



Government of India / भारत सरकार

Ministry of Commerce and Industry / वाणिज्य और उद्योग मंत्रालय

Department of Commerce / वाणिज्य विभाग

Directorate General of Foreign Trade / विदेश व्यापार महानिदेशालय

Office of the Joint Director General of Foreign Trade, Kochi /सुयुक्त महानिदेशक, विदेश व्यापार का  
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### **Adjudication Order**

**ECA File Number : KOCECAAPPLY00000100AM25**

**Date :** (Refer Date of Digital Signature)

**Subject :** Adjudication Order under Section 11(2) of the FTDR Act, 1992 – Non-fulfillment of Export Obligation

### **ORDER IN ORIGINAL**

#### **General Instruction:**

1. The Licensee may under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992 as amended, file an Appeal against the same to the Appellate Authority i.e. The Zonal

Additional Director General of Foreign Trade, Chennai. The Appeal must be filed within 45 days from the date of receipt of this Order. The Appeal must be accompanied by a copy of the Order-in-Original, duly affixed with requisite Court Fee stamp thereon with all the documents of evidence in the form of Annexures to the Appeal relied and in support of the Appeal, together with evidence of deposit of penalty imposed in the Adjudication Order.

2. Any person/party desirous of filling an appeal against this Order shall deposit the penalty amount along with appeal to the Appellate Authority failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 15(b) of the Foreign Trade (Development & Regulation) Act, 1992, read with Foreign Trade (Development & Regulation) Act, 2010 as amended from time to time and in force.
3. The penalty amount is to be deposited under the Head of Account. "Foreign Trade and Export Promotion-Minor Head 104, Major Head-145300104000000 other receipts and Penalties etc," Import & Export Control Organization, maintained by Central Bank of India, KOCHI OR through "e-MPS (Electronic Miscellaneous Payment Systems)" OR submit a Demand Draft in favour of "ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE, KOCHI".
4. The evidence of payment(s) of penalty amount is required to be produced to the Appellate Authority within 45 days from the date of receipt of this Order-in-Original, failing which the Import Export Code Number of the subject licensee shall be suspended till the penalty is paid in terms of Section 11 (7) of Foreign Trade (Development & Regulation) Act, 1992, as amended.

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## BRIEF FACTS OF THE CASE

5. Whereas, M/s **KARAKATTU CASHEWS** (IEC No: **5314002884**) (hereinafter denoted as "licensee") had filed an application under **F.No. 532104000136AM16** for issue of an Advance Authorisation (AA) under Duty Exemption Scheme (DES) in terms of provisions of the Foreign Trade Policy read with Handbook of Procedures 2014–2019 as amended up to 2023.
6. Based on the said completed application filed by the licensee, they were issued with an Advance Authorisation No. **5310018629** dated **23/03/2016** for import of item(s) mentioned in the licence for a CIF value of ₹ **1,80,01,811.000** under Duty Exemption Scheme with the condition to export the item(s) mentioned in the licence and earn foreign exchange for an FOB value of ₹ **2,08,82,100.000** within the stipulated period of 18 months as mentioned in the licence.
7. It was mandatory on the part of the licensee as per of the conditions specified on the licence

to submit the prescribed export documents as proof of fulfilment of export obligation against the subject licence. Some of the additional conditions governing the said authorisation were:-

- a. In terms of Condition No. 4, the licensee was required to fulfill the export obligation as per the terms and conditions specified in the Foreign Trade Policy **2014–2019**, as amended up to 2023, and the Handbook of Procedures **2014–2019**, along with other guidelines issued by the Director General of Foreign Trade from time to time.
  - b. As per condition No.5, the authorisation holder was to deliver to this office within 2 months from the date of expiry of the Export Obligation period documents as prescribed under Para 4.46 of the Handbook of Procedures (**2014–19**) as amended upto 2023, as evidence of fulfillment of Export Obligation imposed on the authorisation. Failure to fulfill the Export Obligation in the manner prescribed in the Handbook of Procedures shall attract penal proceedings under the provisions of the Foreign Trade (Development & Regulation) Act, 1992 as amended from time to time and as per provisions of Para 4.28 of the Handbook of Procedures Vol-I **2014–2019** (as amended from time to time);
  - c. The licensee was required to submit ANF 4F to Regional Authority concerned and upload prescribed documents in support of fulfilment of EO
  - d. As per Para 4.49 of the Handbook of Procedures, cases of bonafide default in fulfillment of Export Obligation may be regularized as per procedure specified therein;
  - e. As per Para 4.50 of the Handbook of Procedures, Customs duty with interest (as notified by Department of Revenue to be recovered from Authorisation holder on account of regularization or enforcement of BG/LUT, shall be deposited by Authorisation holder under relevant Head of Account of Customs Revenue within 30 days of demand raised by Regional Authority/Customs Authority and documentary evidence shall be produced to this office to the Regional Authorisation / Customs Authority, immediately. The licensee can also make suo-moto payment of Customs duty and interest based on self/own calculation as per procedure laid down by (Department of Revenue, which would be adjusted at the time of closure of the case;
  - f. As per Para 4.44.f of the HBP, in case the Authorisation holder fails to complete Export Obligation or fails to submit relevant information / documents, Regional Authority shall take action by refusing further Authorisations, enforce conditions of Authorisation and Undertaking and also initiate penal action as per law.
8. The Export Obligation period expired on **22/09/2017**
9. As per Section 11 (2) of the Foreign Trade (D & R) Act 1992 as amended , where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the Foreign Trade Policy, he shall be liable to a penalty of not less than then thousand rupees and not more than five times the value of the goods or services or technology in respect of which any contravention is made or

attempted to be made, whoever is more.

10. As per documents/information available on file, the licensee had not submitted documents towards fulfilment of export obligation.
11. Hence, as a last opportunity, this office vide this Office **Show Cause Notice dated on 23/04/2024** the licensee was called upon to Show Cause as to why the licensee should not be penalized under Chapter IV Sec 11 (2) of the Foreign Trade (D & R) Act, 1992. The licensee was provided opportunity to submit response to the Show Cause Notice along with corroborative evidence in support of their contention within 15 days from the date of issue of the Show Cause Notice. In accordance with the principles of natural justice, a personal hearing was also provided by the adjudicating authority.
12. The licensee has neither attended the **personal hearing on 15/05/2024** nor submitted any reply to the Show cause notice.

## OBSERVATIONS :

13. The licensee failed to submit documents evidencing fulfilment of the conditions governing the authorization and therefore defaulted on the fulfilment of the Export Obligation.
14. The above actions of the licensee indicate that the licensee has not exercised due diligence and also defaulted on the fulfilment of the export obligation. Therefore, the licensee has failed to comply with the conditions governing the said authorization and have contravened the provisions of the Foreign Trade Policy and has caused huge loss to the Public Exchequer.
15. Hence prima facie, I have reasons to believe that the licensee has obtained the said authorization and failed to comply with the conditions governing the said authorization and therefore contravened the provisions of the Foreign Trade Policy and caused huge loss to the Public Exchequer. The licensee has been provided sufficient time and reasonable opportunities to present their case which the licensee has failed to avail fruitfully. As there is huge Government/Public Money involved, I see no grounds to prolong the matter any further. Therefore, the licensee is liable for action under Section 11(2) of the FTDR Act.

## ORDER

16. In view of the above, in exercise of powers as conferred in me under Section 13 of the Foreign Trade (Development & Regulation) Act, 1992 I hold the licensee guilty of contravention of the provisions of the Foreign Trade Policy and therefore under Section 11 (2) of the FTDR Act, I hereby impose a fiscal penalty of **Rs.50,000/- (Rupees Fifty Thousand Only)** on M/s **KARAKKATTU CASHEWS** (IEC No: **5314002884**)
17. The above penalty is in addition to its liability for the payment of amount equivalent to the

Customs duty saved on the entire imports made along with applicable interest thereon.

18. The undersigned further orders that no further licences/authorizations / export incentives shall be granted to the licensee and to its Director(s) and to other business entities in which they are directly involved in the capacity of Director(s) under Section 9 (2) Foreign Trade (Development & Regulation) Act, 1992 as amended from time to time and under the relevant portion of Rule 7 (1) of Foreign Trade (Regulation) Rules, 1993, as amended from time to time.
19. This order is issued without prejudice to any other action that may be taken under any other act, rules or regulations in force.

To /सेवा में,

KARAKKATTU CASHEWS

KP VII/871 IVERKALA, PUTHANAMBALAM P O KUNNATHOOR Contact No: 919946962132, KOLLAM, KOLLAM,KERALA,691553

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2. KARAKKATTU CASHEWS

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