

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

F. No. 18/06/2023-24/ECA.I/194

Date of Order : 06.11.2023

Date of Despatch: 08.11.2023

Name of the Petitioner:

M/s Fibretec,
Proprietor Sweta Chaudhry
2/2A, Ho Chi Minh Sarani,
Kolkata – 700 071.

IEC No.

0202010295

Order Reviewed against:

Order-in-Appeal No. 18/47/FA/CRAD/17-18/ECA/KOL/Appeal-303 dated 03.03.2023 passed by Addl. DGFT, Kolkata.

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Review

M/s Fibretec, Kolkata(here-in-after referred to as 'the petitioner') having IEC No. 0202010295 filed Review Petition dated 08.05.2023 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Appeal No. 18/47/FA/CRAD/17-18/ECA/KOL/Appeal-303 dated 03.03.2023 passed by Addl. DGFT, Kolkata dismissing the appeal as being time barred against the Order-in-Original No.02/24/40/00235/AM'11/ECA-47/17-18 dated 06.06.2017 imposing a penalty of Rs. 5,00,000/- on the petitioner and its Directors in addition to payment of Customs Duty along with 15% interest p.a. U/S 11 of the FTDR Act 1992.

Brief of the Case

2. The Petitioner obtained an Advance Authorization No. 0210158232 dated 28.04.2011 for duty free import of capital goods for a CIF value of US\$ 40,000.00 (Rs.18,28,000.00) with an FOB Value of US\$ 46000.00(Rs.21,02,200.00) to be completed within a period of 36 months from the date of issue of the Authorization. As per the Condition of the Authorization the petitioner were required to submit the export documents towards fulfillment of obligation block wise and Installation Certificate within the time frame as mentioned in the FTP during the policy period.



3. The Export Obligation (EO) period was expired on April, 2014 and the petitioner had failed to furnish prescribed documentary evidence towards fulfillment of export obligation within the time frame. Therefore, a Show Cause Notice under Rule 7 of FTDR Rules 1993 & under section 9 & 11 of the FTDR Act, 1992 was issued on 06.03.2017 and a refusal order dated 08.05.2017 was issued.

4. The petitioner had contravened the provisions of the FTDR Act 1992 by way of non-submission of complete export documents and therefore Adjudicating Authority passed an Order-in-Original No.02/24/40/00235/AM'11/ECA-47/17-18 dated 06.06.2017 imposing a fiscal penalty of Rs 5,00,000/- on the petitioner and its Directors in addition to payment of Customs Duty along with 15% interest p.a. U/S 11 of the FTDR Act 1992.

5. The Petitioner did not prefer any appeal before the Appellate Authority against the OIO dated 06.06.2017 within the prescribed time limit, an IEC suspension Order dated 08.05.2017 was issued. The petitioner filed an appeal before the Appellate Authority on 01.03.2023 which was the expiry of the extended period of 30 days beyond the prescribed period of 45 days from the date of service of the OIO. Therefore, the appeal under Section 15 of the FTDR Act, 1992 was dismissed for being time-barred.

6.1 Now, the petitioner has filed the present Review Petition dated 08.05.2023 on the following grounds :-

(i) The Order in original as conveyed through the letter dated 06.06.2017 by the Joint Director General of Foreign Trade is not proper and the same maintainable in law.

(ii) The OIO contained in the letter dated 06.06.2017 was passed without granting any opportunity of personal hearing which is amounting to violation of the principles of natural justice.

(iii) There is no contrary evidence disclosed and/or stated in the Order-in-Original as contained in the letter dated 06.06.2017 and in such circumstances, rejection of appeal on the ground of time barred cannot be maintainable in law.

(iv) The Appellate authority did not go into the merit of the case but rejected mechanically on the ground of time barred and that to without assigning any reason, how the appeal was time barred.

(v) The Petitioner further submits that he was directed to deposit Customs duty and interest vide letter dated 07.12.2017, by the DGFT Authorities. The appellant was requested to pay the Customs duty and interest on excess import quantity of woven 94% Poly 6% Spandex woven Fabric of 5521.79 sq. mtr as ascertained by them an also to pay Rs.5.00 lacs as penalty. The appellant deposited the amount of



Rs. 197,369.99 being the total of Customs duty and interest through DD No.0093 dated 10.12.2017.

(vi) The Appellate authority failed to appreciate that the applicant in their appeal had fulfilled their obligation towards duty payment and interest and had paid excess duty and interest on qty. of import due to misread of figure 1111.7 sqmtr. instead of 111.7 sqmtr. Hence under such circumstances penalty should not have been imposed.

6.2 The Petitioner has prayed as under:

(i) OIO and OIA may kindly be set aside and the matter be remanded back for de-novo consideration by RA, Kolkata.

7. The Reviewing Authority granted the personal hearing to the Petitioner on 19.10.2023. Shri J.K. Singh, Advisor and Ms. Sweta Chaudhry, Proprietor of the firm attended the PH. The Petitioner stated that they had obtained the subject authorization on 28.04.2011 under no-norms category and imported in 2011 itself. In 2012 they have fulfilled 100% export obligation. Norms Committee fixed less norms therefore there was shortfall in export obligation. The shortfall is due to the less fixation by the Norms Committee. RA Kolkata issued SCN in March, 2017 wherein the Petitioner responded in April 2017 giving all documents of the fulfillment of export obligation. On 18.12.2017 they had paid Rs.197369.99 (Customs Duty plus interest) to the Customs Authority through DD No.0093 dated 10.12.2017 and submitted the proof of payment to RA Kolkata on 29.12.2017. In spite of that RA Kolkata did not reply to them but were asking to submit the certificate of utilization. They had approached the Customs Authority to issue the utilization certificate, but the customs are not issuing the utilization certificate. Meanwhile, the person who was looking after the work did not tell the receipt of OIO and other details of the case to Ms. Sweta Chaudhry, Proprietor of the firm, so this has been lapsed. When they came to know the issue of Order-in-Original, immediately they had filed the appeal on 01.03.2023, but the appeal was rejected on the ground being time barred. Therefore, the Petitioner requested to remand back the matter to RA, Kolkata for de-novo consideration.

7.1 Shri Anand Mishra, DDG RA, Kolkata attended the meeting. He stated that the case was adjudicated vide Order-in-Original dated 06.06.2017. The Petitioner has already paid the Customs Duty plus interest of Rs.197369.99 on 18.12.2017. The Petitioner had fulfilled the EO within time and now, they have already submitted the requisite documents regarding fulfillment of export obligation of the subjected advance authorization to RA, Kolkata for regularization and discharge of EODC.

8. I have gone through the facts and records of the case carefully. The Petitioner had obtained an Advance Authorization No. 0210158232 dated 28.04.2011 for duty free import of capital goods for a CIF value of US\$ 40,000.00 (Rs.18,28,000.00) with an FOB Value of US\$ 46000.00 (Rs.21,02,200.00) to be completed within a period of 36 months from the date of issue of the Authorization.



The Export Obligation (EO) period was expired in April, 2014 and the Petitioner had failed to furnish the prescribed documentary evidence towards fulfillment of export obligation within the time frame. Adjudicating Authority passed an Order-in-Original dated 06.06.2017 imposing a fiscal penalty of Rs.5,00,000/- on the Petitioner and its Directors. However, the Petitioner had already fulfilled 100% export obligation within time. They had also paid Customs Duty plus interest amounting to Rs.197369.99 on 18.12.2017 and submitted all requisite documents of the fulfillment of export obligation to RA, Kolkata for discharge of EODC.

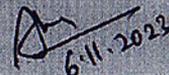
9. I therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:-

ORDER

F.No. 18/06/2023-24/ECA.I/194

Dated : 06.11.2023

The Review Petition dated 08.05.2023 is admitted. The Order-in-Original No. 02/24/40/00235/AM'11/ECA-47/17-18 dated 06.06.2017 and Order-in-Appeal No. 18/47/FA/CRAD/17-18/ECA/KOL/Appeal-303 dated 03.03.2023 passed by RA, Kolkata are set aside. The case is remanded back to RA, Kolkata for de-novo consideration.

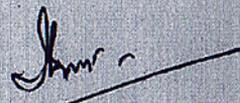

6.11.2023

(Santosh Kumar Sarangi)

Director General of Foreign Trade

Copy to:-

1. M/s Fibretec, Proprietor Sweta Chaudhry, 2/2A, Ho Chi Minh Sarani, Kolkata – 700071.
2. The Addl. Director General of Foreign Trade, Kolkata.
3. Central Economic Intelligence Bureau, 1st, 6th & 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
4. DGFT Website.



(A.S. Lungreishang)

Dy. Director General of Foreign Trade

