

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

F.No. 18/33/2020-21/ECA.I/

Date of Order: 13.12.2022

Date of Despatch: 15.12.2022

Name of the Applicant:

Nityo Infotech Services Pvt. Ltd.,
303/304, Eco House, Vishweshwar
Nagar, 1st Cross Road, Off. Aarey
Road, Goregaon
(East), Mumbai-400063.

IEC No.

0307032639

Order reviewed against:

Order-in-Appeal No. 05/16/140/064/
AM20/Appeal/CLA dated 26.08.2020
passed by Addl. DGFT, CLA, New
Delhi

Order-in-Review passed by

Santosh Kumar Sarangi, DGFT

Order-in-Review

Nityo Infotech Services Pvt. Ltd., Mumbai (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 27.01.2021 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. 05/16/140/064/AM20/Appeal/CLA dated 26.08.2020 passed by Addl. DGFT, CLA, New Delhi dismissing the appeal against the Order-in-Original (OIO) dated 27.11.2019. The Appellate Authority, however, allowed removal of the Petitioner's IEC from DEL as it had deposited the penalty amount. The Adjudicating Authority had imposed a penalty of Rs. 60,000/- in addition to payment of interest on the amount of SEIS scrips issued to the Petitioner.

Brief of the case

2.1 The Petitioner obtained SEIS authorisation No. 0519151334 dated 03.01.2019 for Rs.1,18,77,221/- for the financial year 2017-18 for service categories "Other Business Services(Placement of Supply Services of Personnel) CPC-872".



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2.2 DRI, Ahmedabad vide their letter dated 12.06.2019 informed CLA, New Delhi that on inquiry they had found that the Petitioner had mis-classified/mis-stated its export services in its application filed before CLA, New Delhi and fraudulently obtained SEIS authorization. The Petitioner had been providing/exporting software & related services and other IT Services to its overseas clients. This service is categorically classified under Division 84 of CPC, but the Petitioner mis-stated the said services as 'Other Business Services (Placement and supply services of personnel 8720)' and mis-classified the same under division 87 of CPC and thereby fraudulently availed the SEIS authorization. During the inquiry by DRI, the director of the Petitioner admitted that it had wrongly mentioned the description of service to fraudulently obtain the SEIS benefits and it had undertaken to pay the SEIS benefits obtained.

2.3 CLA, New Delhi issued a SCN dated 21.08.2019 to the Petitioner for actions under Rule 7(c), 7(j) and 7(n) of Foreign Trade (Regulation) Rules, 1993 (here-in-after 'the Rules') for placing its IEC in DEL and under Sections 11(2) and 11(3) of FT(D&R) Act, 1992 (here-in-after 'the Act') for imposing a penalty under Section 7 of the Act and Rule 10(a) of the Rules for cancellation of SEIS authorization. A reminder was issued on 04.11.2019. It was also granted an opportunity of personal hearing (PH) on 05.09.2019. The Petitioner in its reply stated that it had provided recruitment & manpower supply services and DRI findings are factually incorrect and not supported by any documentary evidence. The Petitioner requested 15 days time to submit detailed reply vide its letter dated 31.08.2019. CLA, New Delhi reminded the Petitioner to submit detailed reply vide the letters dated 23.09.2019, 25.10.2019 and 11.09.2019. Despite reminders, the Petitioner failed to furnish any documentary evidence to support that it has rendered services as claimed in the application i.e. Other business services (Placement and supply services of personnel (872)). The Petitioner's contention that it had availed SEIS correctly has not been supported by any documentary evidence to corroborate its claim. The Petitioner deposited Rs. 91,88,189.29 vide TR-6 Challan No. 01/Nityo/2019 and Rs. 50,00,000.00/- vide TR-6 Challan No. 02/Nityo/2019 both dated 12.07.2019 to Customs authority.

2.4 The Adjudicating Authority observed that the Petitioner had paid back the authorization amount but the fact remained that the Petitioner did avail the SEIS incentive by misdeclaring the nature of service and hence it is a fit case of misdeclaration under Section 11(3) of the Act. The Adjudicating Authority passed the OIO No.05/21/098/80242/AM19/EPS-II/CLA dated 27.11.2019 imposing a penalty of Rs.60,000/- on the Petitioner and its directors. The IEC of the Petitioner and its directors were also placed under DEL. The penalty imposed is over and above the amount of interest the Petitioner has to pay on the amount of SEIS scrip.

3. The Petitioner filed an appeal on 20.01.2020 before the Appellate authority against the OIO dated 27.11.2019. The Appellate Authority dismissed the appeal against the (OIO) dated



27.11.2019. The Appellate Authority, however, allowed removal the Petitioner's IEC from DEL as it had deposited the penalty amount.

4.1 The Petitioner has filed the review petition dated 27.01.2021 stating that:

- (i) it exported recruitment services falling under the category of Placement and Supply Services of Personnel and the mode of services fall under para 9.51 (i) of the FTP 2015-20. It claimed incentive under SEIS for the FY 2017-18. Its application was processed and Authorisation No. 0519151334 dated 03.01.2019 for Rs. 1,18,77,211/- was issued,
- (ii) DRI forced its director Mr. Subodh Hegde, to give a statement contrary to the evidence documents such as export invoices, FIRC's agreement with group companies etc., and without following the proper adjudication process and the principles of natural justice. It was forced to make payment of Rs. 91,88,189.29/- and Rs. 50,00,000/-. It withdrew the statement which was taken under pressure by submitting a letter dated 13.08.2019 to DRI,
- (iii) based on DRI investigation, CLA, New Delhi issued Show Cause Notice dated 21.08.2019 and without accepting its submissions the Adjudicating Authority passed OIO dated 27.11.2019,
- (iv) the Appellate Authority passed OIA dated 26.08.2020 without granting personal hearing and considering the documents submitted alongwith appeal and relying only on inquiry conducted by DRI.

4.2 The Petitioner has prayed for setting aside the OIA and the Review petition may be allowed.

5. The Reviewing Authority granted personal hearing to the Petitioner on 24.11.2022 which was attended by Shri Shrikant Rathi, Consultant on behalf of the Petitioner. The Consultant to the Petitioner informed the Petitioner supplies recruitment services only to its group entities abroad and not to any other company. Its foreign entities are involved in IT services. Petitioner received summons from DRI after about four months of obtaining SEIS authorisation to submit documents relating to SEIS authorization. Its director Mr. Subodh Hegde submitted all supporting documents, but DRI forced its director to give a statement contrary to documentary evidence such as export invoices, FIRC's agreement with group companies etc., and without following the proper adjudication process and the principles of natural justice. It was forced to make payment of Rs. 91,88,189.29/- and Rs. 50,00,000/-. However, DRI has not made any communication with the Petitioner after deposit of SEIS scips amount. CLA, New Delhi, issued SCN to it solely based on DRI investigation which it replied. Adjudicating Authority however, passed the OIO dated 27.11.2019 imposing penalty. It



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submitted appeal before the Appellate Authority, but the Appellate Authority without granting PH and considering the documents submitted by the Petitioner, rejected the appeal.

6. I have gone through the facts and records carefully and it is observed that the Petitioner had been exporting providing/exporting 'software & related services and other IT Services' to its group entities abroad which are providing IT services. 'Software & related services and other IT Services' is categorically classified under division 84 of CPC. DRI investigated the matter and found that the Petitioner exported software & related services and other IT Services and wrongly availed SEIS benefits by mis-declaring its export as 'Other Business Services (Placement and supply services of personnel 872)' and mis-classified the same under division 87 of CPC thereby fraudulently availed the SEIS authorization. After the DRI investigation, the Petitioner deposited the SEIS amount. Though the Petitioner has claimed before DGFT that DRI forced its director to give statement contrary to documentary evidence and repay the amount of SEIS scrips issued, the Petitioner has not substantiated his claim of coercion by DRI, nor has it resolved the matter with DRI even after two years.

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

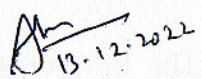
ORDER

F.No. 18/33/2020-21/ECA.I/412

Dated: 13.12.2022

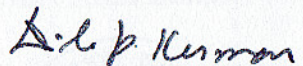
The Review Petition dated 27.01.2021 is rejected and Order-in-Appeal No.05/16/140/064/AM20/Appeal/CLA dated 26.08.2020 and Order-in-Original 05/21/098/80242/AM19/EPS-II/CLA dated 27.11.2019 are upheld.




(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:

- (1) Nityo Infotech Services Pvt. Ltd., 303/304, Eco House, Vishweshwar Nagar, 1st Cross Road, Off. Aarey Road, Goregaon, (East) Mumbai-400063.
- (2) Addl. Director General of Foreign Trade, CLA, A-Wing, I.P. Bhawan, Y Shape Building, I.P. Estate, New Delhi-110 002.
- (3) Central Economic Intelligence Bureau, 1st, 6th& 8 Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- (4) DRI, Zonal Unit, Ahmedabad-380 054.
- ✓ (5) DGFT Website.



(Dilip Kumar)
Dy. Director General of Foreign Trade