

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

F.No. 18/31/2020-21/ECA.I/

Date of Order : 14 .11.2022

Date of Dispatch: 15 .11.2022

Name of the Applicant:

Kempsz Trading Pvt. Ltd., F-2, Bhargav
Towers, No. 20, Dinnur Main Road,
R.T. Nagar, Bangalore-560032.

IEC No.

0701005599

Order Reviewed against:

Order-in-Appeal No. 07/Addl.DGFT/
Appeal/00015/AM20 dated 22.08.2019 passed
by Additional DGFT, Bangalore.

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

Order-in-Review

Kempsz Trading Pvt. Ltd., (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 26.03.2021 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/00015/AM20 dated 22.08.2019 passed by Additional DGFT, Bangalore upholding the Order-in-Original (OIO) dated 05.02.2019 imposing a penalty of Rs. 10.00 lacs in addition to payment of customs duty saved and applicable interest, on the Petitioner.

Brief of the case

2.1 The Petitioner obtained an Advance Authorization No. 0710062284 dated 07.01.2009 for a CIF value of Rs. 8,33,250/- with an obligation to export for an FOB value of US\$666,600/- to be completed within a period of two years from the date of issue of the Authorization. As per conditions of the Authorization, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled export obligation (EO) within two months of expiry of EO period.

2.2 EO period expired on 07.01.2011. The Petitioner submitted documents on 12.03.2018, seven years after expiry of Export Obligation. RA, Bangalore scrutinized the documents and found that the authorization number was endorsed manually in all shipping bills. They took up this issue with the Commissioner of Customs, Chennai for verification. Customs authority



14.11.

informed that the manual endorsement of advance authorization number in the EDI shipping bills submitted for EO fulfillment by the Petitioner was not done by them. RA, Bangalore issued Show Cause Notice (SCN) dated 20.11.2018 for actions under Section 11(2) of the Act, and Rule 7 of Foreign Trade (Regulation) Rules, 1993. The Petitioner was also granted personal hearing on 29.11.2018. The Petitioner neither replied to the SCN nor appeared for personal hearing. The Adjudicating Authority observed that the Petitioner did not submit export documents evidencing fulfillment of export obligation and tried to fabricate the shipping bills by indicating the advance authorization number in the shipping bills without the approval of Customs authority. It also did not regularize the authorization by payment of Customs duty with interest. The Adjudicating Authority passed an OIO No. 07/21/040/01046/AM09 dated 05.02.2019 imposing a penalty of Rs. 10,00,000/- on the Petitioner and its Directors, in addition to payment of customs duty saved and interest thereon.

3. The Petitioner filed an appeal on 28.06.2019 before the Appellate Authority. The Appellate Authority dismissed the appeal as time barred vide OIA dated 22.08.2019.

4.1 The Petitioner has now submitted a review petition dated 26.03.2021 to the undersigned stating that:

- (i) it imported the raw material and completed the export obligation within the obligation period and received payment. It submitted the documents for issue of redemption certificate,
- (ii) it did not indicate authorization number and date in the shipping bills by mistake,
- (iii) in EDI systems, corrections cannot be done once shipping bill is passed and goods exported. Therefore, authorization number and date were indicated manually with seal and signature of the Customs officer,
- (iv) it deposited duty saved and interest thereon.

4.2 The Petitioner has prayed for :

- (i) setting aside the OIA dated 22.08.2019, and
- (ii) waiving off the penalty.

5. RA, Bangalore vide their letter dated 07.10.2021 furnished report on the review petition. They informed that the Petitioner had submitted fabricated documents. It has to regularize the entire import made against the Authorization and original TR challan & calculation sheet is required to be submitted alongwith payment of penalty imposed by the Adjudicating Authority.

6. The Petitioner was granted an opportunity of Personal Hearing on 11.10.2022 which was attended by Shri Achuth Rao, who looks after commercial operations of the Petitioner. He informed that the Petitioner fulfilled export obligation, but authorization number in the shipping bills were not mentioned by the clearing agent. It got the authorization number endorsed on the shipping bills. The Petitioner deposited Rs.5,03,221/- towards the customs



duty saved and interest thereon. Shri H.D. Lokesh, JDG, Bangalore also attended the hearing. He informed that the Petitioner exported Rough Granite Blocks whereas the Authorization was issued for Dimensional Dressed Granite Blocks. Further, the Petitioner fabricated the shipping bills by indicating manually the authorization number on the shipping bills. The Petitioner paid the duty saved amount plus interest, but has not paid the penalty amount.

7. I have gone through the records and facts carefully. The Petitioner did not fulfill the export obligation as the export item mentioned in the shipping bills was Rough Granite Blocks whereas the export item allowed under the authorization was Dimensional Dressed Granite Blocks. Further, the authorization number in the shipping bill were manually indicated which is not allowed. The Petitioner's shipping bills did not have the authorization number and the Petitioner attempted to alter the shipping bills manually with the intention to mislead the RA, Bangalore office and obtain export benefit through fraudulent means

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

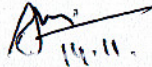
Order

F.No. 18/31/2020-21/ECA.I/373

Dated: 14.11.2022

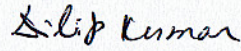
The Review Petition dated 26.03.2021 is dismissed. The Order-in-Appeal No. 07/Addl. DGFT/Appeal/00015/AM20 dated 22.08.2019 and the Order-in-Original No. 07/21/040/01046/AM09 dated 05.02.2019 are upheld.




(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy To:

- (i) Kempsz Trading Pvt. Ltd., F-2, Bhargav Towers, No. 20, Dinnur Main Road, R.T. Nagar, Bangalore-560032.
- (ii) Joint Director General of Foreign Trade, C & E Wing, 6th floor, Kendriya Sadan, 17th Main, 2nd block, Koramangala, Bangalore - 560 034 with the direction that the penalty amount be recovered from the Petitioner.
- (iii) CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- (iv) DGFT Website.


(Dilip Kumar)
Dy. Director General of Foreign Trade