

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

F.No. 18/64/2019-20/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/ 00916/
AM05 dated 21.03.2018 passed by Assistant
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 08.02.2020 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.07/21/021/00916/AM05 dated 21.03.2018 passed by Assistant DGFT, Bangalore imposing a penalty of Rs.7,56,663.21 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. 0730002533 dated 08.02.2005RA, 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.7,56,663.21 with an obligation to export of "Fruits and Vegetable pulps and Concentrates, Juices, Pastes, Purees, Squashes, Sauces, Jams, Jellies, Marmalades, etc." for an FOB value of US\$ 130,178.61 to be completed within a period of 8 years from the



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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 07.02.2013 but the Petitioner did not submit any document towards fulfillment of export obligation. A Show Cause Notice (SCN) was issued on 27.05.2015. As the Petitioner did not respond, RA, Bangalore placed its IEC in Denied Entity List (DEL) and requested customs authorities to recover the entire customs duty with interest vide the letter dated 20.08.2015. Another SCN was issued on 24.04.2017 which was returned undelivered. The Adjudicating Authority observed that the Petitioner is guilty of contravening Section 11 of the Act and willfully ignored the demand raised to submit Export Obligation documents or regularize the matter by way of payment of customs duties with interest. The Adjudicating Authority imposed a penalty of Rs.7,56,663.21 in addition to payment of customs duty plus applicable interest on the Petitioner and its directors and cancelled the Authorization ab-initio vide OIO No. 07/21/021/00916/AM05 dated 21.03.2018. It was also ordered that no further license shall be issued to the Petitioner or any other firm in which the Proprietor/Partners/Directors of the Petitioner are directly or indirectly involved in day-to-day activities of that firm.

3.1 The Petitioner did not file any appeal against the OIO dated 21.03.2018 before the Appellate Authority. However, the Petitioner submitted a Review Petition dated 08.02.2020 to the undersigned stating that: -

- (i) it has two factories at Belgaum, Karnataka and Chittoor, Andhra for manufacture of fruit pulp and concentrates, vegetable pulp and concentrates, juices, pastes, purees, squashes, sauces, jams and jellies,
- (ii) it got the authorization invalidated for direct import to procure the capital goods - (a) Vapour Absorption Heat Pump Model ESD 20 AH and (b) Vapour Absorption Heat Pump Model Z 212 - indigenously and purchased domestically. It installed capital good mentioned at (a) above to its Chittoor factory and the capital good at (b) above to its Belgaum Factory,
- (iii) as per para 5.9 of FTP the export obligation to be fulfilled is @75% and therefore the export obligation is US\$ 97,633.96 whereas it made export of US\$ 1,36,861,



- (iv) 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,
- (v) it could not attend 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,
- (vi) its export products are agri product - mango pulp, and there is no requirement to maintain average export obligation in terms of para 5.7.6 read with appendix - 8 of HBP 2009-14.
- (vii) it submitted an application for redemption of authorization on 09.01.2020 after passing of OIO dated 21.03.2018. During pre-scrutiny stage, it was asked to furnish annual average statement duly attested by CA, but it did not submit the same,
- (viii) it did not file an appeal against the OIO dated 21.03.2018 due to stoppage of its business operations, its concerned staff left, change of its registered office, etc.

3.2 The Petitioner has prayed:

- (i) to hold that the export obligation has been fully completed,
- (ii) to set aside OIO dated 21.03.2018,
- (iii) to remand back the case to Adjudicating authority to consider the documents filed but returned to it and thereon to issue the EODC.

4.1 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 Poona.



4.2 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.

4.3 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) Vapour Absorption Heat Pump Model ESD 20 AH and (b) Vapour Absorption Heat Pump Model Z 212. They have enclosed a copy of the DGFT 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.

5. I have gone through the fact and records of the case carefully. The import allowed under the authorization were (a) Vapour Absorption Heat Pump Model ESD 20 AH and (b) Vapour Absorption Heat Pump Model Z 212. The Petitioner purchased the capital goods domestically after invalidating the authorization. It installed one capital good at Chittoor Factory and another at Belgaum Factory. 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. 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 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.

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

ORDER

F.No. 18/64/2019-20/ECA.I/390

Date: 18.11.2022

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