

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

F.No. 18/37/2019-20/ECA.I/

Date of Order: 21.01.2022

Date of Despatch: 24.01.2022

Name of the Appellant:

Kitman International, A/17, Raj
Industrial Complex, 2nd Floor,
Military Road, Marol,
Andheri(East), Mumbai-400 059.

IEC No.

0391007351

Order reviewed against:

Order-in-Appeal No. 03/16/144/
000295/ AM19/2894 dated
19.09.2019 passed by Addl. DGFT,
Mumbai

Order-in-Review passed by:

Amit Yadav, DGFT

Order-in-Review

M/s Kitman International, Mumbai (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 14.11.2019 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. 03/16/144/000295/AM19/2894 dated 19.09.2019 passed by the Appellate Authority upholding the Order-in-Original (OIO) No. 03/01/002/00245/AM12 dated 21.09.2017. The Adjudicating Authority imposed a penalty of Rs. 12,50,000/- on the Petitioner in addition of payment of Customs duty plus applicable interest thereon.

Brief of the case

2.1 The Petitioner obtained an Advance Authorization No. 0310308625 dated 22.12.2004 for a CIF value of Rs. 8,23,802/- (US\$ 18,205.56) with an obligation to export for an FOB value of Rs. 8,99,168/- (US\$ 20,026.00) to be completed within a period of 24 months from the date of the Authorization. As per conditions of the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO).

2.2 After the expiry of EO period, the Petitioner vide its letter dated 26.06.2007 submitted the export documents for redemption. On examination of the documents by RA, Mumbai, it was found that the Petitioner did not submit the Customs attested Invoice for GSM on export side and also revised statement of exports mentioning



value as per BRCs. A letter dated 05.07.2007 was issued to the Petitioner for compliance of the deficiencies. The Petitioner failed to furnish the requisite documents. RA, Mumbai issued a Demand Notice dated 04.04.2008 directing the Petitioner to submit prescribed export documents evidencing fulfilment of EO within 15 days of receipt of the notice. It was also granted personal hearing on 05.05.2008. As the Petitioner did not respond to the demand notice nor appeared for the personal hearing, a Refusal Order dated 20.06.2008 under Rule 7 of Foreign Trade (Regulation) Rules, 1993 was issued.

2.3 Show Cause Notice (SCN) dated 08.12.2011 was issued to the Petitioner under Section 14 for action under section 11(2) of FTDR Act, 1992 with an opportunity of personal hearing (PH) on 28.12.2011. The Petitioner did not appear for the PH nor replied to the SCN. The Petitioner was also given an opportunity to regularize the case in terms of PN No. 22 dated 12.08.2013 but it did not respond. RA, Mumbai again issued a letter dated 25.03.2014 requesting the Petitioner to submit export documents and also to regularize the case in terms of Public Notice No. 22 dated 12.08.2013.

2.4 On the basis of an audit memo raised by O/o the Controller of Aid Accounts Audit, Export Promotion Audit Wing (WZ), Mumbai, RA Mumbai issued a letter dated 05.08.2016 directing the Petitioner to submit original export documents evidencing fulfilment of EO within 15 days failing which action would be initiated. However, the Petitioner failed to reply. RA, Mumbai granted two more opportunities of personal hearings, but the Petitioner did not respond. The Adjudicating Authority passed an OIO dated 21.09.2017 imposing a penalty of Rs. 12,50,000/- on the Petitioner in addition to payment of Customs duty plus applicable interest thereon.

3. The Petitioner filed an appeal on 20.11.2018 before the Appellate Authority. The Appellate Authority rejected the appeal as time barred vide OIA dated 19.09.2019.

4.1 The Petitioner has now submitted a Review Petition dated 14.11.2019 to the undersigned stating that :

- (i) it had fully utilized the import entitlement and exported 25.45% excess (quantity wise) and 57.8% excess (value wise) export within the validity period and also realized Free Foreign Exchange through normal banking channel,
- (ii) there was no need to call for customs attested export invoice since GSM was declared in both the Bills of Entry and Shipping Bills,
- (iii) it suffered big loss which resulted in discontinuation of its bank facilities and its bankers took over all the commercial premises in their possession and, therefore, it could not respond to various letter i.e. demand notice, refusal order SCN and PH granted by RA, Mumbai from time to time,



- (iv) it intends to club the instant Advance Authorisation No. 0310308625 with Advance Authorization No. 0310303567 dated 24.11.2004 in which imports have been made but no export has been made and seeks approval for clubbing of the two advance authorizations.

4.2 The Petitioner has prayed that:

- (i) the operation of the impugned order dated 21.09.2017 and 19.09.2019 passed by Dy DGFT, and Additional DGFT, Mumbai respectively which is against the Applicant be stayed, pending disposal of the review,
(ii) the pre-deposit of penalty of Rs. 12,50,000/- imposed in Order-in-Original dated 21.09.2017 and as confirmed by Addl. DGFT, Mumbai vide OIA dated 19.09.2019 be dispensed with,
(iii) a personal hearing may be granted,
(iv) order or such other order as may be deemed fit be passed in interest of natural justice.

5. The Petitioner was granted personal hearing on 09.01.2020 which was attended by Shri Manmohan Arora, Partner of the Petitioner. He requested for clubbing of two advance authorization No. 0310308625 dated 22.12.2004 and No. 0310303567 dated 24.11.2004. The Reviewing Authority had directed that a report be sought from RA, Mumbai. RA, Mumbai vide their email dated 11.01.2022 has furnished para-wise comments in which it has inter-alia informed that as per para 4.38(i) of HBP, clubbing of authorizations issued on or before 31.03.2009 shall not be allowed. The Petitioner was again granted personal hearing on 13.01.2021 which was attended by Shri Manmohan Arora, partner of the Petitioner. He informed that the Petitioner made excess import in value and quantity wise and requested to club two authorizations No. 0310308625 dated 22.12.2004 and No. 0310303567 dated 24.11.2004. Dr. Sampat Kumar, JDGFT, Mumbai also attended the hearing. He confirmed that the Petitioner has submitted complete documents evidencing fulfilment of EO for Advance Authorisation No. 0310308625 dated 22.12.2004. However, the GSM of import and export items are different.

6. I have carefully gone through the records and submissions made and it is observed that the Petitioner has fulfilled the export obligation and submitted all prescribed documents evidencing fulfilment of export obligation within the validity period.

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



ORDER

F. No. 18/37/2019-20/ECA.I/ 451

Dated: 24.01.2022

The Review Petition dated 14.11.2019 is admitted. Order-in-Appeal No. 03/16/144/000295/AM19/2894 dated 19.09.2019 and Order-in-original No. 03/01/002/00245/AM12 dated 21.09.2017 are dismissed. The case is remanded to RA, Mumbai for de novo consideration



(Signature)

(Amit Yadav)

Director General of Foreign Trade

Copy to:

- (I) Kitman International, A/17, Raj Industrial Complex, 2nd Floor, Military Road, Marol, Andheri(East), Mumbai-400 059.
- (II) Addl. Director General of Foreign Trade, Nishtha Bhawan, New CGO Building, 48, Vithaldass Thackersey Marg, New Marine Lines, Churchgate, Mumbai-400 020.
- (III) Central Economic Intelligence Bureau, 1st, 6th& 8 Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- ✓ (IV) DGFT Website.

(Signature)

(Dilip Kumar)

Dy. Director General of Foreign Trade