

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

F.No. 18/88/2018-19/ECA-I

293+298

Date of Order: 18 .01.2021

Date of Dispatch: 18 .01.2021

Name of the Appellant:

Dr. Siddhan Subramanian, Shri Surendra Shrikrishna Somani, Shri Susheel Gajadhar Somani, Dr. Sunita Banerjee, Shri Vijay Kumar Bhandari, Dr. Arvind Keshavji Mehta, all Directors of Kopran Ltd., Mumbai (IEC 0388066989).

Orders reviewed against:

Orders-in-Appeal No.
03/16/144/00009/AM19/799,
03/16/144/00008/AM19/798,
03/16/144/00007/AM19/794,
03/16/144/00006/AM19,
03/16/144/00005/AM19/793,
03/16/144/00004/AM19/797, all dated
24.08.2018 passed by Addl. DGFT, Mumbai.

Order-in-Review passed by:

Amit Yadav, DGFT

Order-in-Review

Dr. Siddhan Subramanian, Shri Surendra Shrikrishna Somani, Shri Susheel Gajadhar Somani, Dr. Sunita Banerjee, Shri Vijay Kumar Bhandari, Dr. Arvind Keshavji Mehta, all Directors of Kopran Ltd., Mumbai (here-in-after referred to as the 'Petitioner') have filed Review Petitions, all dated 06.02.2019, under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as 'the Act'), against Orders-in-Appeal No. 03/16/144/00009/AM19/799, 03/16/144/00008/AM19/798, 03/16/144/00007/AM19/794, 03/16/144/00006/AM19, 03/16/144/00005/AM19/793 and 03/16/144/00004/AM19/797 all dated 24.08.2018 passed by Addl. DGFT, Mumbai upholding the Order-in-Original (O-i-O) dated 12.02.2018 passed by the Adjudicating Authority i.e. imposing a composite penalty of Rs.8,50,000/- on Kopran Ltd. and on all the above Petitioners, in addition to payment of customs duty and applicable interest thereon.



Brief facts of the case

2.1 Kopran Limited obtained an Advance Authorisation No. 0310323675 dated 29.03.2005 from RA, Mumbai for a CIF value of Rs.2,34,73,692/- (US\$ 5,33,493) with an obligation to export specified products for an FOB value of US \$ 5,49,700 to be completed within a period of 24 months from the date of issue of the Authorisation. As per conditions of the Authorisation, Kopran was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO) within two months from the date of expiry of the export obligation. However, Kopran failed to submit the prescribed documents.

2.2 A Show Cause Notice dated 12.09.2012 was issued to Kopran and the Petitioners under Section 14 for action under Section 11(2) of the Act. Kopran submitted documents towards discharge of export obligation. On scrutiny of the documents, it was found that Kopran Ltd. made excess import and therefore it was asked to regularize the case in terms of para 4.49 of Handbook of Procedure 2015-20. Kopran Ltd. failed to regularize the excess imports. The Adjudicating Authority passed an O-i-O No. 03/01/002/00068/AM.13 dated 12.02.2018 imposing a penalty of Rs. 8,50,000/- on Kopran and the Petitioners, in addition to payment of customs duty and applicable interest thereon.

2.3 The Petitioners filed appeals, on 03.04.2018, before the Appellate Authority against O-i-O No. dated 12.02.2018. The Appellate Authority granted Personal Hearing on 01.08.2018. Shri Ashutosh Mishra, Advocate, appeared on behalf of the Petitioner.

2.4 The Appellate Authority observed the following in its order:

- (i) *Relevant Statute lays down the provisions for imposing liability on a director or circumstances exists that warrant lifting of Corporate veil.*
- (ii) *A specific director is found responsible for relevant functions of the Company leading to the circumstances for lifting of Corporate veil.*
- (ii) *Evidence that such Director has used the Company for fraudulent purposes or personal gains is brought on record.*
- (iv) *As regards liability of director/s it is pertinent to note that under Section 8 of FT(DR) Act, it is provided that:-*



Section 8 (A)(1) where.....(a) any person has contravened any of the provisions of this Act or any rules or orders made there under or the Foreign Trade Policy or any other law for the time being in force.....

(b) the Director General or any other officer authorized by him has reason to believe that any person has made an export or import in a manner prejudicial to the trade relation of India with any foreign country or to the interests of other persons engaged in imports or exports or has brought disrepute to the credit.....

(c) any person who imports or exports specified goods or services in contravention of any provisions of this Act or any Rules or orders made there under or the foreign trade policy.....

The Director General or any other officer authorized by him may call for the record or any other information from that person and may after giving to that person a notice in writing.....

In view of above provisions, it is evident that the director/s referred to as person (stressed "person") is liable to discharge the liabilities/responsibilities of the company.

4. A Director is responsible for all day-to-day activities of the Company. If a Director were an Executive Director, depending on his qualifications, he would be involved in some specific functions of the company. In this case (the Petitioner) is a Director as per IEC data base. It was his responsibility and duty to get the case regularized for excess imports. Default of not getting the case regularized has occurred in the tenure of (the Petitioner), as a Director who was responsible for his act which tantamount to violation of Section 11(2) of Foreign Trade (Development & Regulation) Act, 1992, as amended.

Vide orders dated 24.08.2018, the Appellate Authority dismissed the Appeal concluding that the Petitioners have failed to regularize the case for excess import.

3. The Petitioners submitted Review Petitions, all dated 04.02.2019, to the undersigned. The Petitioners have submitted the following:

(a) the Impugned Orders passed by the Appellate Authority are erroneous for the reason that these have blatantly imposed a composite penalty on Koproan Ltd. and the Petitioners, without assigning the exact and specific role played by the

[Handwritten signature]



Petitioners in the alleged offence. That all Impugned Orders are silent on the role played by the Petitioners,

(b) both the Company and the Directors are independent entities and in absence of any finding am/or allegation of any collusion between the Directors including the Petitioners and the Company, the imposition of penalty is clearly uncalled and unwarranted. Further, in any case, since the quantum of penalty imposed on the Petitioners is unspecific and unquantified and therefore, the Impugned Orders are liable to be quashed on this ground alone,

(c) the Show Cause Notice does not make any averments on the Petitioners. Therefore, the Order-in-Original and Orders-in-Appeal have gone beyond the Show Cause Notice by holding the Petitioners liable. Thus, the Orders are liable to be set aside on this ground itself.

(d) in absence of any specific provision under Section 11(2), the Petitioners cannot be made liable for fiscal penalty for failure of the company. Under Section 11(2) it is the person, who makes export or import in contravention of the Act, who is liable to penalty. Under Para 9.38 of the FTP, a Person has been defined under to mean both – natural and legal and includes individual, firm, society, company, corporation or any other legal person including DGFT officials. In the present matter, the above definition of 'Person' is therefore the Company, i.e. a separate legal person in law and the holder of the IE Code Number and the Advance Authorization, who is liable for penalty and not the Petitioners.

4. Comments on the Review Petition were asked from the RA Mumbai. Vide letter dated 23.08.2019, RA Mumbai stated the following: -

- i) the Show Cause Notices were duly served on all the Petitioners.
- ii) all the petitioners were granted opportunity of Personal Hearing
- iii) detailed reasons for imposing penalties on the Petitioners have been given in para 9.3 and 9.4 of the Appellate Orders.

5. The Petitioners were granted opportunity of Personal Hearing on 09.01.2020. I have gone through the facts and records carefully. The Authorisation holder is a Public Limited Company. It has corporate identity. It is a legal entity (or legal person), separate and distinct from those of its Directors. It's shareholders have limited liability. Specific role and violation(s) by the Director(s) of Kopran Ltd., Mumbai, i.e. the Petitioners needs be established by the Adjudicating Authority. The Petitioners personal liability cannot be imputed just because of the fact that they are Directors as per IEC data base. The Adjudicating/Appellate Authority has not examined the personal role and



contraventions made by the Petitioners. Secondly, the penalty amount has also not been specified for each of the Petitioner. It is also pertinent to mention that the Order in Original dated 12.02.2018, as well as the Order in Appeal dated 30.08.2018 of Kopran Ltd. pertaining to the same Authorisation from which these proceeding are flowing, has been set aside.

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

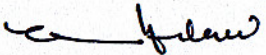
Order

F.No. 18/88/2018-19/ECA-I | 299

Dated: 18 .01.2021

Order in Original No. 03/01/002/00068/AM.13 dated 12.02.2018 in so far as it pertains to the Petitioners and Orders-in-Appeal No. 03/16/144/00009/AM19/799, 03/16/144/00008/AM19/798, 03/16/144/00007/AM19/794, 03/16/144/00006/AM19, 03/16/144/00005/AM19/793 and 03/16/144/00004/AM19/797 all dated 24.08.2018 are set aside. The Review Petitions are admitted and the matter is remanded back to the Adjudicating Authority for *denovo* consideration.




(Amit Yadav)

Director General of Foreign Trade

Copy To:

- (i) Dr. Siddhan Subramanian, 403, Wellington CHS, Hiranandani Estate, Ghodbunder Road, Patilpada, Thane, Maharashtra - 400615
- (ii) Shri Surendra Shrikrishna Somani, 86-A, Netaji Subhas Road, Marine Drive, Mumbai, Maharashtra - 400020.
- (iii) Shri Susheel Gajadhar Somnai, 403, Olympus Altamount Road, Cumballa Hill, Mumbai, Maharashtra - 400026
- (iv) Dr. Sunita Banerjee, 1011/1012, Sheffield Towers, 2nd Cross Road, Lokhandwala Complex, Andheri, Maharashtra - 400053.

- (v) Shri Vijay Kumar Bhandari, 1704, Wallace Apartment, 17th Floor, Sleater Road, Grant Road (W), Mumbai, Maharashtra - 400007
- (vi) Dr. Arvind Keshavji Mehta, Krishna Bhavan, 2nd Floor, 43, Vijay Wadi Krishna Bhavan, JSS Rd, Kalb, Mumbai, Maharashtra - 400002.
- (vii) Addl. DGFT, Nishtha Bhawan (New C.G.O. Complex), 48, Vithaldas Thackersey Marg, New Marine Lines, Churchgate, Mumbai-400020.
- (viii) DGFT website.

Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade

d/c

Issued