

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

F. No. 18/34/2022-23/ECA.I/ 226

Date of Order : 05th.01.2024
Date of Despatch: 8th.01.2024

Name of the Petitioner:

M/s Biki Overseas Pvt. Ltd.
3A, Muzaffar Ahamed Street,
(Rippon Street), 1st Floor,
Kolkata – 700 016.

IEC No.

0208020535

Order Reviewed against:

Order-in-Appeal No. 18/31/21-
22/ECA/KOL/Appeal-281 dt.
05.08.2022 passed by Addl. DGFT, Kolkata

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Review

M/s Biki Overseas Pvt. Ltd., Kolkata (here-in-after referred to as the 'Petitioner') having IEC No. 0208020535 filed Review Petition dated 16.09.2022 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 No. 18/31/21-22/ECA/KOL/Appeal-281 dated 05.08.2022 passed by Addl. DGFT, Kolkata dismissing the appeal against the Order-in-Original No. KOLECAAPPLY00033138AM22 dated 09.11.2021 & corrigendum dated 10.11.2021 imposing a penalty of Rs. 7,00,000/- on the Petitioner and its partners in addition to Customs duty & interest.

Brief of the Case

2. The Petitioner obtained eleven (11) Focus Product Scheme (FPS) licenses/scrips on the basis of declaration/undertaking and documents prescribed in the Policy/Handbook of Procedure for the relevant period as under:

Sl.No.	License No.	Date
1	0219026913	05.09.2016
2	0219025355	28.07.2016
3	0219030443	16.12.2016



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4	0219025829	10.08.2016
5	0219026914	05.09.2016
6	0219025831	10.08.2016
7	0219032883	22.02.2017
8	0219033134	08.02.2017
9	0219033136	28.02.2017
10	0219025879	11.08.2016
11	0219029101	26.10.2016

3. During an internal audit of the files, it was found that the Petitioner had obtained the above FPS by showing HS Codes in the Shipping bills which differs from the HS Code used in the application and bonus 2% not admissible leading to ineligible/excess claim for a total value of Duty Credit of Rs. 68,91,640/-.

4. A Demand Notice was issued to the petitioner on 27.07.2021 directing to refund the excess duty credit availed along applicable interest. In reply, the petitioner requested to provide them relevant papers like calculation sheet, Shipping bills, application copies etc. The petitioner was again reminded to refund the excess duty credit along with applicable interest and also informed regarding details of the demand amount. The petitioner was also provided the opportunity to examine the documents.

5. The petitioner again reiterated its earlier stand requesting for relevant papers, however, the petitioner was informed clearly the reason for the excess claim and also given the opportunity to visit office (RA, Kolkata) to see the documents but the petitioner did not avail the same. Therefore, a Show Cause Notice (SCN) dated 24.08.2021 was issued to the petitioner u/s 8,9 & 11 of FTDR Act, 1992 giving opportunity of personal hearing.

6. Personal hearing granted on 15.09.2021. The representative of the petitioner attended the personal hearing and expressed that she was not aware of the details of the case as she is new in the petitioner firm and Directors were abroad and could not participate in the personal hearing and also requested for handing over of all the documents related to the case. The representative of the petitioner firm was also explained that the matter is of misinformation and wrongful declaration in the application. The petitioner was advised to inspect the documents in the office and that selective copies of documents would be provided to them, if at all they desire so.

7. The lack of intent of the petitioner to comply the demand notice dated 27.07.2021 and SCN dated 24.08.2021, therefore, a DEL Order was issued as per Rule 7 of FT(Regulation) Rules, 1993 and Section 8 of FTDR Act, 1992, the operation of the petitioner's IEC was suspended until further orders.

8. The petitioner had contravened the provision of FTDR Act, 1992 and it had become evident that the petitioner had given mis-declaration and adopted fraudulent means to obtain the above FPS license/Scripts. By way of suppression of



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facts and fraud and therefore the Adjudicating Authority passed an Order-in-Original (OIO) No. KOLECAAPPLY00033138AM22 dated 09.11.2021 imposing a penalty of Rs. 7,00,000/- in addition to Customs duty & interest against utilized FPS licenses/scrips which have been cancelled for violation and mis-use of the FPS scheme on the petitioner and its Directors.

9. The Petitioner filed an appeal dated 24.12.2021 against the said OIO dated 09.11.2021 requesting to set aside the OIO, to withdraw DEL Order and allow personal hearing. The Petitioner was requested vide letter dated 15.02.2022 to submit documents substantiating their claim being in order and countering the OIO dated 09.11.2021. The petitioner was also requested to deposit entire penalty amount imposed in the Adjudication order as pre-deposit.

10. The Petitioner submitted some documents which were found to be inconsequential to the contention of the petitioner. The documents submitted by the Petitioner fail to establish the claim under the said scheme.

11. The Petitioner failed to deposit the penalty amount in spite of reminder dated 29.04.2022. As per Section 15 of FTDR Act, 1992, the request for waiver of penalty was not considered tenable. In view of above, the Appellate Authority passed Order-in-Appeal No. 18/31/21-22/ECA/KOL/Appeal-281 dated 05.08.2022 upholding the Order-in-Order dated 09.11.2021 & corrigendum dated 10.11.2021.

12.1 The Petitioner has filed present Review Petition dated 16.09.2022 on the following grounds:-

(i) The demand notice, show-cause notice and the adjudication order are absolutely without jurisdiction and in gross violation of the principles of natural justice, whereas section 15(2) of FT (D & R) Act, 1992 defines that "the Appellate Authority may, after giving to the petitioner a reasonable opportunity of being heard, if so desires" and therefore, liable to be set aside and/or quashed.

(ii) The demand notice was raised on the basis of very silly reason that HS code in Shipping Bills differs from the HS code mentioned in the application. The HS code mentioned in the Shipping Bills is only the authentic documents, based on which the application for FPS Authorization issuing Authority to verify whether HS code mentioned in the Shipping Bills were eligible to get FPS Authorization or not, after a lapse of about five years the observation of internal Audit is not acceptable because the authorization was issued after proper verification and each and every shipping bill has been mentioned in the Authorization itself regarding items eligible to import. Therefore, the observation of the internal Auditor as referred to the SCN has no basis to establish the demand.

(iii) The licenses were issued by the concerned officer after verifying all required documents following the procedures as laid down in FTP and no discrepancy was



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pointed out. On the observation of the internal auditor (that after five years from the date of issuance of FPS Authorization) suddenly found that the petitioner obtained the said authorization by doing mis-declaration and fraudulent means and directed the exporter to pay such large amount without providing any documentary evidence or proper justification or any authentic explanations. Hence such action has no leg to stand.

(iv) As per the HBP (2009-2014), it is mandatory that before issuing of any authorization, Shipping Bills, ITC codes and description have to be matched by the concerned RA. The department had verified the contents of the shipping bills and being satisfied with the documentation the authorization was issued. Therefore, it proves that the petitioner was entitled to get the authorization.

12.2 The Petitioner has prayed as under:-

- (i) to examine the demand notice, Show Cause Notice, Adjudication Order and Appeal,
- (ii) to examine the record of proceedings to find out correctness, legality and propriety of such decision or order,
- (iii) to pass such orders thereon as deemed fit,
- (iv) to grant Personal hearing to the Petitioner to defend their case.

13. The Reviewing Authority granted the personal hearing to the Petitioner on 16.11.2023. Shri R.N. Bandhyopadhyay, Advocate attended the personal hearing on behalf of the Petitioner and stated that neither the Adjudicating Authority nor the Appellate Authority allowed the personal hearing to the Petitioner. They also sought the time for submission of detailed written representation.

14. Ms. Dona Ghosh, Jt. DGFT attended the meeting on the behalf of RA, Kolkata. She stated that Show Cause Notice itself facilitates providing someone a chance to be heard. Personal Hearing was granted to the Petitioner on 15.09.2021. The representative of the firm attended the said hearing on the given date and expressed that she was not aware of the details of the case as she was new in the firm and Directors were abroad and could not participate in the personal hearing. She requested for documents related to the case. The Petitioner was advised to inspect the documents in the office at RA, Kolkata and that selective copies of documents would be provided to them, if at all they desire so. On 15.02.2022, the firm was also requested to deposit the entire penalty amount imposed in the Adjudication order as pre-deposit. The firm failed to deposit the penalty amount imposed in the Adjudication Order in spite of reminder dated 29.04.2022.



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15. I have gone through the facts and records of the case including submissions made by the Petitioner carefully. The Petitioner obtained eleven (11) Focus Product Scheme (FPS) licenses/scrips on the basis of declaration/undertaking and documents as prescribed in the Policy/Handbook of Procedure. It is observed that the Petitioner availed the export benefits (FPS licenses/scrips) fraudulently by way of manipulation of entries and mis-declaration of HS codes to avail of undue benefits. The Petitioner obtained the above said FPS by showing HS Codes in the Shipping bills which differs from the HS Code used in the application and bonus of 2% which was inadmissible leading to ineligible/excess claim for a total value of Duty Credit of Rs. 68,91,640/-. It is also observed that Personal Hearing was granted by the Adjudicating authority on 15.09.2021. The Petitioner was also advised to inspect the documents in the office at RA, Kolkata and that selective copies of documents would be provided to them, if at all they desire so.

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

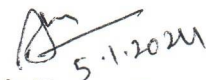
ORDER

F.No. 18/34/2022-23/ECA.I/ 226

Dated : 5th .01.2024


The Review Petition dated 16.09.2022 is rejected. Order-in-Appeal No. 18/31/21-22/ECA/KOL/Appeal-281 dated 05.08.2022 and Order-in-Original No. KOLECAAPPLY00033138AM22 dated 09.11.2021 and corrigendum No. KOLECAAPPLY00033138AM22 dated 10.11.2021 are upheld.




(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. M/s Biki Overseas Pvt. Ltd., 3A, Muzaffar Ahamed Street, (Rippon Street), 1st Floor, Kolkata – 700 016.
2. The Addl. Director General of Foreign Trade, Kolkata.
3. Central Economic Intelligence Bureau, 1st, 6th & 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
- ✓ 4. DGFT Website.


(Anita Thakur)
Dy. Director General of Foreign Trade