demanding interest on the said customs duty,(iv) confiscation of the goods imported under the EPCG Authorization, (v) imposing redemption fine of Rs.20 lacs and (vi) imposing penalty of Rs. 5 lacs

4.2 The Petitioner has prayed:

- (i) to hold that its export product is an agri-product in terms of appendix 8 of Handbook of Procedures,
- (ii) to hold the fast track export performance benefit in terms of para 5.7.6 of HBP 2004-09 in the instant case,
- (iii) to hold that the export obligation in the instant case is fully completed,
- (iv) to set aside OIO dated 18.09.2014.

5.1 The Petitioner was granted personal hearing (PH) on 29.12.2021 & 21.09.2022 but the Petitioner sought adjournment on both dates. Another PH was granted on 10.10.2022 which was attended by Shri R. Rangaswamy, consultant. He informed that despite unfavourable natural condition and financial difficulty, the Petitioner fulfilled export obligation but could not fulfill the Average Export Obligation (AEO). The main contention is that the mango pulp is considered as agricultural product as per Appendix -8 of HBP and there is no requirement to fulfill AEO. The Petitioner's factory is situated in Andhra Pradesh Chittoor district which is an Agri export zone and therefore the Petitioner seeks relief under Para 5.9 of FTP 2004-09. Para 5.9 provides that, if a firm fulfills 75% of Export obligation and 100% Average Export Obligation within half of export obligation period, the remaining export obligation will be waived off. He also referred to the decision of CESTAT in the case of Mafco Limited vs. CCE Pooana.

5.2 Shri Lokesh H.D., Jt.DGFT and Shri Pravin Nalawade, DDG were also present during personal hearing on behalf of RA, Bangalore. Shri Lokesh, Jt. DGFT informed that the Petitioner's main contention is that its product be considered as agricultural product and under para 5.7.6 of HBP AEO is exempt for agricultural products. However, in 2011 there was a clarification that processed foods cannot be considered as



an agricultural product for the purposes of Para 5.7.6 of HBP. Therefore, RA, Bangalore did not consider mango pulp as an agricultural product and was therefore not exempted from AEO.

5.3 RA, Bangalore vide their letter dated 21.09.2020 had furnished a background note and para-wise comments on the Review Petition and have also furnished written submission vide their email dated 10.10.2022, wherein they have indicated that the imported items were (a) Equipment of production of Natural Concentrates Purees and Juices from Tropical Fruits, filled into bag in drums, (b) WTPMCC, Can Cooling MCC, Aseptic Cooling Tower, Preparatory Line, main LT Panels, (c) Vapour Absorption Heat Pump Model, etc. They have enclosed a copy of the circular No.12/(RE-2010/2009-14 dated 17.01.2011 which clarified that the processed foods cannot be treated as agricultural products. Further, Para 5.7.6 of HBP giving exemption from Average Export Performance maintenance to certain category of products and location of unit in Agri Export Zone was not a criterion for AEO exemption as per provisions of EPCG scheme in FTP/HBP.

6. I have gone through the fact and records of the case carefully. The import allowed under the authorization was 'equipment for the production of concentrates purees and juices, from tropical fruit filled into bag-in-drums (as per supplier packing list)'. The Petitioner imported (i) Equipment for the production of Natural Concentrates, purees and juices, etc from tropical fruit filled into bag-in-Drums, (ii) Comitrol processor Model 1700 Juice and Pulp Processing machine, (iii) various Accessories of Comitrol Processor. The decision of CESTAT in the case of MAFCO Ltd vs. Collector of Central Excise, Poona dated 23.07.1993 is not relevant to the case as the said case dealt with the issue as to whether the preparation of fruit pulp amounts to manufacture and thereby attracting levy of duty under the Central Excise Act. Thus it was an issue of Excise taxation which was adjudicated. The DGFT circular No.12/(RE-2010/2009-14 dated 17.01.2011 clarified that the processed foods cannot be treated as agricultural products. Para 5.7.6 of HBP 2009-14 is not applicable in the instant case. However, the clarification relating to processed products not being considered for exemption of average export obligation was issued in 2011. Whether such clarification took into account differentiation of agriculture products in terms of primary and secondary processing is not clear as this was discussed in a review meeting and clarification was issued in the shape of Minutes of the Meeting. Further, it needs to be examined in the context of requirement of capital goods under EPCG for agriculture products in case processed agriculture products are not allowed for the purpose of



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fulfillment of average EO. In addition, whether such clarification will apply with prospective effect or from retrospective effect has also not been examined by the RA while disposing off the case.

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

ORDER

F.No. 18/63/2019-20/ECA.I/385

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The Review petition is admitted. The matter is referred to Policy Interpretation Committee (PIC) and the views obtained. Outcome of this review petition will be based on the decision of the PIC. Accordingly, the case is remanded to the Adjudicating Authority to take a view based on the decision of the PIC.



[Signature]
18.11.2022

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. Cleanfoods Ltd., No. 5AC-510, HRBR Layout, 2nd Block Kalyan Nagar, Outer Ring Road, Bangalore - 560043.
2. Policy Interpretation Committee, DGFT
3. Joint Director General of Foreign Trade, Kendriya Sadan, 6th Floor, C & E Wing, 17th Main Road, Koramangala, 2nd Block, Bangalore - 560034.
4. CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- ✓ 5. DGFT Website.

[Signature]

(Dilip Kumar)
Dy. Director General of Foreign Trade