

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

F.No. 18/31/2019-20/ECA.I(E)/223 Date of Order: || .12.2020
Date of Dispatch: || .12.2020

Name of the Applicant: Shalimar Paints Limited,
Stainless Centre, 4th Floor, Plot No.50,
Sector-32, Gurugram - 122001.

IEC No.: 0288014511

Order reviewed against: Order-in-Original No. 030100200018
AM13 dated 10.04.2018 passed by
Asstt. DGFT, Mumbai.

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

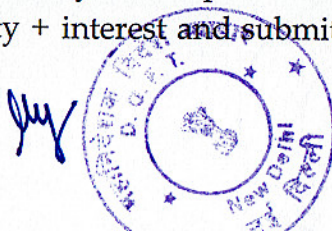
Order-in-Review

Shalimar Paints Ltd., Gurugram (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 19.09.2019 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against Order-in-Original (O-I-O) No. 030100200018AM13 dated 10.04.2018 passed by the Adjudicating Authority imposing a penalty of 26.00 lakh in addition to payment of Customs duty plus applicable interest thereon on the Petitioner.

Brief Facts of the Case

2.1 The Petitioner obtained an Advance Authorization No.0310449518 dated 07.11.2007 for a CIF value of Rs.5133317.44 (US\$ 115804.88) with an obligation to export for an FOB value of US\$140450/- within a period of 24 months from the date of issue of said Authorization. As per conditions of the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO) on expiry of the Export Obligation period. However, the Petitioner failed to submit the prescribed documents.

2.2 A Demand Notice dated 10.10.2011 was issued to the Petitioner to regularize the unutilized duty-free imports made by it against the said Authorization by paying Customs duty + interest and submit the prescribed documents. The Petitioner, vide



its letter submitted on 11.11.2011, stated that it misplaced the original authorization and submitted a copy of FIR. It further submitted that it had not imported any item under the Authorization. The Licensing Authority directed the Petitioner to submit a non-utilization certificate from the Customs. The Petitioner, vide its letter dated 23.08.2012, submitted a copy of certificate from Customs to the Licensing Authority. As per the copy of utilization certificate, the Petitioner made an import of US\$40339. The Petitioner further stated that Norms Committee rejected its case for norms fixation and it will pay full duty with interest to Customs and submit the documentary evidence. A Show Cause Notice dated 08.02.2013 was issued by the Licensing Authority, under Section 14 for action under Section 11(2) of the Act. The Petitioner submitted documents evidencing export of 51.21% in quantity and realization of 50.04% of export obligation value wise. The Licensing Authority also granted the Petitioner an opportunity to avail benefit of clubbing as per Public Notice No.34 dated 24.10.2017 and fixed Personal Hearing (PH) on 24.01.2018. The Petitioner did not avail the opportunity of Personal Hearing. As the Petitioner failed to submit the requisite documents, an OIO dated 10.04.2018 was passed by the Adjudicating Authority (Asstt. DGFT, Mumbai) imposing a penalty of Rs.26.00 lakhs, in addition to payment of Customs duty and interest thereon, on the Petitioner and its Directors.

3. The Petitioner did not file an appeal against the OIO dated 10.04.2018. It submitted a Review Petition dated 19.09.2019 to the Reviewing Authority. The Petitioner submitted the following:

(i) There was a heavy fire in two of its plants i.e. Kolkata and Nashik in 2014 and 2016. It has been facing difficult financial problems for last many years. It is still in the process of recovering from difficulties caused by the fire.

(ii) When the Petitioner made declaration for not having imported any goods against the Authorisation, it was not aware of the facts regarding actual imports and exports against the Authorisation. Later on, the Petitioner obtained utilization certificate from the Customs authorities and came to know the correct position of the export obligation.

(iii) There has been frequent shifting of registered office and corporate office and also major change in management teams and the persons handling imports and exports. These frequent changes made it almost impossible to trace any past records by the current management.

(iv) As per OIO, it had exported 51.21% quantity wise and realized 50.04% value wise of export obligation and also submitted proof for fulfilment of export obligations by submitting Shipping Bills and Bank certificates of the licensing authority. However, Norms Committee rejected its application for fixation of norms.



(v) It has now commenced the production in Nashik plant and is in the position to fulfil its export obligation and it has requested DGFT to grant extension in the export obligation for a period of two years vide its letter dated 16.07.2019.

(vi) It did not receive the letter for personal hearing on 24.01.2018 due to fire incidence in the intervening period. As such, it was deprived of the right of personal hearing and also the breach of principles of natural justice.

(vii) Harsh penalty has been imposed on it without considering its financial health.

4.1 The Petitioner was granted Personal Hearing by me on 01.10.2020 which was attended by Shri Akshaya Kumar, Manager, Finance and Accounts. I have gone through the facts and records carefully and the submission made by the Petitioner in the Personal Hearing. The Petitioner had initially misrepresented to the Licensing Authority, Mumbai that it had not made any imports. On being asked by the Licensing Authority, Mumbai to submit non utilization certificate from Custom, it admitted that it had made an import of \$40339. It also claimed to have made an export of 25608 litres realizing Rs.3127767. The Petitioner obtained this Authorization for import of duty-free raw materials for quantities on self-declared Input/Output norms. The Authorization was issued as applied with a condition that the norms would be examined and approved by the relevant Norms Committee. However, the Norms Committee in its meeting No. 17/83 ALC 1/2008 dated 23.7.2008 rejected the ad-hoc norms as applied for by the Petitioner. As per Handbook of Procedures, in case of self-declared Authorizations where SION does not exist, the applicant (in this case the Petitioner) shall pay duty and interest as notified by the Department of Revenue on the imported items if such norms are rejected or modified by the Norms Committee.

4.2 The Petitioner neither paid the amount of customs duty exemption enjoyed by it on the duty-free imports made by it under this Authorization nor submitted the prescribed documentary evidence. The Petitioner has made imports in contravention of the conditions of the Authorization and in violation of the policy and procedures of the Foreign Trade Policy.

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

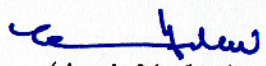
Order

F.No. 18/31/2019-20/ECA-I(E)

Dated: 11.12.2020

The Review Petition dated 19.09.2019 is dismissed.




(Amit Yadav)
Director General of Foreign Trade

Copy To:

- ✓(1) Shalimar Paints Limited, Stainless Centre, 4th Floor, Plot No.50, Sector-32, Gurugram, Haryana - 122001.
- (2) Addl. DGFT, Nishta Bhavan, New C.G. Building, New Marin Lines, 48, Vithaldas Thackersey Marg, Churchgate, Mumbai-400020 with a direction to make recoveries.
- (3) DGFT website.



Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade