

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

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

Date of Order : 19 .01.2022

Date of Dispatch: 20 .01.2022

Name of the Applicant:

Tyco (India) Pvt. Ltd., P-25, Transport
Depot Road, Kolkata (W.B.) - 700 088.

IEC No.

0288035763

Order reviewed against:

Order-in-Appeal No. 18/86/19-
20/ECA/KOL/ Appeal-270 dated
21.09.2020 passed by Additional DGFT,
Kolkata

Order-in-Review passed by:

Shri Amit Yadav, DGFT

Order-in-Review

Tyco (India) Pvt. Ltd., Kolkata (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 20.10.2020 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Appeal (OIA) No. 18/86/19-20/ECA/KOL/Appeal-270 dated 21.09.2020 passed by Additional DGFT, Kolkata upholding the Order-in-Original (OIO) No. 02/21/021/00517/AM11/2001 dated 20.09.2019 passed by the Adjudicating Authority imposing a penalty of Rs. 50,000/- in addition to payment of Custom duty and applicable interest, on the Petitioner and its Directors.

Brief of the case

2.1 The Petitioner obtained an EPCG Authorization No. 0230005637 dated 16.08.2010 from the office of the Zonal Addl. DGFT, Kolkata. 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. 1,30,133.60, with an obligation to export products for a FOB value of US\$ 21,986.66 (Rs.10,41,068.80) 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.48,90,337.66 till completion of export



obligation. As per conditions of the Authorization, the Petitioner was required to submit the prescribed documents showing fulfillment of export obligation within two months from the date of expiry of the export obligation period.

2.2 The Export Obligation Period (EOP) expired in August, 2018. The Petitioner did not submit any document towards fulfillment of export obligation. A Show Cause Notice (SCN) under Sections 9 & 11 of the Act and Rule 7 of Foreign Trade (Regulation) Rules, 1993, as amended was issued on 29.04.2019. The Petitioner was also informed that if it wished to be heard in person, it may intimate so, failing which action as deemed fit may be taken ex-parte on the basis of available records. Further, a refusal order dated 05.08.2019 was issued for non-fulfillment of export obligation. The Petitioner did not reply to the SCN. The Adjudicating Authority passed an OIO dated 20.09.2019 imposing a penalty of Rs.50,000/- in addition to payment of Custom duty and applicable interest under Section 11 of the Act on the Petitioner and its Directors. The authorization was also cancelled ab-initio under Section 9 of the Act.

2.3 The Petitioner filed an Appeal on 16.06.2020 before the Appellate Authority against OIO dated 20.09.2019. As the Petitioner did not file the appeal within the prescribed period, the Appellate Authority dismissed the appeal as time barred vide OIA dated 21.09.2020. The IEC of the petitioner was thereafter suspended vide Order dated 18.09.2019.

3.1 The Petitioner has submitted a Review petition dated 20.10.2020 to the undersigned. In its petition it has stated that:

- (i) it had submitted all documents showing compliance of obligation under EPCG authorization vide letter dated 03.05.2013 to RA Kolkata,
- (ii) it has documents to show that it met export obligation to the tune of Rs.10,41,068.80 and has made export to the tune of Rs,1,23,47,918.00 during last eight years,
- (iii) the adjudicating authority had passed the OIO without considering the reply submitted by the Petitioner in its letter dated 03.05.2013 and the said order was passed without providing an opportunity of hearing.

3.2 The Petitioner has prayed that :

- (i) the OIA dated 21.9.2020 be set aside,
- (ii) the suspension order dated 11.03.2020 be set aside,



- (iii) the case be remanded to the adjudicating authority for fresh adjudication of show cause notice dated 29.04.2019,
- (iv) an interim order of stay on the suspension order dated 11.3.2020 pending disposal of the review petition.

4. The Petitioner was granted personal hearing on 16.12.2021 which was attended by Shri Ayan Podar, Counsel for the Petitioner. He informed that the Petitioner had submitted installation certificate in 2013 and that the OIO was passed without being heard in person. The OIA was also passed without being heard in person and deemed to be time barred and therefore the Petitioner was not heard before passing the adjudication and appellate orders. The representative of RA, Kolkata Shri A.M. Mishra, Dy.DGFT informed that the documents submitted by the Petitioner is not as per the prescribed requirements of the Foreign Trade Policy. The Petitioner has not submitted a proper installation certificate and failed to produce block-wise fulfillment of EO. Two shipping bills submitted by the firm do not have any scheme endorsed on it and the remaining two shipping bills pertain to a different scheme.

5. I have gone through the facts and records carefully. The Petitioner has failed to produce the prescribed documents evidencing installation of the capital goods and fulfillment of the export obligation as per conditions of the authorization. The show-cause notice issued by the Adjudicating authority gave the firm an opportunity to file their written reply within 15 days from the date of issue of the SCN and also an opportunity to be heard in person if the petitioner so desired. However, the petitioner neither gave a written reply to the show-cause notice nor appeared in person before the Adjudicating authority.

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

ORDER

F.No.18/18/2020 -21/ECA .1/ 433

Date: 19 .01.2022

The Review Petition dated 20.10.2020 is dismissed. Order-in-Appeal No. 18/86/19-20/ECA/KOL/Appeal-270 dated 21.09.2020 and Order-in-Original No. 02/21/021/00517/AM11/2001 dated 20.09.2019 are upheld.



(Handwritten signature)

(Amit Yadav)

Director General of Foreign Trade

Copy to:-

1. Tyco (India) Pvt. Ltd., P-25, Transport Depot Road, Kolkata (W.B.) – 700 088.
2. The Addl. Director General of Foreign Trade, 4, Esplanade East, Kolkata-700 069. The penalty amount may be recovered. A copy of this Order-in-Review be sent to customs authorities for recovery of duty saved value and interest thereon.
3. CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
- ✓ 4. DGFT Website.

Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade