

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

F.No. 18/27/2021-22/ECA.I/

Date of Order : 13.06.2023

Date of Despatch: 20.06.2023

Name of the Petitioner:

M/s Chaitanya Preci-tech Pvt. Ltd.  
#316, 8<sup>th</sup>Cros, 4<sup>th</sup> Phase, Peenya Industrial  
Area, Bangalore - 5360058.

IEC No.

0701014733

Order Reviewed against:

Order-in-Appeal No. 07/Addl.DGFT  
/Appeal/00010/AM21 dated 18.05.2021  
passed by Addl. DGFT, Bangalore

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

**Order-in-Review**

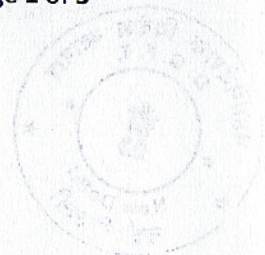
M/s Chaitanya Preci-tech Pvt. Ltd., Bangalore (here-in-after referred to as the 'Petitioner') having IEC No. 0701014733 filed Review Petition dated 01.12.2021 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Appeal No. 07/Addl. DGFT/Appeal/00010/AM21 dated 18.05.2021 passed by Addl. DGFT, Bangalore upholding the Order-in-Original No.07/21/021/00047/AM04 dated 16.12.2016 imposing a penalty of Rs. 34,46,832/- along with payment of customs duty + applicable interest thereon, on the Petitioner and cancelling the subject EPCG authorization ab-initio. It was also ordered not to issue further authorization to the firm/company or to any other firm/company in which the Proprietor/Partners/Directors of this firm/company are directly or indirectly involved in the day-to-day activities of that firm.

**Brief of the Case**

2.1 M/s Chaitanya Preci-tech Pvt. Ltd. had applied and obtained an EPCG Authorization No.0730001017 dated 09.05.2003 for duty saved of Rs.17,23,416/- for import of Capital Goods with a condition to fulfill export obligation for a FOB value of Rs.1,37,87,328/- (US\$ 2,88,136.42) within a period of 8 years from the date of issue



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of authorization. The authorization was subsequently amended to duty saved value of Rs.2,15,432/- and FOB value was proportionately reduced to Rs.17,23,416/- on 04.08.2003. EOP expired on 08.05.2011.

2.2 The Petitioner did not submit the requisite documents towards fulfillment of export obligation. RA, Bangalore issued cautionary letters dated 30.08.2010, 14.11.2012 and 21.02.2014 but the Petitioner did not respond. RA, Bangalore issued SCN dated 07.01.2015 with opportunity of PH on 23.01.2015. The Petitioner neither responded to SCN nor availed the opportunity of PH on 23.01.2015. The SCN was sent to the petitioner at their two addresses (No. 24, Ashirwad, 8<sup>th</sup> Main Road, RMV 2<sup>nd</sup> Stage, Bangalore-560 016 and A-68, Rajaji Nagar, Industrial Estate, Chord Road, Bangalore-560 044) with a copy to customs. In view of the above, the Adjudicating Authority issued Order-in-Original (OIO) No. 07/21/021/00047/AM04 dated 16.12.2016 imposing a penalty of Rs.34,46,832/- along with payment of customs duty + applicable interest thereon, on the petitioner and cancelled the subject EPCG authorization ab-initio. It was also ordered not to issue further authorization to the firm/company or to any other firm/company in which the Proprietor /Partners /Directors of this firm/company are directly or indirectly involved in the day-to-day activities of that firm.

2.3 The Petitioner filed an appeal dated 01.02.2021 before the Appellate Authority which was beyond the stipulated time. Shri Ramesh Kumar, Managing Director of the Petitioner appeared for personal hearing. He stated that during 2007, they got the IEC amended and the said address (No. 24, Ashirwad, 8<sup>th</sup> Main Road, RMV 2<sup>nd</sup> Stage, Bangalore-560 016) was no longer valid. Thus, their plea is that they did not receive the SCN nor the Adjudication order otherwise they would have immediately approached RA, Bangalore office for finalization of the issue for EODC/filing of appeal. However the adjudication order was also addressed to their new address A-68, Rajaji Nagar, Industrial Estate, Chord Road, Bangalore-560 044 and the Directors but there is no record of that being undelivered.

2.4 They have requested to admit the Appeal as 'in time' taking the actual date of obtaining the Adjudication Order by them from the office and consider the Appeal. As per submission, they approached the office and obtained the Order-in-Original in the month of January 2021. In the appeal, it was claimed that they have fulfilled the exports and in fact they were having very good exports every month during that period. They stated that they would be able to satisfy the condition of fulfillment of export obligation. However without giving into the merits of the claim of EO being fulfilled, the appeal is rejected as time barred vide Order-in-Appeal (OIA) No. 07/Addl. DGFT/Appeal/00010/AM21 dated 18.05.2021 passed by Addl. DGFT, Bangalore.

3.1 Now, the Petitioner has filed the present review petition dated 01.12.2021 on the following grounds:-



(i) The export obligation was wrongly determined in EPCG License No.0730001017 dated 09.05.2003, as Rs.1,37,87,328 (USD 2,88,136.42) which on the petitioner's request was rectified to Rs.17,23,416 (USD 36,017.05) for EO, as the duty saved amount is only Rs 2,15,427,

(ii) The petitioner also claims of not knowing or receiving Order-in-Original. If received on time Petitioner would have filed a Review Petition on time, without any delay, as they have completed the export obligations on time and made sufficient exports every year,

(iii) When the Petitioner during end of January, 2021 came to know that, their export claims were denied by a deficiency letter, then the Petitioner's letter dated 08.02.2021 requested for a copy of the Order-in-Original. The Petitioner filed a Appeal Petition before the ADGFT, Bangalore on 01.02.2021 itself (within 15 days itself from the date of knowing the Order-in-Original,

(iv) The Order-in-Original stated the Audit Observation of the case-Audit Memo No.060 dated 17.06.2016 and it appears that just to close this audit observation, the disputed Order-in-Original has been passed hurriedly on 16.12.2016, by misplacing the documents submitted by the Petitioner and by sending corresponding letters to the wrong & old address, which denied sufficient opportunity to the Petitioner,

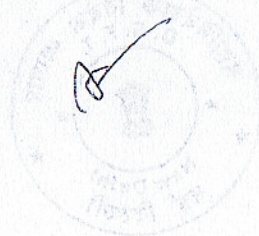
(v) The Order-in-Original imposes a penalty of Rs.34,46,832/- which is mentioned as less than twice the duty saved but the actual duty saved amount is only Rs 2,15,427/. Accordingly twice the duty saved amount should have been Rs.4,30,854/- and not Rs 34,46,832/- and hence the Order-in-Original is defective,

(vi) In the Order-in-Original, it stated that full duty and interest as applicable to be paid by the Petitioner, without referring to the Petitioner's Bank Guarantee (available in the EPCG License file), submitted for the full duty saved amount, and is readily liable for forfeiture for the full duty saved amount, if EO is not cleared by the Petitioner. Without using this option, order-in-original passed by determining wrong penalty's and hence the order is not correct.

3.2 The Petitioner has prayed :-

- (i) to exempt from pre-deposit of penalty, as the penalty amount is wrongly determined in OIO,
- (ii) to set aside the OIO & OIA.

4.1 The Reviewing Authority granted personal hearing to the Petitioner on 27.04.2023. Shri Ramesh Kumar, Managing Director of the Petitioner attended the PH on behalf of the firm. Petitioner informed that they had received the communication late because their factory address kept on changing i.e. (i) 2002-2004 Ashirvad Sadasya Nagar, (ii) 2004-2007 Sadasya Nagar Bangalore and (iii) 2007 Peenya



Industrial area Bangalore. They had fulfilled the Export obligation and Average Export Obligation and already submitted the documents to RA, Bangalore. Copies of CA certified Shipping Bills and bank statement are available with them. Shri Lokesh HD, Jt.DGFT, RA, Bangalore attended the meeting. He intimated the Petitioner had fulfilled the EO within two years, but statement copy of fulfillment of average EO not available with them in the file. Firm had been communicated multiple times in this regard. The same was not available during the passing order of OIO and OIA and same is not available even today.

4.2 During the personal hearing, the Petitioner was directed to submit the copies of CA certified copy of Shipping bill and bank statement to RA, Bangalore and RA, Bangalore will examine the issue and furnish a report to HQ. RA, Bangalore vide mail dated 29.05.2023 have is intimated that based on the documents furnished by the Petitioner on 25.05.2023, it is observed that the firm had fulfilled Average Export Obligation (AEO) along with specific export obligation.

5. I have gone through the facts and records of the case carefully. The Petitioner had obtained an EPCG authorization No.0730001017 dated 09.05.2003 for import of capital goods with a condition to fulfill export obligation within a period of 8 years from the date of issue of authorization. The Petitioner was imposed a penalty of Rs.34,46,832/- along with payment of customs duty + applicable interest thereon and the EPCG authorization was ab-initio cancelled. The Petitioner had fulfilled the EO within two years and submitted all the documents to RA, Bangalore. However, documents relating to fulfillment of AEO was not available with RA, Bangalore at the time of passing of the adjudication & appellate orders. The Petitioner has since furnished the documents and RA, Bangalore has confirmed the same vide email dated 29.05.2023.

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

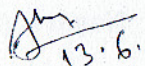
**ORDER**

F.No. 18/27/2021-22/ECA.I/110

Dated:13.06.2023

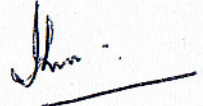
The Review Petition dated 01.12.2021 filed by the Petitioner against Order-in-Appeal No. 07/Addl. DGFT/Appeal /00010/AM21 dated 18.05.2021 passed by Addl. DGFT, Bangalore is admitted. Penalty imposed vide OIO dated 16.12.2016 is set aside. The case is remanded to RA, Bangalore to examine the documents towards Export obligation fulfillment of the EPCG authorization No. 0730001017 dt. 09.05.2003.



  
(Santosh Kumar Sarangi)  
Director General of Foreign Trade

Copy to:-

1. M/s Chaitanya Preci-tech Pvt. Ltd., #316, 8<sup>th</sup>Cros, 4<sup>th</sup> Phase, Peenya Industrial Area, Bangalore - 5360058.
2. The Addl. Director General of Foreign Trade, Bangalore.
3. Central Economic Intelligence Bureau, 1<sup>st</sup>, 6<sup>th</sup>& 8<sup>th</sup> Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
4. DGFT Website.



(A.S. Lungreishang)

Dy. Director General of Foreign Trade



