

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

F.No. 18/15/2020-21/ECA.I/

Date of Order : 16.11.2022

Date of Dispatch: 18.11.2022

Name of the Applicant:

Southern Agro Engine Pvt. Ltd., 24 A, III Phase,
Industrial Estate, Guindy, Chennai - 600032

IEC No.

0497000270

Order Reviewed against:

Order-in-Appeal No. A(36)/Addl. DGFT/ECA/
Che/AM20 dated 11.03.2020 passed by
Additional DGFT, Chennai

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

Order-in-Review

Southern Agro Engine Pvt. Ltd., Chennai (here-in-after referred to as 'the Petitioner') filed a Review Petition on 21.09.2020 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Appeal (OIA) No. A(36)/Addl. DGFT/ECA/ Che/AM20 dated 11.03.2020 passed by Additional DGFT, Chennai upholding the Order-in-Original (OIO) dated 17.06.2019 imposing a penalty of Rs. 10,000/- and in addition to payment of customs duty saved and interest thereon, on the Petitioner.

Brief of the case

2.1 The Petitioner obtained an EPCG Authorization No. 0430003933 dated 01.08.2006 from the office of the Joint DGFT, Chennai 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. 3,47,474/- with an obligation to export for an FOB value of US\$ 59,716.26 to be completed within a period of 8 years from the date of issue of the Authorization. The Petitioner was required to maintain annual average export of Rs. 1,28,57,876/-. 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 expired on 31.07.2014. The Petitioner submitted some documents towards fulfillment of export obligation on 18.08.2014. RA, Chennai, on scrutiny, observed that the Petitioner did not submit complete documents and communicated the same



(Handwritten signature)

vide the letter dated 05.11.2014. The Petitioner vide its letter dated 25.02.2015 informed that it would submit the documents shortly. The Petitioner did not reply even after 4 years. RA, Chennai issued a Show Cause Notice dated 26.03.2019 for action under Section 11(2) and Section 9(2) of the Act read with Rule 7(k) of Foreign Trade (Regulation) Rules, 1993 alongwith an opportunity of personal hearing which was attended by the Petitioner on 09.05.2019. The Petitioner again submitted documents on 16.05.2019. The Adjudicating Authority observed that the Petitioner submitted free shipping bills / no export incentive shipping bills and it did not submit installation certificate issued by Central Excise Authority concerned. Further, it did not regularize the case by paying duty saved amount and interest thereon. The Adjudicating Authority passed OIO No.04/21/021/00342/AM07 dated 17.06.2019 imposing a penalty of Rs.10,000/- in addition of payment of customs duty saved and interest thereon.

3. The Petitioner submitted an appeal on 03.10.2019 against the OIO dated 17.06.2019. The Appellate Authority dismissed the appeal as time barred vide the OIA dated 11.03.2020.

4.1 The Petitioner submitted a Review Petition received on 21.09.2020 to the undersigned stating that :-

- (i) it submitted, on completion of export obligation, filed details in the prescribed format Appendix 9A duly signed and certified by the Bank and CA,
- (ii) its company situated near Adyar river submerged in water due to flood in the river in 2015 and suffered lot of damages including loss of documents. It therefore could not submit the shipping bills, but submitted copies of shipping bills,
- (iii) the procedural lapse of not mentioning EPCG authorization number in shipping bills may be condoned. Shipping bills are evident of fulfillment of export obligation as they were effected during the Export Obligation (EO) period,
- (iv) it is not justifiable to call for shipping bills and Bank certificates which were not prescribed documents.

4.2 The Petitioner has prayed that:

- (i) payment of Custom duty with interest and penalty be set aside,
- (ii) submission of shipping bills may be condoned,
- (iii) the appellate authority may be advised not to insist copies of shipping bills as documents were lost during natural calamity and beyond recovery,
- (iv) export obligation discharge certificate to be issued.

5. RA, Chennai vide their letter dated 14.07.2021 furnished a report on the review petition. They have informed that nine Shipping Bills were submitted out of which five were free shipping bills, and remaining four were under Drawback Scheme were. These shipping bills cannot be taken into account towards fulfillment of export obligation. Further, Petitioner did not maintain average export obligation.

6. The Petitioner was granted personal hearing on 11.10.2022 which was attended by D. Jayavijayan, Managing Director and Shri D. Abel Herbert, Sr. Manager (Import /Export). They



informed that the Petitioner lost number of documents during flood in 2015 in Adyar river. It fulfilled the export obligation and submitted export documents, but did not indicate authorization number and date on the shipping bills, by mistake. Shri K. Hrushikesh Reddy, DDG, Chennai was also present during the hearing. He informed that the Petitioner, in addition to not indicating the authorization number and date on the shipping bills, did not fulfill average export obligation which was 1.28 crores. It also did not submit installation certificate. On this the representatives of the Petitioner stated that it fulfilled average export obligation of Rs.3.0 crores and have supportive documents.

7. I have gone through the facts and records carefully. It is observed that the shipping bills submitted by the Petitioner do not have EPCG authorization number and date and therefore do not fulfill the regulatory requirements of being counted towards fulfillment of export obligation, nor has it submitted the installation certificate. The Petitioner has also not maintained the Average export obligation.

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

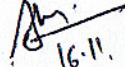
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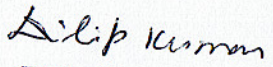
The Review Petition dated nil received on 21.10.2020 is rejected. Order-in-Appeal No. A(36)/Addl. DGFT/ECA/ Che/AM20 dated 11.03.2020 and Order-in-Original No. 04/21/021/00342/AM07 dated 17.06.2019 are upheld.




(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

- (I) Southern Agro Engine Pvt. Ltd., 24 A, III Phase, Industrial Estate, Guindy, Chennai - 600032.
- (II) Additional Director General of Foreign Trade, IV & V Floor, Shastri Bhawan Annexe, No. 26, Haddows Road, Chennai-600006. It is requested to recover the penalty amount immediately.
- (III) CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- ✓ (IV) DGFT Website.


(Dilip Kumar)
Dy. Director General of Foreign Trade