

Government of India
Ministry of Commerce & Industry
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi -110011

F.No. 18/11/2019-20/ECA.I/261 Date of Order: 04 .01.2021
Date of Dispatch: 04 .01.2021

Name of the Applicant: HB Esmech Pvt. Ltd.,
A-254-259 & A-283, Road No.
30-A, Wagle Industrial Estate,
Thane - 400604. Maharashtra.

IEC No.: 0396008275

Order reviewed against: Order-in-Appeal No.
03/16/144/00160/AM19/2112
dated 06.05.2019 passed by
Addl. DGFT, Mumbai.

Order-in-Review passed by: Shri Amit Yadav, DGFT

Order-in-Review

HB Esmech Pvt. Ltd., Thane (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 12.06.2019 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.03/16/144/00160/AM19/2112 dated 06.05.2019 passed by the Appellate Authority i.e. Addl. DGFT, Mumbai upholding the Order-in-Original (O-i-O) dated 09.03.2018 imposing a penalty of 25 lakhs on the Petitioner.

Brief Facts of the Case

2.1 The Petitioner obtained, from the Regional Authority (RA) Mumbai, an Advance Authorization No.0310407229 dated 09.11.2006 for a CIF value of Rs.47,56,850/- (US\$1,05,740) with an obligation to export specified products for an FOB value of US \$2,84,000 within a period of 24 months from the date of issue of said Authorization. As per conditions of the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO) and to pay duties on the imported raw materials left unutilized with it.



2.2 The Petitioner submitted export documents to the RA on 05.02.2009. On examination of the documents, it was observed that the Advance Authorization was issued for import of inputs to be used in the export product on net-to-net basis (as per General Note 4 of the Engineering product group of Standard Input Output Norm Book) and the Petitioner submitted a Chartered Engineer Certificate as a proof of accountability of the imported inputs. However, the said certificate could not be accepted as it was not signed by the Central Excise Authority. Further, the export invoices did not show the description of export item as per decision of the Norms Committee which had approved the input output norms. Despite reminders, the Petitioner did not submit complete prescribed documents. A Demand Notice dated 18.10.2017 was issued to the Petitioner for payment of amount of customs duty exemption enjoyed by it along with interest, as applicable thereon. The Petitioner did not respond to the Demand Notice. Thereafter, a Show Cause Notice dated 26.10.2017, was issued to the Petitioner under Section 14 for action under 11(2) of the Act. The Petitioner was also granted a Personal Hearing on 22.11.2017. The Petitioner neither submitted any reply to the Show cause Notice nor attended the Personal Hearing. As the Petitioner failed to submit complete requisite documents, an O-i-O dated 09.03.2018 was passed by the Joint DGFT, Mumbai imposing a penalty of Rs.25 lakhs on the Petitioner.

2.3 Against the O-i-O dated 09.03.2018, the Petitioner filed an Appeal on 30.07.2018 before the Appellate Authority stating that it had submitted the prescribed documents on 03.04.2018. The Appellate Authority, vide an Order-in-Appeal (O-i-A) dated 06.05.2019, rejected the appeal as time-barred.

3. The Petitioner submitted a Review Petition dated 12.06.2019 to the undersigned. In its Petition, the Petitioner submitted that:

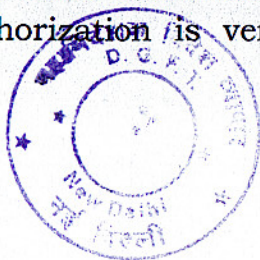
(i) It imported inputs free of duty for a CIF value of Rs. 56,65,57 (US\$ 86,487) and exported products for an FOB value of US\$1,73,555.56. It fulfilled export obligation both in terms of quantity and value.

(ii) Export Obligation was fulfilled by making Deemed Exports and payments were received through normal banking channel.

(iii) It submitted all the documents required for the purpose of redemption to the RA on 05.02.2009 and 05.10.2010 and also submitted replies to the deficiency letters. It also attended the Personal Hearing on 22.11.2017.

(iv) It was required to submit a certificate duly certified by Excise Authority to show accountability of imported inputs in the export product. As the authorization is very old, therefore a certificate from Chartered

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Accountant may please be accepted to show accountability of the imported inputs as per DGFT P.N. No.63 dated 22.02.2018.

4. Comments on the Petition were invited from RA Mumbai which, vide its letter dated 20/08/2020, inter-alia, informed that:

i) Firm submitted invoices duly certified by Central Excise, however invoices submitted do not show export description as approved by the Norms Committee.

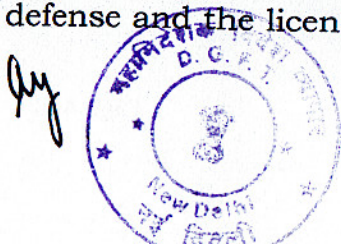
ii) Firm was asked to submit documents showing accountability of imports and exports. Firm submitted a Chartered Engineer certificate certifying the net-to-net accountability.

iii) Matter regarding acceptability of Chartered Engineer certificate was referred to the Norms committee which advised to take action as per policy.

5. The Petitioner was granted a Personal Hearing on 27.11.2020, which was attended by Shri Vijay Joshi, MD of the Petitioner wherein he re-iterated the written submissions while filing the Petition.

6.1 I have gone through the facts and records carefully. It is observed that the Appellate Authority rejected the Appeal of the Petitioner as time barred, without entertaining and examining the Petitioner's submissions dated 03.04.2018. The para-wise comments sent by Mumbai RA, dated 20/08/2020 do not provide inputs on the substantive issues raised in the Review Petition. The two main issues in the Review Petition are variation in the description of export product as mentioned in the invoice vis-à-vis as mentioned in the Advance Authorisation and non-submission of a proper certificate to prove accountability.

6.2 Vide letter dated 19.02.2010, RA, Mumbai had sought advice from the Norms Committee as to whether the Chartered Engineer Certificate submitted by the Petitioner can be accepted. The RA, Mumbai vide communication dated 29.02.2012 was informed that decision may be taken as per existing FTP/HBP provisions and refer to Norms Committee in case any revision in norms was required. The RA, Mumbai did not bring out the exact concern due to which he was unable to decide or establish co-relation from the available export documents and did not refer the matter again to the Norms Committee explaining the doubt. Moreover, the RA has not referred to the Norms Committee the matter of variation in the description of the export product in the invoice. RA has passed the O-i-O dated 09.03.2018 mentioning that the Petitioner has not been able to get the imported items correlated with the export items despite being given several opportunities, therefore, it is apparent that the Petitioner has nothing to say in their defense and the license was obtained with ulterior motive and with malafide



intention. RA has to come out with a reasoned and speaking order rather than arriving at a conclusion only on the basis that the Petitioner did not appear for the hearing. Thus, issues need to be examined properly in light of the FTP/HBP as well as instructions issued from time to time on this subject.

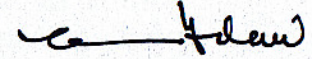
7. I, therefore, in exercise of powers vested in me, under Section 16 of the Act, pass the following order:

Order

F.No. 18/11/2019-20/ECA-I(E)/262

Dated: 04.01.2021

Order-in-Appeal No. 03/16/144/00160/AM19/2112 dated 06.05.2019 is set aside and the matter is remanded back to the Appellate Authority with directions to examine and decide Appeal of the Petitioner on merits, notwithstanding the delay in filing such Appeal.

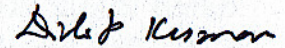


(Amit Yadav)

Director General of Foreign Trade

Copy To:

- (1) HB Esmech Pvt. Ltd., A-254-259& A-283, Road No. 30-A, Wagle Industrial Estate, Thane - 400604
- (2) Addl. DGFT, Nishta Bhavan, New C.G. Building, New Marine Lines, 48, Vithaldas Thackeray Marg, Churchgate, Mumbai - 400020.
- (3) DGFT website



(Dilip Kumar)

Dy. Director General of Foreign Trade

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