

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

F. No. 18/34/2023-24/ECA.I/220

Date of Order : 22 .12.2023

Date of Despatch: 22 .12.2023

Name of the Petitioner:

M/s AAK South East India Pvt. Ltd. (Earlier
M/s Arani Agro Oil Industries Pvt. Ltd.)
New Port Area, ADB Road,
Kakinada – 533 003.

IEC No.

0902000284

Order Reviewed against:

Order-in-Original No.
09/36/021/00064/AM04 dated 20.02.2013
passed by Jt. DGFT, Hyderabad

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Review

M/s AAK South East India Pvt. Ltd. (formerly M/s Arani Agro Oil Industries Pvt. Ltd.), Hyderabad (here-in-after referred to as 'the Petitioner') having IEC No. 0902000284 filed Review Petition dated 18.12.2023 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 No. 09/36/021/00064/AM04 dated 20.02.2013 passed by Jt. DGFT, Hyderabad imposing a fiscal penalty of Rs. 20,00,00,000/- on the Petitioner.

Brief of the Case

2. The Petitioner had obtained EPCG authorization No. 0930000647 dated 31.07.2003 for import of machinery for a duty saved value of Rs. 6,04,00,010/- with an export obligation (EO) to export the resultant product worth USD 1,00,98,225 i.e. 8 times of the CIF value of Capital goods on FOB basis within a period of 8 years from the date of issue of license and the EO shall be fulfilled by the use of the imported capital goods. The license holder shall submit a six monthly progress report from time to time, duly certified by a Chartered Accountant (CA) to the issuing authority.



3. The export obligation period (EOP) expired on 30.07.2011, but the Petitioner did not submit the documents towards fulfillment of EO block-wise as per the conditions stipulated. A Show Cause Notice (SCN) dated 24.01.2012 u/s 14 for action u/s 11(2) of FTDR Act, 1992 was issued to the Petitioner directing to submit the requisite documents. Since, no response received from the Petitioner, the Adjudicating Authority (RA, Hyderabad) passed an Adjudication Order No. 09/36/021/00064/AM04 dated 20.02.2013 imposing a fiscal penalty of Rs. 20,00,00,000/- on the Petitioner.

4. The Petitioner further stated that DGFT imposed ban on export of all edible oils under Chapter 15 on 17.03.2008, the ban was extended multiple times by issuance of several notifications and finally the ban was lifted after 10 years vide Notification dated 06.04.2018. Since there was a ban on export of all edible oils under Chapter 15 for 10 years, they got EPCG authorisation amended with two additional products i.e. Palm Oil Fractions and Animal Feed to complete their EO. They could not complete the export obligation within the original EOP as the quantity and value of the by products was very low. They could have completed EO within EOP by exporting the edible oils in bulk. As per FTP they are entitled for automatic extension of the EOP till 14.12.2014 i.e. for 3 years 4 month and 14 days for the period from March 17,2008 to July 31,2011) on account of the ban.

5.1 The Petitioner approached PRC Section, DGFT (Hqrs.) on 25.10.2023 with the following request :

(i) To grant Auto extension to EOP of EPCG Authorization no. 0930000647 dated 31.07.2003 up to 31.08.2013 considering 10 years ban on all edible products.

(ii) Inclusion of export shipments undertaken against EPCG License No.0930002931 dated 21.02.2007 towards fulfillment of EOP against EPCG Authorization no. 0930000647 dated 31st July 2003 and regularize the same under Amnesty Scheme.

5.2 PRC Section heard the aforesaid case on 24.11.2023. The decision of PRC Committee Meeting No. 21/AM24 dated 24.11.2023 is as under :

Decision : The Committee heard and went through the submission made by the applicant and discussed the matter at length and decided to refer the case to ECA Division for considering review if filed by applicant.

6.1 Now, the Petitioner has filed their Review Petition dated 18.12.2023 on the following grounds :

(i) The Petitioner intended to regularize said EPCG Authorisation as per Public Notice 02/2023 dated 01st April 2023 – Amnesty Scheme for one time settlement of default



in export obligations by Advance and ECPG Authorisation holders. They filed Application under Amnesty Scheme in June 2023, RA, Hyderabad rejected the application due to expiry of Export Obligation period prior to 2013.

(ii) As per the decision of PRC Committee, the Review application has been filed in ECA Division.

6.2 The Petitioner has prayed as under :

(i) To review the OIO No.F.No.09/36/021/ 00064/AM'04 dated 20.02.2013 and set aside the order;

(ii) Condone the delay in filing the present Review Petition;

(iii) Grant extension to export obligation beyond 12.08.2023 to enable us to regularise ECPG Authorisation No. 0930000647 dated 31.07.2003 under Amnesty Scheme, last date of filing application under Amnesty Scheme is 31.12.2023;

(iv) Consider all Exports Shipments Undertaken Vide ECPG Authorisation No.0930002931 Dated 21/02/2007 towards Fulfilment of Export Obligation of ECPG Authorisation No. 0930000647 Dated 31/07/2003 as did not claim while regularizing ECPG Authorisation No.0930002931 under Amnesty Scheme;

(v) To pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.

7. The Reviewing Authority granted the personal hearing to the Petitioner on 22.12.2023. Shri Dheeraj Talreja, President cum Director, Mr. Baquer Bengaliwala, Director cum CFO & Mrs. Bharti Punjabi – Senior Manager Legal attended the personal hearing on behalf of the Petitioner. Shri Akshay S.C., Jt. DGFT attended from RA, Hyderabad side.

12. I have gone through the facts and records of the case carefully. The Petitioner had obtained ECPG authorization No. 0930000647 dated 31.07.2003 for import of machinery for a duty saved value of Rs. 6,04,00,010/- with an export obligation (EO) to export the resultant product worth USD 1,00,98,225 i.e. 8 times of the CIF value of Capital goods on FOB basis within a period of 8 years from the date of issue of license and the EO shall be fulfilled by the use of the imported capital goods. The export obligation period (EOP) expired on 30.07.2011. Due to non fulfillment of export obligation documents, the Adjudicating authority passed OIO dated 20.02.2013 after following the due procedure. Now, the Petitioner has filed this Review Petition and prayed to grant Extension in Export Obligation to enable them to regularise ECPG Authorisation No. 0930000647 dated 31.07.2003 under Amnesty Scheme. Since, DGFT imposed ban on export of all edible oils under Chapter 15 on



17.03.2008 which was continued till 2018, the firm was unable to complete the Export Obligation under Force Majeure Clause.

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

ORDER

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Dated : 22.12.2023

The Review Petition dated 18.12.2023 filed by the Petitioner is admitted. The Adjudication Order dated 20.02.2013 passed by RA, Hyderabad is set aside. The case is remanded back to RA, Hyderabad for de novo consideration. The Petitioner is granted 3 years EO period Extension as requested by them and the firm is allowed to avail of the Amnesty scheme. Further, the exports made by the Petitioner be considered and for the balance unfulfilled EO duty and interest are to be paid under Amnesty scheme by the Petitioner.



22.12.

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. M/s AAK South East India Pvt. Ltd. (Earlier M/s Arani Agro Oil Industries Pvt. Ltd.), New Port Area, ADB Road, Kakinada – 533 003.
2. O/o the Addl. Director General of Foreign Trade, Hyderabad.
3. Central Economic Intelligence Bureau, 1st, 6th& 8th Floor, 'B' Wing, JanpathBhawan, Janpath, New Delhi – 110001.
- ✓ 4. DGFT Website.

Anita
22/12/23
(Anita Thakur)

Dy. Director General of Foreign Trade