

Government of India/Ministry of Commerce
Office of the Joint Director General of Foreign Trade

"KENDRIYA SADAN", 6th Floor, C & E Wing, 17th Main Road,
Koramangala 2nd Block, Bengaluru 560 034.

File No.: 07/95/199/00002/AM07 / 2

Dated: 18th March, 2014

Adjudication Order

19 MAR 2014

ORDER - IN - ORIGINAL

Passed by:  Patil, Joint Director General of Foreign Trade, Bangalore

1. Any person/party aggrieved by this order may, under Section 11(2) read with Section 15(1) of the Foreign Trade (Development & Regulation) Act, 1992 file an appeal against the same to the appropriate appellate authority i.e. to the Additional Director General of Foreign Trade, 4th Floor, Shastri Bhawan, Hadows Road, Nungambakkam, Chennai PIN 600 006 within 45 days from the date of serving of this Adjudication Order.

2. Any person/party desirous of filing an appeal against this order shall deposit the penalty amount and produce proof of payment along with appeal to the Appellate Authority failing which the appeal is liable to be rejected for non-compliance of the provision of Section 15(1) of the Foreign Trade (Development & Regulation) Act, 1992.

3. The penalty amount is to be deposited under Head of Account "1453-Foreign Trade & Export Promotion Minor Head 102-Other receipts, fines and penalties etc., Director general of Foreign Trade or by way of a DD payable at Bangalore drawn in favour of Jt. Director General of Foreign Trade, Bangalore within 45 days thereof.

4. M/s. Stove Kraft P. Ltd., Bangalore obtained the following Advance licences for duty free import of inputs with obligation to export products manufactured as specified in the said licences

The details are as below:

Sl. No.	Advance licences Number and Date/Value	File No.	Export Item	Import Item
1	0710020710 23.04.2003 Rs. 3448108/-	072104000042AM04	Stainless Steel LPG Stove	Stainless sheets/coils, Gas Valves, Brass Honey Scrap
2	0710022741 28.07.2003 Rs. 7453729/-	072104000206AM04	Stainless Steel LPG Stove	Stainless sheets/coils, Gas Valves, Brass Honey Scrap
3	0710022942 31.07.2003 Rs. 1668412/-	072104000221AM04	Stainless Steel Kerosene Wick Stove	Stainless Steel Sheets/coils
4	0710024959 30.10.2003 Rs. 1346577/-	072104000617AM04	Stainless Steel LPG Stove	Stainless sheets/coils, Gas Valves, Brass Honey Scrap
5	0710026094 18.12.2003 Rs. 5126058/-	072104000785AM04	Stainless Steel LPG Stove	Stainless Steel sheets/coils, Gas Valves, Brass Honey Scrap
6	0710025406 17.11.2003 Rs. 666030/-	072104000616AM04	Stainless Steel Pressure Cooker	Stainless Steel Sheets/coils
7	0710028835 19.04.2004 Rs. 3811508/-	072104000017AM05	Aluminium Pressure Cooker	Aluminium Sheets
8	0710029493 20.05.2004 Rs. 2239160/-	072104000058AM05	Stainless Steel Kerosene Wick Stove	Stainless Steel Sheets/coils
9	0710029830 14.05.2004 Rs. 14393078/-	072104000064AM05	Stainless Steel LPG Stove	Stainless Steel sheets/coils, Gas Valves, Brass Honey Scrap
10	0710031155 23.07.2004 Rs. 10329795/-	072104000387AM05	Stainless Steel LPG Stove	Stainless Steel sheets/coils, Gas Valves, Brass Honey Scrap
11	0710035139 31.12.2004 Rs. 2239160/-	072104000318AM05	Stainless Steel Kerosene Wick Stove	Stainless Steel Sheets/coils
12	0710036467 04.03.2005 Rs. 1904936/-	072104000059AM05	Aluminium Utensils	Aluminium Scrap, etc.,
13	0710038269 02.06.2005 Rs. 4109688/-	072104000323AM06	Aluminium Pressure Cooker	Aluminium Sheets/Ingots

While three licences were for export of Aluminum utensils/cookers, other ten covered Export of Stainless steel (SS) LPG stove/ SS Kerosene stove/ SS Cookers.

5. The Department of Revenue Intelligence (DRI) informed this office about misuse of the scheme by the said company.

As per investigation of DRI M/s. Stove Kraft P. Ltd. diverted the duty free stainless sheet of 304/430 grade imported duty free under the advance authorizations into the local market and used cheaper patta material procured from local market to meet export obligation. They had misdeclared to JT. DGFT about usage of 304/430 grade AISI in the manufacture of SS LPG stoves and Stainless Steel wick stoves and in their application made under Appendix – 10B.

As in DRI letter, in respect of exports of LPG stoves/and wick stoves covered under authorization numbers 0710020710 dated 23.04.2003, 0710022741 dated 28.07.2003, 0710022942 dated 31.07.2003, 0710024959 dated 31.10.2003, 0710029493 dated 20.05.2004, 0710031155 dated 23.07.2004 and 0710038269 dated 02.06.2005, the firm misdeclared with regard to the usage of 304/430 grade in the shipping bills.

The company misdeclared the weight of aluminium pressure cookers in their exports but claiming excess usage even though they have not consumed the imported duty free Aluminium ingots in the aluminium pressure cookers to that extent as per their declaration made in the shipping bills. The weight of aluminium cooker has been misdeclared by the company in the export shipping bills covered under licence number 0710038269 dated 2.6.2005

Further they stated that the Managing Director during the course of investigation accepted to the usage of inferior grade pattas in the exported stoves and deposited totally Rs. 99 lakhs toward customs duty liability.

6. In respect of five licences (Sl. No. 1,2,3,4 & 5 of the table above) this office had already issued Export Obligation discharge certificates. Hence a Show Cause Notice(SCN) in respect of these for taking action for cancellation of discharge of EO and cancellation of the licence and imposition of penalty under section 11(2) of FTDR Act was initiated by SCN dated 18.01.2007.

In continuation of the said SCN, an additional SCN dated 18.9.2013 was issued covering all the remaining nine authorizations for the same violation as reported by DRI.

In this regard, the 08 Authorizations covering export of stoves were pertaining to ICD Bangalore. The one case pertaining to import of Aluminium ingots (Licence number 0710038269 dated 2.6.2005) was pertaining to customs Chennai. In the balance four cases no import taken place

Shri Rajiv Nambiar, GM, Stove Kraft P Ltd. appeared for Personal Hearing vide Interview slip number 22029 dated 21.10.2013 and informed that they have already paid the duty with interest and accepted the violations and they would be submitting a written submission with a copy of the Settlement Commission Order and payment details. Accordingly they have submitted the same on 28.10.2013. In the written submission they contended that they had used the imported goods in the exports but had not maintained satisfactory record for establishing such use. They further stated that, though they could have contested the notice, in true spirit of settlement filed application before the settlement commission. Also requested this office to take a lenient view of the offense and settle the case in terms of 11(4) of the FTDR Act1992.

7.As stated in the Settlement Commission Order, a SCN dated 4.5.2007 from Commissioner of Customs, Bangalore was issued for licences pertaining to import of Stainless steel/sheets at ICD Bangalore. For licence pertaining to export of aluminium pressure cooker, a SCN was issued by Jt. Commissioner, Chennai Customs on 07.09.2007. In response against these SCNs of Customs, the firm approached Settlement Commission, Chennai.

As per Final Order dated 10.02.2009 the Settlement Commission have stated as follows:

- a. The Customs duty and the interest payable thereon are settled at Rs.98,68,722/- (Rupees Ninety Eight Lakhs Sixty Eight Thousand Seven Hundred and Twenty Two only) and Rs. 28,20,083/- (Rupees Twenty Eight Lakhs Twenty Thousand and Eighty Three only) respectively in respect of both the Show Cause Notices. Since the said amounts have been paid already no further liability subsists in this regard.

- b. The Bench imposes a fine of Rs. 2,00,000/- (Rupees Two Lakhs Only) in lieu of confiscation of the seized goods valued at Rs. 22,10,217/- which was proposed for confiscation and were provisionally released to the applicant. This amount should be paid by the applicant within 7 days of receipt of this order. On payment of this amount, the bond and the Bank Guarantee should be released to the applicant.
- c. The Bench grants immunity from penalty in excess of Rs. 10,00,000/- (Rupees Ten Lakhs only) to the applicant under the Customs Act. The said amount of penalty shall be paid within 15 days from the date of receipt of the order.
- d. The applicant is granted immunity from prosecution under the Customs Act.
- e. The co-applicant, Shri Rajendra Gandhi, is granted immunity from penalty and prosecution under the Customs Act.

8. Quoting this Order the company in the written submission informed that the duty of Rs. 98,68,722/- with interest of Rs. 28,20,083/- has already been paid in respect of 09 licences where import was made and they have also paid penalty of Rs. 10 lacs and produced challan copies in respect of that. They have also informed that in respect of 04 licences no imports have been made.

9. Thus out of 13 licences issued no imports was made in the 4 licence. Out of the remaining 9 cases 8 were pertaining to Stainless Steel/Coils and 1 pertaining to import of Aluminium Scrap. In 4 cases actually EODC was already issued by Jt. DGFT, Bangalore. The violation was there in respect of all the 9 cases including the cases where EODC was issued. The firm has already stated in the Settlement Commission and as per their submission they have paid duty with interest in all these 9 cases. They also paid the penalty imposed by the Settlement Commission

10. This SCN was issued under section 11(2) of the Foreign Trade Development and Regulation Act 1992. The violations/misuse constitutes the contravention of conditions of authorizations, Duty Exemption Scheme, the provisions of Foreign Trade Policy. Hence it is necessary that a penalty is imposed on the firm for the contravention.

Hence I proceed with the following:

- a. All the authorizations are deemed to have been cancelled ab-initio thereby taking away any duty exemption benefit.
- b. A penalty of Rs 10,00,000 (Rupees ten lakhs only) is imposed under the section 11(2) read with section 13 of FTDR Act 1992 on the firm.

This is without prejudice to any other action that may be taken against the firm under any other law that may be applicable.


J.V. Patil

Joint Director General of Foreign Trade
jvpatil@nic.in

To,

M/s. Stove Kraft Private Limited,
No.58/2, Chikkaandra,
Subramanyapura Post,
Bangalore – 560 061.

✓ Copy to,
Additional director general of foreign trade
4th floor Shastri Bhavan Annex,
26, Haddows Road
Nungambakkam Chennai-600006

Commissioner of Custom Chennai

Commissioner of Customs Bangalore