

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

F.No. 18/65/2019-20/ECA.I/

Date of Order : 18 .11.2022

Date of Dispatch: 21 .11.2022

Name of the Applicant:

Cleanfood Ltd.,No. 5AC-510,HRBR
Layout, 2nd Block Kalyan Nagar, Outer
Ring Road, Bangalore - 560043.

IEC No.

0790007495

Order Reviewed against:

Order-in-Original No. 07/21/021/01067
/AM05 dated 07.08.2017 passed by
Deputy DGFT, Bangalore.

Order -in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

Order-in-Review

Cleanfoods Ltd., Bangalore (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 08.02.2020 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. 07/21/021/01067/AM05 dated 07.08.2017 passed by Deputy DGFT, Bangalore imposing a penalty of Rs.6,47,917.02 in addition to payment of customs duty and applicable interest, on the Petitioner.

Brief of the case

2.1 The Petitioner obtained an EPCG Authorization No. 0730002687 dated 17.03.2005 from the office of the Joint DGFT, Bangalore 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



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Rs.6,47,917.02 with an obligation to export of "Fruits and Vegetable pulps and Concentrates, Juices, Pastes, Purees, Squashes, Sauces, Jams, Jellies, Marmalades, etc." for an FOB value of US\$ 111,469.59 to be completed within a period of 8 years from the date of issue of the Authorization. The Petitioner was required to maintain annual average of Rs.11,03,62,000/-. As per conditions of the Authorization, the Petitioner was required to submit the prescribed documents showing fulfillment of export obligation within three months from the date of expiry of Authorization.

2.2 Export Obligation Period expired on 16.03.2013. The Petitioner submitted incomplete EO documents on 11.02.2015. It did not submit annual average statement and indicated that same was not needed as the export product is agricultural product in terms of para 5.7.6 of HBP 2009-14. RA, Bangalore vide their letter dated 04.03.2015 informed the Petitioner that its request for non fulfillment of average export obligation cannot be accepted as the export product is processed food. As the Petitioner did not respond, its IEC was placed in Denied Entity List (DEL) on 20.08.2015. A Show Cause Notices (SCN) dated 20.04.2017 was issued and personal hearing was granted on 30.04.2017. The Petitioner did not respond. The Adjudicating Authority observed that the Petitioner is guilty of contravening Section 11 of the Act and willfully ignored the demand raised to submit Export Obligation documents. The Adjudicating Authority imposed a penalty of Rs.6,47,917.02 in addition to payment of customs duty plus applicable interest on the Petitioner and its owners/directors and cancelled the Authorization ab-initio vide OIO No. 07/21/021/01067/AM05 dated 07.08.2017. It was also ordered that no further license shall be issued to the Petitioner or to any other firm in which the directors of the Petitioner are directly involved in day-to-day activities of that firm.

3. The Petitioner filed an appeal on 23.01.2020 against the OIO dated 21.03.2018 after more than two years of passing OIO. RA, Bangalore informed vide the letter dated 29.01.2020 that its appeal is time barred as the same was submitted after the statutory prescribed limit of 75 days.

4.1 The Petitioner submitted a Review Petition dated 08.02.2020 to the undersigned stating that: -

- (i) It has two factories at Belgaum, Karnataka and Chittoor, Andhra for manufacture of fruit pulp and concentrates, vegetable pulp and concentrates, juices, pastes, purees, squashes, sauces, jams and jellies,
- (ii) It got the authorization invalidated for direct import to procure the capital goods - (a) Main Lt Panels and (b) WTP MCC (c) Can Cooling MCC (d) Preparatory Line MCC (e)



Aseptic Cooling Tower MCC - indigenously and purchased domestically. It installed capital good to its Chittoor factory.

(iii) Its manufactured products being agricultural and based on nature vagaries, it could not sustain the continued productions for many years and compelled to stop business operation since September 2009,

(iv) It could not attend the procedural requirement of updating records, timely action to address the notices from DGFT due to stoppage of its business operations, its concerned staff left, change of its registered office, etc,

(v) As per authorization the export obligation is US\$111469.59. In terms of para 5.9 of FTP, it has to fulfill 75% of export obligation i.e. US\$83602 against which it made export of US\$124,537,

(vi) Its export product are agri product - mango pulp, there is no requirement to maintain average export obligation in terms of para 5.7.6 read with appendix - 8 of HBP 2009-14. It submitted export documents on 04.02.2015 for issue of EODC. It informed RA, Bangalore that it completed EO in less than half of the export obligation period and it sought fast track export performance benefits in terms of para 5.7.6 of HBP,

(vii) RA, Bangalore passed OIO dated 07.08.2017. It could not file an appeal against it timely due to various reasons viz. ceasure of its operations, facing several legal proceeding, staff left organization, etc.

4.2 The Petitioner has prayed :

(i) to hold its product is an agri-product in terms of appendix of HBP,

(ii) to hold that fast track export performance benefit in terms of para 5.7.6 of HBP 2004-09 is available to it,

(iii) to hold that the export obligation has been fully completed,

(iv) to set aside OIO dated 07.08.2017 and letter dated 29.01.2020,

(v) to remand back the case to Adjudicating authority to consider the documents filed in February 2015 and thereon to issue the EODC,

(vi) to hold that the export obligation in the instant case is fully completed.

5.1 The Petitioner was granted personal hearing (PH) on 29.12.2021 & 21.09.2022 but the Petitioner sought adjournment on both dates. Another PH was granted on 10.10.2022 which was attended by Shri R. Rangaswamy, consultant. He informed that despite unfavourable natural condition and financial difficulty, the Petitioner fulfilled export obligation but could not fulfill the Average Export Obligation (AEO). The main contention is that the mango pulp is considered as agricultural product as per Appendix -8 of HBP and there is no requirement to fulfill AEO. The Petitioner's factory is situated in Andhra Pradesh Chittoor district which is



an Agri export zone and therefore the Petitioner seeks relief under Para 5.9 of FTP 2004-09. Para 5.9 provides that, if a firm fulfills 75% of Export obligation and 100% Average Export Obligation within half of export obligation period, the remaining export obligation will be waived off. He also referred to the decision of CESTAT in the case of Mafoo Limited vs. CCE Poona.

5.2 Shri Lokesh H.D., Jt.DGFT and Shri Pravin Nalawade, DDG were also present during personal hearing on behalf of RA, Bangalore. Shri Lokesh, Jt. DGFT informed that the Petitioner's main contention is that its product be considered as agricultural product and under para 5.7.6 of HBP AEO is exempt for agricultural products. However, in 2011 there was a clarification that processed foods cannot be considered as an agricultural product for the purposes of Para 5.7.6 of HBP. Therefore, RA, Bangalore did not consider fruit pulp as an agricultural product and was therefore not exempted from AEO.

5.3 RA, Bangalore vide their letter dated 21.09.2020 had furnished a background note and para-wise comments on the Review Petition and have also furnished written submission vide their email dated 10.10.2022, wherein they have indicated that the imported items were (a) Main Lt Panels and (b) WTP MCC (c) Can Cooling MCC (d) Preparatory Line MCC (e) Aseptic Cooling Tower MCC - were purchased domestically. They have enclosed a copy of the DGFT circular No.12/(RE-2010/2009-14 dated 17.01.2011 which clarified that the processed foods cannot be treated as agricultural products. Further, Para 5.7.6 of HBP giving exemption from Average Export Performance maintenance to certain category of products and location of unit in Agri Export Zone was not a criterion for AEO exemption as per provisions of EPCG scheme in FTP/HBP.

6. I have gone through the fact and records of the case carefully. The import allowed under the authorization were (a) Main Lt Panels and (b) WTP MCC (c) Can Cooling MCC (d) Preparatory Line MCC (e) Aseptic Cooling Tower MCC - indigenously purchased. The Petitioner purchased the capital goods domestically after invalidating the authorization and installed them at its Chittoor Factory. The decision of CESTAT in the case of MAFCO Ltd vs. Collector of Central Excise, Poona dated 23.07.1993 is not relevant to the case as the said case dealt with the issue as to whether the preparation of fruit pulp amounts to manufacture and thereby attracting levy of duty under the Central Excise Act. Thus it was an issue of Excise taxation which was adjudicated. The DGFT circular No.12/(RE-2010/2009-14 dated 17.01.2011 clarified that the processed foods cannot be treated as agricultural products. However, the clarification relating to processed products not being considered for exemption of average export obligation was issued in 2011. Whether such clarification took into account



differentiation of agriculture products in terms of primary and secondary processing is not clear as this was discussed in a review meeting and clarification was issued in the shape of Minutes of the Meeting. Further, it needs to be examined in the context of requirement of capital goods under EPCG for agriculture products in case processed agriculture products are not allowed for the purpose of fulfillment of average EO. In addition, whether such clarification will apply with prospective effect or from retrospective effect has also not been examined by the RA while disposing off the case.

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

ORDER

F.No. 18/65/2019-20/ECA.I/395

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The Review Petition is admitted. The matter is referred to Policy Interpretation Committee (PIC) and the views obtained. Outcome of this review petition will be based on the decision of the PIC. Accordingly, the case is remanded to the Adjudicating Authority to take a view based on the decision of the PIC.



Santosh Kumar Sarangi
18.11.2022

(Santosh Kumar Sarangi)

Director General of Foreign Trade

Copy to:

1. Cleanfoods Ltd., No. 5AC-510, HRBR Layout, 2nd Block Kalyan Nagar, Outer Ring Road, Bangalore - 560043.
2. Policy Interpretation Committee, DGFT
3. Joint Director General of Foreign Trade, Kendriya Sadan, 6th Floor, C & E Wing, 17th Main Road, Koramangala, 2nd Block, Bangalore - 560034.
4. CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- ✓ 5. DGFT Website.

Dilip Kumar
(Dilip Kumar)

Dy. Director General of Foreign Trade