

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

F.No. 18/03/2020-21/ECA-I/246 Date of Order: 23.09.2021  
Date of Dispatch: 24.09.2021

Name of the Applicant: M/s. Kay Jain Hosiery, 545/2A, New  
Shivpuri, Ludhiana -141007

IEC No. 1288043872

Order reviewed against: Order-in-Original No. 9/138/AM19/  
ECA/LDH dated 26.02.2019  
passed by Dy. DGFT, Ludhiana

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

### Order-in-Review

M/s. Kay Jain Hosiery, Ludhiana (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 17.03.2020 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against Order-in-Original (OIO) No. 9/138/AM19/ECA/LDH dated 26.02.2019 passed by the Adjudicating Authority, Ludhiana, imposing a penalty of Rs. 28,00,000/- in addition to payment of customs duty plus interest thereon, on the Petitioner for non-fulfilment of export obligation against duty free imports of machinery under Export Promotion Capital Goods (EPCG) scheme.

### Facts of the case:

2. The Petitioner obtained an EPCG Authorisation No. 3030002024 dated 01.09.2006 under EPCG scheme from the office of the Addl. DGFT, Ludhiana, as per provisions of the Foreign Trade Policy (FTP) prevalent during that period, for import of capital goods for a Duty Saved Value of Rs. 789,600/- with an obligation to export products manufactured with the same/similar machinery, for an FOB value of Rs. US\$ 134,400 to be completed within a period of 8 years from the date of issue of the Authorization. As per condition of the Authorization, the





Petitioner was required to submit the prescribed documents showing fulfilment of obligation within a time frame as mentioned in the FTP. The export obligation period expired on 01.09.2014. The Petitioner did not furnish any documents evidencing fulfilment of export obligation.

2.1 A Show Cause Notice dated 09.08.2018 was issued to the Petitioner for taking action under section 11(2) of the Act and Rule 7 of the Foreign Trade (Regulations) Rules, 1993, as amended. In response the Petitioner submitted redemption documents. After scrutiny of redemption documents, a deficiency letter was issued to it. The Petitioner was also granted an opportunity of personal hearing on 12.02.2019. The Petitioner neither submitted any documents nor appeared for personal hearing. The Adjudicating Authority passed an OIO dated 26.02.2019 imposing a fiscal penalty of Rs.28,00,000/- in addition to payment of customs duty saved plus interest thereon, on the Petitioner and its directors/proprietor/partners.

2.2. The Petitioner filed an appeal on 02.08.2019 before the Appellate Authority against the OIO. FTDO, Ludhiana intimated the Petitioner that its appeal is time barred vide the letter dated 09.10.2019.

3. The Petitioner submitted a review petition dated 17.03.2020 to the undersigned. It submitted the following:

- (i) It made 125.53% export of actual EO against duty saved and fulfilled average EO as well in 1<sup>st</sup> block period.
- (ii) It submitted all export documents to RA, Ludhiana.
- (iii) FTDO, Ludhiana's letter dated 09.10.2019 was mere a communication. No written order was passed by Addl. DGFT, Ludhiana declining the appeal.
- (iv) Installation Certificate from Chartered Engineer instead Central Excise Authority may be accepted under para 2.58 of HBP 2015-20 and redemption of EPCG authorization be allowed.

4. The Petitioner was granted personal hearing on 17.09.2021 which was attended by its managers Shri Davinder Singh and Shri Ravinder Kumar Jain. The managers submitted that it fulfilled export obligation and submitted complete prescribed export documents. A report was called from RA, Ludhiana. RA, Ludhiana vide their letter dated 05.04.2021 and email 17.08.2021 intimated that the Petitioner fulfilled export obligation and submitted all prescribed documents except Installation Certificate from jurisdictional central excise authority. Instead, it submitted Installation Certificate from Chartered Engineer.





5. I have gone through the facts and records carefully. It is observed that office of Addl. DGFT, Ludhiana vide their letter No.Appeal-137/AM-20/Lic/Ldh 9/138/AM-19/ECA/Ldh(EPCG-352/AM-07) dated 05.04.2021 and email dated 17.08.2021 confirmed that the Petitioner fulfilled export obligation and submitted all prescribed documents except Installation Certificate from jurisdictional Central Excise authority. Instead, it submitted Installation Certificate from Chartered Engineer. At the time of issue of EPCG authorization, Installation Certificate from jurisdictional Central Excise authority was required. However, due to change of policy in 2007, Installation Certificate from jurisdictional Central Excise authority or independent Chartered Engineer is required. As such, the Petitioner submitted complete prescribed export documents

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

### ORDER

F.No. 18/03/2020-21/ECA-I

Dated: 28.09.2021

The Review Petition dated 17.03.2020 is admitted. Order-in-Original No.No. 9/138/AM19/ECA/LDH dated 26.02.2019 is set aside.



(Amit Yadav)

Director General of Foreign Trade

### Copy To:

- ✓(1) M/s. Kay Jain Hosiery, 545/2A, New Shivpuri, Ludhiana -141007
- (2) Additional DGFT, C-IV, Green Field, Pokhowal, Ludhiana-141 002.
- (3) CEIB, 8<sup>th</sup> Floor, 'B' Wing, JanpathBhawan, Janpath, New Delhi – 110001
- (4) DGFT Website.

(Dilip Kumar)

Dy. Director General of Foreign Trade