

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

F.No. 18/13/2021-22/ECA.I/

Date of Order : 21.02.2023

Date of Dispatch: 21.02.2023

Name of the Applicant:

Vishnu International (P) Ltd., 901 & 909, INTL,
Twin Tower, B-09 Netaji Subhash Palace,
Pitampura, New Delhi-110034.

IEC No.

0505025108

Order Reviewed against:

Order-in-Appeal No. 05/16/140/0039/AM17/
Appeal/CLA dated 23.02.2021 passed by
Additional DGFT, CLA, New Delhi

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

Order-in-Review

Vishnu International Pvt. Ltd., New Delhi filed a Review Petition dated 16.08.2021 (here-in-after referred to as the 'Petitioner') 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. 05/16/140/0039/AM17/Appeal/CLA dated 23.02.2021 passed by Additional DGFT, CLA, New Delhi dismissing the appeal filed on 23.06.2019 against the Order-in-Original (OIO) dated 11.05.2016 and reduced the penalty amount of Rs. 3,50,00,000/- to Rs. 5,10,100/-. The reduced penalty amount was over and above the customs duty, interest, penalty, fine and personal penalty etc. which the Petitioner has already paid or is payable against the EPCG Authorization No. 0530139720 dated 17.10.2005.

Brief of the case

2.1 The Petitioner obtained an EPCG Authorization No. 0530139720 dated 17.10.2005 from the office of the Additional DGFT, CLA, New Delhi 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. 51, 01,100/- with an obligation to export for



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an FOB value of US\$8, 52,831.76 to be completed within a period of 8 years from the date of issue of the Authorization. As per conditions of the Authorization, the Petitioner was required to submit the prescribed documents showing fulfillment of export obligation within a period of two months from the date of expiry of export obligation.

2.2 Export Obligation Period expired on 16.10.2013. The Petitioner did not submit prescribed export documents towards fulfillment of export obligation. A cautionary letter was issued to the Petitioner on 19.02.2015 directing it to submit original export documents within 15 days. Again a Show Cause Notice dated 20.03.2015 was issued to the Petitioner and its directors for action under Section 11(2) of the Act and Rule 7 of the Foreign Trade (Regulation) Rules, 1993 (the Rules). It was also granted Personal Hearing (PH) on 15.04.2015, and 29.04.2016. The Adjudicating Authority observed that the Petitioner and its Director contravened the conditions of the imports made by them under the authorization and liable for action under Section 11(2) of the Act and Rule 7 of the Rules. The Adjudicating Authority passed an OIO No.05/35/21/00733/AM06/EPCG-II dated 11.05.2016 imposing a penalty of Rs. 3, 50,00,000/-. The penalty was over and above the customs duty, interest, penalty, fine and personal penalty etc. which the Petitioner has already paid or is payable against the Authorization.

3. The Petitioner filed an appeal on 23.06.2019 before the Appellate Authority (Additional DGFT, CLA, New Delhi). The Petitioner during the personal hearing on 21.08.2017 sought time to pay customs duty and interest. Thereafter, CLA, New Delhi sent several letters to the Petitioner to submit proof regarding payment of customs duty with interest, but the letters were received back undelivered. The Appellate Authority dismissed the appeal but reduced the penalty amount to Rs.5, 10,100/- vide OIA dated 23.02.2021.

4.1 The Petitioner submitted a Review Petition dated 16.08.2021 to the undersigned stating that: -

- (i) The order has been passed ex-parte without giving an opportunity of hearing,
- (ii) It made import and duty saved amount is Rs.51, 01,000/-, but could not make export due to conditions beyond its control and due to change of import policy,
- (iii) Authorization was issued in the name of the company and the company is only liable to be proceeded. The penalty has been imposed upon the company and all its branches as well as all the Directors under Section 11(2) of the Act for contravention of the condition of the Foreign Trade Policy which is not permissible under the law. The



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role of each person and company has not been specified. Penalty cannot be imposed jointly and severely hence the order is illegal and liable to be set-aside,
(iv) Provisions of Section 11(2) of the FT(D&R) Act, 1992 is not applicable.

4.2 The Petitioner has prayed to set aside OIO dated 11.05.2016 and OIA dated 23.02.2021.

5. The Petitioner was granted PH on 25.11.2022 & 19.12.2022, 04.01.2023, 24.01.2023 and 13.02.2023. Shri Naveen Malhotra, Advocate of the Petitioner sought adjournment on 25.11.2022 and 24.01.2023. PH on 19.12.2022 and 04.01.2023 could not be conducted due to administrative reasons. During hearing on 13.02.2023, the Advocate informed that the Petitioner was not granted personal hearing before passing OIA and reiterated the submissions made in the Review Petition. Shri Sourav Goyal, DDG CLA, Delhi was also present during the hearing. He informed that the Petitioner did not make any export and neither regularized the case by payment of Customs duty alongwith applicable interest. It was given enough opportunity to deposit customs duty and interest, but it failed to deposit the same. It was given personal hearings during adjudication proceedings and appellate proceedings.

6. I have gone through the facts and records carefully. It is observed that the Petitioner imported the capital goods allowed under the Authorization but it did not carry out any exports against the EPCG authorization No. 0530139720 dates 17.10.2005. Though, it agreed to pay customs duty alongwith interest before the Appellate Authority, it did not actually deposit it. It was granted personal hearings during Adjudication and Appellate proceedings and given enough opportunity to deposit the customs duty and interest.

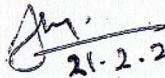
7. I therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:-

ORDER

F.No.18/13/202122/ECA.I/481

Date: 21.02.2023

The Review Petition dated 16.08.2021 is dismissed. Order-in-Appeal No. 05/16/140/0039/AM17/Appeal/CLA dated 23.02.2021 is upheld.


21.2.2023
(Santosh Kumar Sarangi)

Director General of Foreign Trade

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Copy to:-

- i. Vishnu International (P) Ltd., 901 & 909, INTL, Twin Tower, B-09, Netaji Subhash Palace, Pitampura, New Delhi-110034.
- ii. Additional DGFT, CLA, A-Wing, IP Bhawan, I.P. Estate, New Delhi - 110002.
He is requested to forward a copy of this OIR to Customs authority for recovery of customs due. It is requested to initiate recovery of penalty from the Petitioner.
- iii. CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- ✓iv. DGFT Website.



Abhijit Bakshi
(Abhijit Bakshi)

Jt. Director General of Foreign Trade