

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

F. No. 18/20/2022-23/ECA.I/

Date of Order : 12 .10.2023

Date of Despatch: 16 .10.2023

Name of the Petitioner:

M/s MRK Granites,
5/18 H, Rajaji Avenue,
P&T Colony East, New Fairlands,
Salem, Tamilnadu – 636016.

M/s MRK Granites
19, Ramasamy Nagar,
Narasothipatti,
Salem, Tamilnadu – 636004.

IEC No.

3294005652

Order Reviewed against:

Order-in-Appeal No. 04/95/A(13)/AM20
dated 12.04.2022 passed by Addl. DGFT,
Chennai

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Review

M/s MRK Granites, Salem (here-in-after referred to as 'the petitioner') having IEC No.3294005652 filed Review Petition dated 30.06.2022 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Appeal No. 04/95/A(13)/AM20 dated 12.04.2022 passed by Addl. DGFT, Chennai dismissing the appeal against the Order-in-Original No. 32/21/021/00354/AM05 dated 15.03.2019 imposing a penalty of Rs. 5,00,000/- on the licensee and its Proprietor/Partners/Directors in addition to customs duty plus interest payable to the customs authority concerned as there was no further reply nor did they appear for the personal hearing granted to them.

Brief of the Case

2. The Petitioner had obtained an EPCG Authorization No. 3230003295 dated 14.09.2004 for a total notional customs duty saved of Rs. 17,46,193.50/- under 5%



NFE basis (EPCG Scheme) for procurement of capital goods indigenously with an obligation to export 'Dimensional Rough Granite Block' manufactured out of indigenously procured capital goods for a FOB value of US\$ 300420.38/- and also the average export obligation to the extent of US\$ 1,86,320/- within a period of 8 years from the date of issue of authorization.

3. The EOP had expired on 13.09.2012. The Petitioner did not submit any original documents viz. Statement of exports, original shipping bills, BRC, Installation Certificate etc. showing fulfillment of export obligation (EO) against the subject EPCG authorization within the prescribed time limit.

4. A Demand-cum-Show Cause Notice dated 18.01.2013 was issued to the petitioner u/s 14 for action u/s 11(2) of FTDR Act, 1992, as amended. The petitioner replied that it has utilized the authorization for a duty saved value of Rs. 11,92,212/- only and Customs have already invoked the Bank Guarantee for a value of Rs.2,99,000/-. The petitioner submitted the copies of shipping bills accounted towards main export obligation. Since, the petitioner had not maintained the average export obligation, the adjudicating authority had advised to pay the balance customs duty of Rs.8,93,212/- plus interest to the concerned customs authority and produce the proof thereof within 30 days vide letter dated 11.01.2015. The petitioner did not respond to this letter.

5. In view of above, the Adjudicating Authority is fully convinced that the petitioner and its Proprietor/Partners/Directors, as the case may be, are guilty of violating the conditions of the authorization in question thereby liable to a penalty. Therefore, the adjudicating authority passed an Order-in-Original (OIO) No. 32/21/021/00354/AM05 dated 15.03.2019 imposing a penalty of Rs. 5,00,000/- on the petitioner and its Proprietor/Partners/Directors in addition to customs duty plus interest payable to the Customs authority/concerned as there was no further reply nor did they appear for the personal hearing granted to them. It was also ordered that no further authorization shall be issued to the petitioner or to any other firm in which the Proprietor/Partners/Directors of the petitioner is/are directly involved in the day to day activities of that firm. The petitioner was put under DEL vide DEL order dated 15.03.2019.

6. The Petitioner filed an appeal against the OIO dated 15.03.2019 stating that it has imported only one machinery for its site and subsequently exported goods to a total value of US\$ 67323 till 01.02.2005 and also US\$ 58429 till 01.07.2005. The petitioner also informed that it has achieved direct export under EPCG Scheme for a value of US\$ 1,25,752/- equivalent to Rs. 54,81,852/-. The petitioner had expressed its inability to fulfill the export obligation due to the failure of quarries and also for want of necessary export orders.



7. The petitioner was called for personal hearing on 23.12.2019 and 28.01.2020 by the Appellate Authority (Zonal Addl. DGFT, Chennai). Shri M. Krishnan, MD and Advocate Shri M.R. Kanagasabai appeared for personal hearing on 28.01.2020. The petitioner was advised to regularize the case by paying applicable customs duty with interest and granted 45 days of time to do the same. The next personal hearing was granted on 13.03.2020, for which the petitioner did not respond and simultaneously personal hearing were granted on 20.04.2020, 01.06.2020, 18.02.21 and 25.01.2022 for which the petitioner did not turn up.

8. In view of above, the Appellate Authority gone through the facts and found that the petitioner has not fulfilled the export obligation against the subject EPCG authorization. No tangible or concerted efforts have been taken by the petitioner to fulfill the export obligation. It appears that the petitioner does not have the intent to make good the loss cause to the Government exchequer. Therefore, the Appellate Authority passed an Order-in-Appeal (OIA) No. 04/95/A(13)/AM20 dated 12.04.2022 and dismissed the appeal.

9. Now, the petitioner had filed the review petition dated 30.06.2022 against the OIA dated 12.04.2022 on the following grounds:

(i) Penalty is not imposable under Section 11(2) of FTDR Act, 1992. Penalty cannot be imposed in case of non-fulfillment of part EO due to operational difficulties.

(ii) Penalty cannot be imposed jointly on the petitioner and its Directors without specific quantification.

(iii) The OIO was issued beyond reasonable period of time and there is an inordinate delay in adjudication proceedings.

10. The Petitioner has prayed as under:-

(i) Allow the review petition and set aside the OIA dated 12.04.2022.

(ii) Set aside the penalty of Rs. 5,00,000/-.

(iii) Grant of personal hearing.

(iv) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.



11. The Reviewing Authority granted the personal hearing to the Petitioner on 22.09.2023. Shri Yogesh Srinivasan and Shri S. Ganesh Aravindh, Authorised Representatives of the firm attended the PH. The Petitioner has submitted that they have obtained the subjected EPCG license in 2004 and they have started their projects, but after some point of time there was a serious lacked of project as a result they were not able to fulfill the EO. They have utilized the license to the tune of Rs.11,92,212/-. Now, the shortfall of non-fulfillment of obligation is to the tune of Rs.8,93,212/-. A Bank Guarantee has already been en-cashed and provided to them for Rs.2,99,000/-. They are mobilizing the funds to pay the unfulfilled EO, but unable to fulfill the EO. Now, penalty has been imposed for Rs.5,00,000/-, vide O-I-O dated 15.03.2019, which is almost half of the duty saved value.

11.1 Ms. Rajalakshmi Devraj, Addl. DGFT RA Chennai had attended the meeting. It was informed that the Petitioner is eligible for Amnesty Scheme. The license was issued in 2004 and EO period falls beyond 2013. Since, the Petitioner did not fulfill the EO, they have to regularize the case by paying the customs duty plus interest. So the Petitioner can go for the amnesty scheme and regularize the case. Regarding unfulfilled EOP, they can apply for extension of EO as per the procedure, get the amnesty scheme and regularize the case. Otherwise the Petitioner really did not fulfill the EO as per the policy. Ms. Mary Rathinammal, Asstt. DGFT, RA Coimbatore was also attended the meeting.

12. I have gone through the facts and records of the case carefully. The Petitioner had obtained an EPCG Authorization No.3230003295 dated 14.09.2004 for a total notional customs duty saved of Rs.17,46,193.50/- under 5% NFE basis (EPCG Scheme) for procurement of capital goods indigenously with an obligation to export 'Dimensional Rough Granite Block' manufactured out of indigenously procured capital goods for a FOB value of US\$ 300420.38/- and also the average export obligation to the extent of US\$ 1,86,320/- within a period of 8 years from the date of issue of authorization. The EOP had expired on 13.09.2012. The Petitioner did not submit any original documents showing fulfillment of export obligation (E.O.) against the subject EPCG authorization within the prescribed time limit. The Adjudicating Authority passed an Order-in-Original (OIO) dated 15.03.2019 imposing a penalty of Rs.5,00,000/- on the petitioner and its Proprietor/Partners/Directors in addition to customs duty plus interest. The case is covered under the Amnesty Scheme and Petitioner was advised to apply under Amnesty Scheme and regularize the case.

13. Attention is invited to Public Notice No.02/2023 dated 01.04.2023 read with Public Notice No.07/2023 dated 18.04.2023 and Public Notice No.20/2023 dated 30.06.2023 which provides the Amnesty Scheme for one time settlement of default in export obligation by Advance and EPCG Authorization holders. The authorization holder can avail this benefit under the scheme by depositing the customs duty and interest with the jurisdictional customs authorities by 31.03.2024.



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

ORDER

F.No. 18/20/2022-23/ECA.I/170

Dated : 12.10.2023

The Petitioner is directed to pay the Customs Duty and interest under the Amnesty Scheme issued vide Public Notice No.2/2023 dated 01.04.2023 read with Public Notice No.07/2023 dated 18.04.2023 and Public Notice No.20/2023 dated 30.06.2023 by 31.03.2024 and submit the documentary evidence to RA, Coimbatore. RA, Coimbatore shall examine the documents submitted by the Petitioner and consider the case under Amnesty Scheme. Failure to pay the necessary duty and interest under the Scheme by 31.03.2024 shall lead to re-imposition of the penalty.



[Signature]
12.10.

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. M/s MRK Granites, 5/18 H, Rajaji Avenue, P&T Colony East, New Fairlands, Salem, Tamilnadu – 636016.
2. M/s MRK Granites, 19, Ramasamy Nagar, Narasothipatti, Salem, Tamilnadu – 636004.
3. O/o the Joint Director General of Foreign Trade, Coimbatore.
4. The Addl. Director General of Foreign Trade, Chennai.
5. Central Economic Intelligence Bureau, 1st, 6th & 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
- ✓ 6. DGFT Website.

[Signature]

(A.S. Lungreishang)
Dy. Director General of Foreign Trade