

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

F. No. 18/40/2021-22/ECA.I/

Date of Order : 15.05.2023

Date of Despatch: 16.05.2023

Name of the Petitioner:

M/s Samik Exports (India) Pvt. Ltd.
72/2, Topsia(South) Road,
Kolkata - 700046
(shifted to Delhi NCR)
M/s Samik Exports (India) Pvt. Ltd.
Plot No. 104-105 & 98B, Sector-5, IMT
Manesar, Gurugram
Haryana - 122050

IEC No.

0597030057

Order Reviewed against:

Order-in-Appeal No. 18/28/1920/ECA/KOL
/Appeal-280 dated 11.01.2022 passed by
Addl. DGFT, Kolkata

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Review

M/s Samik Exports (India) Pvt. Ltd. (here-in-after referred to as the 'Petitioner') having IEC No. 0597030057 filed Review Petition dated 03.02.2022 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 No. 18/28/1920/ECA/KOL/Appeal-280 dated 11.01.2022 passed by Addl. DGFT, Kolkata upholding the Order-in-Original No. 02/21/021/00792/AM08 dated 29.01.2019 cancelling the license ab-initio imposing a penalty of Rs. 1 Lakh on the Petitioner and its directors in addition to payment of Customs duty and interest. Its IEC was also placed in DEL.

Brief of the Case

2. The Petitioner obtained an EPCG authorization No. 0230003087 dated 13.03.2008 from RA, Kolkata for import of capital goods for a Duty saved of Rs.



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1,66,216/- with an export obligation of Rs. 13,29,728/- to be completed within a period of 08 years from the date of issue of the authorization. The export obligation period (EOP) expired on 12.03.2016. The Petitioner did not submit the documents towards fulfillment of export obligation. After following the adjudication proceedings, Dy. DGFT, Kolkata passed Order-in-Original No.02/21/021/00792/AM08 dated 29.01.2019 cancelling the license ab-initio imposing a penalty of Rs. one lac on the Petitioner and its directors in addition to payment of Customs duty and interest. Its IEC was also placed in DEL.

3. The Petitioner filed an appeal initially on 30.07.2021 but not found in appropriate format and again filed on 21.12.2021. The Appellate Authority (ADG, Kolkata) dismissed the appeal as time barred vide Order-in-Appeal (OIA) No. 18/28/19-20/ECA/KOL/Appeal-280 dated 11.01.2022.

4. Now, the Petitioner has filed the present review petition dated 03.02.2022 on the following grounds:-

- i. It availed Duty Saved amount of Rs.93,802.62 only against the Duty Saved amount allowed of Rs.1,66,216.09 under the EPCG Authorization,
- ii. It shifted from Kolkata to Delhi NCR. Even having a big challenge on time of shifting of factory from Kolkata to Delhi NCR, it continuously maintained its every year Exports Average and completed export obligation on 12.12.2011,
- iii. It handed over to its agent with duly filled in application with all enclosures on 30/4/2012 for submitting to RA, Kolkata office. But the Agent unfortunately did not submit the entire relevant documents at RA Kolkata office,
- iv. Due to changes of Staff and shuffling of Files and Documents it could not trace the notice about the non-submission of documents for fulfilment of export obligation,
- v. Due to COVID almost 2 Years elapsed without any concrete work because of staff absences and Work From Home,
- vi. It submitted complete documents in February 2021,
- vii. During the appeal proceedings, ADG, Kolkata was convinced that all documents were submitted but was not able to redeem its case being time barred,
- viii. It is a very small firm and already suffered a lot in Corona pandemic. It is facing tremendous problem due to our IEC is placed in DEL,
- ix. It has enclosed a bank guarantee of Rs. one lac equal to penalty amount.

5. The Petitioner has prayed for :-

- (i) setting aside the Order-in-Original dated 31.01.2019,
- (ii) waiving off the condition for pre-payment of penalty amount so imposed by RA, Kolkata along with customs duty and applicable interest thereon,



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- (iii) removed from DEL the IEC as it has enclosed a bank guarantee of Rs. one lakh equal to the penalty imposed,
- (iv) that its review petition dated 03.02.2022 may please be decided urgently in its favour and its bank guarantee (0440222BG0000227 dated 26.08.2022) be returned.

6.1 A report was called from RA, Kolkata. They had stated that the firm has submitted all the prescribed documents. Based on the report of RA, Kolkata, the prayer of the Petitioner to remove its IEC from DEL was granted and RA, Kolkata was directed to remove the IEC of the Petitioner from DEL in lieu of submission of Bank Guarantee (BG) of Rs. 1.00 Lakh equivalent to the penalty imposed. The firm has since submitted the BG dated 26.08.2022 & the DEL has also been removed from its IEC.

6.2 The Reviewing Authority granted personal hearing to the Petitioner on 10.05.2023. Shri Karan Malik, Director of the firm attended the personal hearing. The Petitioner informed that they have completed export obligation in December 2011. However, due to shifting of factory from Kolkata to Delhi NCR, they could not submitted the documents on time. They have submitted all the documents to RA, Kolkata in February, 2021. Ms. Dona Ghosh, Jt. DGFT, RA, Kolkata and Shri Abhijit Choudhury, FTDO, RA, Kolkata were also present in the meeting. RA, Kolkata has confirmed that they have received the documents submitted by the firm. They had also received the Appeal, but the same was dismissed as it was time barred.

7. I have gone through the facts and records of the case carefully. It is observed that the Petitioner had obtained the EPCG Authorization No.0230003087 dated 13.03.2008 from RA, Kolkata. They have completed the export obligation and submitted the complete documents to RA, Kolkata in February 2021. The Petitioner had also submitted bank guarantee of Rs.1.00 Lakh equal to the penalty amount imposed thereon. The IEC of the Petitioner had been removed from DEL by RA, Kolkata on 09.11.2022. RA, Kolkata confirmed that they have received the documents submitted by the firm.

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

ORDER

F.No. 18/40/2021-22/ECA.I/55

Dated : 15.05.2023

The Review Petition dated 03.02.2022 filed by the Petitioner against O-I-A No.18/28/1920/ECA/KOL/Appeal-280 dated 11.01.2022 passed by Addl. DGFT, Kolkata is admitted. The penalty so imposed vide O-I-O No.02/21/021/00792/AM08 dated 29.01.2019 is set aside. The case is remanded to RA, Kolkata to examine the



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documents de novo and pass appropriate order within one month of issuance of the Order in Review and send a copy of the order to DGFT (HQ).



15.5.2023
(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. M/s Samik Exports (India) Pvt. Ltd., 72/2, Topsia (South) Road, Kolkata - 700046.
2. M/s Samik Exports (India) Pvt. Ltd., Plot No. 104-105 & 98B, Sector-5, IMT Manesar, Gurugram, Haryana - 122050
3. The Addl. Director General of Foreign Trade, Kolkata.
4. Central Economic Intelligence Bureau, 1st, 6th & 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- ✓ 5. DGFT Website.

Amr
(A.S. Lungreishang)
Dy. Director General of Foreign Trade