

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

F. No. 18/01/2020-21/ECA.I/

Date of Order : 10 .05.2023

Date of Dispatch: 11 .05.2023

Name of the Petitioner:

APPL Industries Ltd., Survey No. 279
(1&2), Rasoni Industrial Estate, Hinjewadi
Phase-II, Maan, Mulshi, Pune - 411057.

IEC No.

0500014086

Order Reviewed against:

Order-in-Appeal No. 03/16/144/00281/
AM19 dated 30.10.2019 passed by Addl.
DGFT, Mumbai

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Review

M/s APPL Industries Ltd., Pune (earlier Aalekh Industries Pvt. Ltd., Pune) (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 24.02.2020 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Appeal (OIA) No. 03/16/144/00281/AM19 dated 30.10.2019 passed by Addl. DGFT, Mumbai upholding the Order-in-Original (OIO) dated 19.09.2018 imposing a penalty of Rs. 1,68,07,691/-.

Brief of the Case

2.1 The Petitioner obtained an EPCG Authorization No. 3130001376 dated 25.10.2005 from the office of Joint DGFT, Pune as per the extant provisions of Foreign Trade Policy (FTP), for import of capital goods for a duty saved value of Rs. 49,71,291/- under concessional 3% duty EPCG Scheme with an obligation to export for an FOB value of US\$ 8,55,275.87 (Rs. 3,97,70,328/-) to be completed within a period of 8 years from the date of issue of authorization. As per conditions of the authorization, the Appellant was required to submit the prescribed documents showing fulfilment of export obligation.



2.2 Export obligation period expired on 24.10.2013. The Petitioner did not submit the prescribed documents evidencing fulfilment of export obligation (EO). A Demand Notice dated 15.01.2013 with personal hearing (PH) on 27.02.2013 was issued to the Petitioner, but it did not respond. It was placed under Denied Entity List (DEL) on 14.05.2018. A show cause notice (SCN) dated 22.05.2018 with another opportunity of PH on 31.05.2018 was issued. The Petitioner attended the PH on 31.05.2018 and produced proof of having paid 50% customs duty, but did not paid balance 50% customs duty and 100% interest thereon. The Adjudicating Authority (Joint DGFT, Pune) observed that the Petitioner had not fulfilled export obligation and violated the licensing condition and hence liable for penalty under Section 11(2) of the Act. The Adjudication Authority passed OIO No. 31/21/021/00028/AM06 dated 19.09.2018 imposing a penalty of Rs.1,68,07,691/- on the Petitioner.

3. The Petitioner filed an appeal on 23.10.2018 against OIO dated 19.09.2018 requesting 2 years extension in export obligation period. The Appellate Authority granted PH on 18.10.2019, which the Petitioner availed. The Petitioner submitted copies of challans dated 22.12.2017 and 29.11.2018 as documentary evidence towards payment of 100% customs duty saved and was ready to pay interest amount not exceeding total custom duty saved. But, it did not pay the interest. It also submitted a copy of minutes of 8th EPCG Committee Meeting dated 03.01.2019 which rejected the Petitioner's request for allowing payment of Customs Duty without payment of interest for closure of the case. The Appellate Authority passed OIA dated 30.10.2019 upholding the OIO dated 19.09.2018.

4.1 Now, the Petitioner has filed the review petition dated 24.02.2020 stating:-

- (i) Entire customs duty has been paid.
- (ii) Various judicial precedents were not considered by the Appellate Authority.
- (iii) The export obligation could not be fulfilled because of the global recession and circumstances beyond the control of the company.
- (iv) It made export of US\$6,17,759/-

4.2 The Petitioner has prayed that :-

- (i) OIA dated 30.10.2019 be set aside and EO extension be granted upto 28.03.2019.
- (ii) payment of interest on customs duty and penalty may be waived off.

5.1 The Reviewing Authority granted the personal hearing to the Petitioner on 24.09.2021. Sh Makarand Adkar, Advocate and Sh Inder Jain, MD of the Petitioner attended the personal hearing. He informed that the review petition may be kept



pending as the Petitioner had filed an application dated 04.02.2020 before the EPCG Committee under para 2.58 of FTP- 2015-20 for re-consideration before the EPCG Committee. The request was allowed and decided to seek details from EPCG Committee and to be submitted after 03 months for fixing a date based on status before the EPCG Committee.

5.2 The EPCG Committee was requested to intimate the outcome of the application dated 04.02.2020 submitted on 19.02.2020 by the Petitioner. EPCG Committee intimated that application dated 04.02.2020 of the Petitioner had not been received in EPCG Division. They, however, furnished minutes of their meeting dated 03.01.2019. In the meeting dated 03.01.2019, the Committee rejected the Petitioner's request to waive off payment of interest on customs duty as the Petitioner did not make any exports even after 13 years of obtaining EPCG authorization and there is no merit in request.

6. The Reviewing Authority granted another opportunity of personal hearing on 24.03.2023. Shri Makarand Adkar and Shri Sanket Bora, Advocates of the Petitioner have informed that it fulfilled the export obligation and referred the certificate dated 21.01.2020 issued by the Chartered Accountant. In addition, it also deposited the entire customs duty saved. Shri Satya Raja Shekhar G, DDG, Mumbai was also present during the PH. He informed that the Petitioner did not submit any prescribed documents evidencing fulfillment of export and paid only customs duty and did not paid interest on customs duty and penalty. The Petitioner was specifically asked as to whether the exports were made within the EO/ extended EO period and authorization were mentioned in the shipping bills. The Advocates did not have these information and asked for time to file written submission on this. The Petitioner was allowed three weeks time. The Petitioner was also informed the government is coming with an amnesty scheme soon relating to payment of interest on duty saved amount which it may avail.

7. The Petitioner vide its letter dated 11.04.2023 has intimated that it made export after export obligation period and EPCG authorization number was not mentioned in the shipping bill. It further informed that it will be applying for Amnesty scheme and will pay interest equal to duty amount under this scheme.

8.1 I have gone through the facts and records of the case carefully. The EO period expired on 24.10.2013. It did not make any export. It deposited entire customs duty (50% on 22.12.2017 and 50% on 29.11.2018). But, it has not paid interest on the customs duty saved till date.

8.2 Public Notice No. 2/2023 dated 01.04.2023 provides the amnesty scheme for one time settlement of default in export obligation by Advance and EPCG



authorization holders. It covers the authorization issued under FTP -2004-2009 and before and EO period is valid beyond 12.08.2013. The authorization holder intended to avail benefits under the scheme has to deposit the customs duty and interest with the jurisdictional customs authorities by 30.09.2023. The EO period of the EPCG authorization dated 25.10.2005 in this case was issued during FTP 2004-2009 is valid upto 24.10.2013 and therefore covered under the scheme.

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

ORDER

F.No. 18/01/2020-21/ECA.I/44

Dated : 10.05.2023

The Petitioner is directed to pay interest on the customs duty under the amnesty scheme by 30.09.2023 and submit the documentary evidence to RA, Pune. The penalty imposed by the Adjudicating authority would be waived off subject to payment of interest under the scheme. Failure to pay interest under the scheme by 30.09.2023 shall lead to reimposition of the penalty.



[Signature]
10.5.2023

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. APPL Industries Ltd., Survey No. 279 (1&2), Raison Industrial Estate, Hinjewadi Phase-II, Maan, Mulshi, Pune – 411057.
2. Joint Director General of Foreign Trade, Pune.
3. Central Economic Intelligence Bureau, 1st, 6th & 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
- ✓ 4. DGFT Website.

[Signature]

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