

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

F.No. 18/36/2019-20/ECA.I/ Date of Order: 21.01.2022
Date of Despatch: 24.01.2022

Name of the Appellant: Kitman International, A/17, Raj
Industrial Complex, 2nd Floor,
Military Road, Marol,
Andheri(East), Mumbai-400 059.

IEC No. 0391007351

Order reviewed against: Order-in-Appeal No. 03/16/144/
000294/ AM19/2889 dated
19.09.2019 passed by Addl. DGFT,
Mumbai

Order-in-Review passed by: Amit Yadav, DGFT

Order-in-Review

M/s Kitman International, Mumbai (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 14.11.2019 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 (OIA) No. 03/16/144/000294/AM19/2889 dated 19.09.2019 passed by the Appellate Authority upholding the Order-in-Original (OIO) No. 03/01/002/00150/AM-17 dated 18.09.2017. The Adjudicating Authority imposed a penalty of Rs. 7,50,000/- on the Petitioner in addition to payment of Customs duty plus applicable interest thereon.

Brief of the case

2.1 The Petitioner obtained an Advance Authorization No. 0310303567 dated 24.11.2004 for a CIF value of Rs. 4,38,269/- (US\$ 9,558.76) with an obligation to export for an FOB value of Rs. 4,77,907/- (US\$ 10,515/-) to be completed within a period of 24 months from the date of the authorization. As per conditions of the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO).

After the expiry of the EO period the Petitioner did not submit any documents evidencing fulfillment of export obligation. RA, Mumbai issued a Demand Notice dated 04.04.2008 directing the Petitioner to submit prescribed export documents evidencing fulfillment of EO. The Petitioner was granted personal

hearing on 05.05.2008. As no response was received from the Petitioner, RA, Mumbai issued a refusal order dated 11.06.2008 under Rule 7 of FT(Regulation) Rules, 1993. Subsequently, RA, Mumbai vide their letter dated 25.03.2014 requested the Petitioner to submit the original export documents or to pay customs duty plus interest on the imports made and regularize the case in terms of Public Notice No. 22 dated 12.08.2013 within the stipulated time upto 31.03.2014. However there was no response from the Petitioner.

2.3 On the basis of an audit memo by O/o the Controller of Aid Accounts Audit, Export Promotion Audit Wing (WZ), Mumbai, RA Mumbai issued a letter dated 05.08.2016 directing the Petitioner to submit original export documents evidencing fulfillment of EO but the Petitioner did not respond to the letter. A Show Cause Notice (SCN) dated 26.09.2016 was issued to the Petitioner under Section 14 for action under Section 11(2) of the FT(D&R) Act, 1992 alongwith an opportunity of personal hearing on 07.10.2016. The Petitioner neither submitted the export documents nor attended the personal hearing. Another opportunity of personal hearing was granted on 22.08.2017 vide the letter dated 28.07.2017, but the letter was returned undelivered. The Adjudicating Authority observed that the Petitioner had fully utilized the Authorization but did not make any exports and passed an OIO dated 18.09.2017 imposing a penalty of Rs. 7,50,000/- in addition of payment of customs duty plus interest as applicable.

3. The Petitioner filed an appeal on 20.11.2018 before the Appellate Authority. The Appellate Authority rejected the appeal as time barred vide OIA dated 19.09.2019.

4.1 The Petitioner has now submitted a Review Petition dated 14.11.2019 to the undersigned stating that:

- (i) it had made 100% import within the validity period and did not make any exports,
- (ii) it suffered big loss which resulted in discontinuation of its bank facilities and its bankers took over all the commercial premises in their possession and therefore it could not respond to various letters i.e. demand notice, refusal order, SCN and PH granted by RA, Mumbai from time to time,
- (iii) it lost the original Advance Authorization and requested RA, Mumbai to issue a letter so that it can get the utilization certificate from the Customs authorities,
- (iv) it intends to club the instant Advance Authorization No.0310303567 dated 24.11.2004 with the Advance Authorization No. 0310308625 dated 22.12.2004 in which excess export had been made.

4.2 The Petitioner has prayed that:

- (i) operation of the impugned order dated 18.09.2017 and 19.09.2019 passed by Dy DGFT, and Additional DGFT, Mumbai respectively which is against the Applicant be stayed pending disposal of the appeal,



[Handwritten signature]

- (ii) the pre-deposit of penalty of Rs. 7,50,000/- imposed in Order-in-Original dated 18.09.2017 and as confirmed by Addl. DGFT, Mumbai vide OIA dated 19.09.2019 be dispensed with,
- (iii) a personal hearing may be granted,
- (iv) such order or such other order be passed as deemed fit in interest of natural justice.

5. The Petitioner was granted personal hearing on 09.01.2020 which was attended by Shri Manmohan Arora, Partner of the Petitioner. He requested for clubbing of two advance authorizations No. 0310308625 dated 22.12.2004 and No. 0310303567 dated 24.11.2004. The Reviewing Authority had directed that a report be sought from RA, Mumbai. RA, Mumbai vide their email dated 11.01.2022 has furnished their comments in which it has inter-alia informed that as per para 4.38(i) of HBP, clubbing of authorizations issued on or before 31.03.2009 shall not be allowed. The Petitioner was again granted personal hearing on 13.01.2021 which was attended by Shri Manmohan Arora, Partner of the Petitioner. He requested that the two authorizations No. 0310308625 dated 22.12.2004 and No. 0310303567 dated 24.11.2004 be clubbed for calculation of EO fulfillment. Dr. Sampat Kumar, Jt. DGFT, Mumbai attended the hearing. He informed that the Petitioner did not make any exports. Further, in view of para 4.38(i) of HBP, the two authorization cannot be clubbed.

6. I have carefully gone through the records and submissions made and it is observed that the Petitioner made 100% import but did not make any export. As per para 4.38(i) of HBP, clubbing of authorizations issued on or before 31.03.2009 shall not be allowed. The two authorizations that the Petitioner has requested for clubbing were issued in 2004 and therefore the prayer of the Petitioner cannot be granted.

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

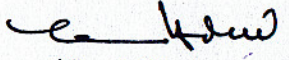
ORDER

F. No. 18/36/2019-20/ECA.I/447

Dated: 21. 01.2022

The Review Petition dated 14.11.2019 is rejected. Order-in-Appeal No. 03/01/002/000150/AM-17/2894 dated 19.09.2019 and Order-in-original No. 03/01/002/000150/AM-17 dated 18.09.2017 are upheld.




(Amit Yadav)
Director General of Foreign Trade

Copy to:

- (I) Kitman International, A/17, Raj Industrial Complex, 2nd Floor, Military Road, Marol, Andheri (East), Mumbai-400 059.
- (II) Addl. Director General of Foreign Trade, Nishtha Bhawan, New CGO Building, 48, Vithaldass Thackersey Marg, New Marine Lines, Churchgate, Mumbai-400 020. It is requested to initiate recovery proceedings against the Petitioner.
- (III) Central Economic Intelligence Bureau, 1st, 6th& 8 Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- ✓(IV) DGFT Website.

Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade