

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

F.No. 18/33/21-22/ECA.II

Date of Order: 07.06.2022

Date of Dispatch: 09.06.2022

Name of the Applicant:

Jindal Exports & Imports Pvt. Ltd., 110, Babar Road,
Opp. Hotel Hilton, New Delhi - 110001

IEC No. :

0588058173

Order reviewed against:

CLA, New Delhi's rejection letter No. 05/26/040
/00085/AM20 dated 30.09.2019 rejecting application
dated 26.06.2019 for issuing advance authorization.

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

Order-in-Review

Jindal Exports & Imports Pvt. Ltd., New Delhi (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 18.11.2021 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against Rejection letter No. 05/26/040/00085/AM20 dated 30.09.2019 rejecting application dated 26.06.2019 for grant of advance authorization by CLA, New Delhi.

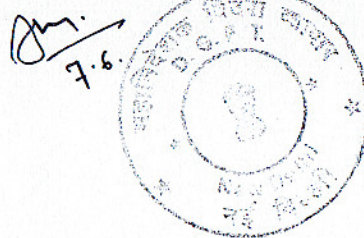
Brief Facts of the Case

2 The Petitioner filed an application dated 26.06.2019 in ANF-4A to CLA, New Delhi for grant an Advance Authorization for import of Gold Bars 99.5 PCT for CIF value of Rs.9,02,70,72,558/- and export of Gold Medallions Purity 91.6% of FOB value of US\$ 130,333,978/- (Rs.9,16,24,78,654/-). CLA, New Delhi rejected the application invoking Public Notice No. 35 dated 26.09.2019.

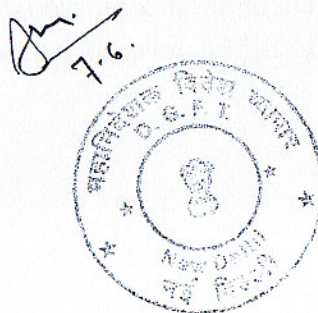
3.1 The Petitioner has submitted a review petition dated 18.11.2021 to the undersigned. It submitted the following:

(i) It has regularly applied and obtained Advance Authorization for import of gold bars and export of gold coins and medallions.

(ii) It applied for grant of Advance authorization for import of 3000kg gold bars 99.5 PCT for CIF value Rs.902,70,72,558/ and export of 3252.217 kg gold medallions purity 91.6% for FOB value US\$130,333,978 (Rs. 9,16,24,78,654/-) vide its application dated 26.06.2019.



- (iii) It is a Four-Star Export House and in terms of Public Notice No. 04/2015 dated 08.06.2015 read with Para 9.10 of Hand Book of Procedure, CLA, New Delhi should have scrutinized and granted Advance Authorization to it within one day i.e. by 27.06.2021.
- (iv) CLA, New Delhi issued deficiency letter dated 31.07.2019 directing the Petitioner to submit previous export details and clarifying how the export obligation will be fulfilled by it.
- (v) DGFT issued Public Notice No. 35 dated 26.09.2019 by which it disallowed issue of Advance Authorizations where the items of export is Gold Medallions and Coins or Any Jewellery articles manufactured by fully mechanized process.
- (vi) CLA, New Delhi invoked this Public Notice dated 26.09.2019 retrospectively and rejected its application dated 26.09.2019, vide the letter dated 30.09.2019 .
- (vii) Hon'ble Delhi High Court, vide its Order dated 11.02.2020 in W.P. (C) 12197/2019 titled M.D. Overseas Limited vs. UOI & others quashed and set aside the Public Notice No. 35 dated 26.09.2019. The Hon'ble Court observed that PN No. 35 dated 26.09.2019 issued by DGFT in exercise of the powers under para 1.03 of FTP 2015-20 has in effect amended the Foreign Trade Policy, in excess of power and jurisdiction of the DGFT and therefore illegal and the same deserves to be quashed and set aside. DGFT challenged the Hon'ble Delhi High Court's Order dated 11.02.2020 before the Hon'ble Supreme Court by filling SLP (C) No. 11088/2021. But, the Hon'ble Supreme Court dismissed the SLP vide the Order dated 27.08.2021.
- (viii) Following the Supreme Court's Order dated 27.08.2021, CLA, New Delhi granted Advance Authorization to M.D. Overseas and therefore there exist no rational to deny Advance Authorization to the similarly placed exporter like the Petitioner. Such denial is highly arbitrary and discriminatory.
- (ix) That given the declaration of law, it is clear that the impugned letter dated 30.09.2019 is completely illegal and the Advance Authorization applied for by the Petitioner ought to have been granted. Accordingly, it requested for grant of Advance Authorization vide email dated 07.10.2021 addressed Additional DGFT, CLA, New Delhi. The delay in issuance of Advance Authorization has resulted in Applicant failing to meet its international commitments. Any further delay or inaction in issuing requested Advance Authorization, resulting in non-fulfilment of commitments, would cause immense reputational and financial prejudice to the Petitioner.



(x) In the light of foregoing, the Petitioner's rights have severely been prejudiced on account of the impugned rejection letter dated 30.09.2019 and inaction on the representations made by it.

3.2 The Petitioner has prayed for the following:

- (i) Review and set aside the CLA, New Delhi's impugned rejection letter dated 30.09.2019.
- (ii) Grant advance authorization applied vide application dated 26.06.2019.
- (iii) Pass such other orders as deemed fit.

4. CLA, New Delhi, in their comments on the review petition, informed that the case was rejected in terms of PN No. 35 dated 26.09.2019 which clearly disallowed import of Gold for export of Gold Medallions by fully mechanised process.

5.1 The Petitioner was granted personal hearing to the Petitioner on 18.05.2022 which was attended by Advocate Shri Kishore Kunal of the Petitioner. He has informed that the Petitioner's application for advance authorization was rejected relying on the Public Notice dated 26.09.2019. A similarly placed exporter namely M/s. MD Overseas Limited challenged the Public Notice in Delhi High Court stating that the export of products under consideration can be restricted only by issuing a Notification. The Hon'ble Court found merits in the arguments and quashed the Public Notice through its order dated 11.02.2020. DGFT filed SLP in the Hon'ble Supreme Court challenging the Hon'ble Court's order dated 11.02.2020. The Hon'ble Court dismissed the SLP vide the order dated 27.08.2021. Thereafter, DGFT granted Advance authorization to M/s. MD Overseas Limited. The Petitioner submitted several requests to issue it advance authorization as applied vide its application dated 26.06.2019 following the Court's judgment. But, CLA, New Delhi did not issue Advance Authorization.

5.2 Shri Sukhbir Singh Badhal, JDG, CLA, New Delhi was also present during the hearing. He informed that M/s. MD Overseas Limited was granted Advance Authorizations due to the Hon'ble Court's order in its case and rejected all other requests.

6 I have gone through the records and facts carefully. Notification No.25/2015-20 dated 10.08.2020 disallows issue of Advance Authorization where export item is 'Gold Medallions and Coins' or 'Gold jewellery/articles' manufactured by fully mechanised process. The Petitioner's application dated 26.06.2019 for grant of advance authorization was rejected by invoking Public Notice No. 35 dated 26.09.2019. The Hon'ble Delhi High Court quashed and set aside Public Notice dated 26.09.2019 and allowed the WP(C) No. 12197/2019 filed by M/s. MD Overseas Limited vs. UOI and others vide its order dated



11.02.2020. The Petitioner was not a party to the WP and therefore cannot be granted benefits of the Court's order dated 11.02.2020.

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

Order

F. No. 18/33/21-22/ECA.II /112

Dated: 07.06.2022

The review petition dated 18.11.2021 is rejected.



Santosh Kumar Sarangi
7.6.2022

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy To:

- (1) Jindal Exports & Imports Pvt. Ltd., 110, Babar Road, Opp. Hotel Hilton, New Delhi - 110001 Addl. DGFT, 4, Esplanade East, Kolkata - 700069.
- (2) Addl. Director General of Foreign Trade, CLA, "Y" Shape Building, "A" Wing, I.P. Bhavan, I.P. Estate, New Delhi-110 002
- (3) CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, New Delhi - 110001
- ✓ (4) DGFT website

Dilip Kumar
(Dilip Kumar)

Dy. Director General of Foreign Trade