



भारत सरकार Govt. of India

वाणिज्य एवं उद्योग मंत्रालय M/o Commerce and Industry

ऑचलिक अपर महानिदेशक विदेश व्यापार का कार्यालय

Office of the Zonal Additional Director General of Foreign Trade

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F.NO. A(01)/Addl.DGFT/ECA/Che/Am 19

Date of Order: 13/07/2018

Name of the Appellant

M/s Shivsu Canadian Clear Waters Ltd.
Survey No. 682,
Paarivakkam Road,
Lilavathy Nagar, Sennar Kuppam,
Poonamalle, Thiruvallur 600 056

Order appealed against

Order -in-Original No.
04/21/040/00142/AM 10
dated 20/04/2018 passed by
Office of Addl.DGFT, Chennai

Order-in-Appeal
Passed by

Shri D.K.Sekar
Appellate Authority &
Zonal Addl. Director General of Foreign Trade

Order-in-Appeal

M/s Shivsu Canadian Clear Waters Ltd., Thiruvallur 600 056 has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992 against Order-in-Original No.04/21/040/00142/AM 10 Dated 20/04/2018 passed by Office of Addl.DGFT, Chennai

2. M/s Shivsu Canadian Clear Waters Ltd., Thiruvallur, had obtained an Advance Authorisation No. 0410105847 dated 03.07.2009 for Rs. 15,74,811/- from the Office of Addl.DGFT, Chennai, for import of items duty free as specified in the licence, with export obligation to export the resultant product as specified in the licence for a FOB value of US\$ 12,64,30,000/- within a period of 36 months from the date of issue of authorization. The firm had submitted EDI Free Shipping bill with a manual correction, which could not be considered towards fulfilment of export obligation, as a result of which there was a shortfall. Therefore, Order-in-Original dated 20/04/2018 imposing penalty of Rs. 50,000/- in addition to payment of duty plus interest was passed and the firm was placed under Denied Entity List.

3. Aggrieved by the above said Order-in-Original, the Company has preferred the present appeal on 14/05/2018. As they have been experiencing difficulties in procuring orders and in execution too because of cash flow problems they have requested for waiver of the condition of pre-deposit of penalty. In view of this the condition of pre-deposit of penalty is waived.

4. In the appeal the firm has stated that they have fulfilled the export obligation within the stipulated period. The only lacuna they state is that they had inadvertently left out to mention the authorisation number and date in the shipping bill. However, the shipping bill bears the manual authentication of Customs of the authorisation number, which was not considered by the adjudicating authority. The firm also states that the Customs did not respond to the letter from this office seeking genuineness of the endorsement, inspite of several visits made by them to Customs. The firm states that they had made the payment of duty plus interest amounting to Rs. 8,31,166/- on 25.4.2018 to Customs, Chennai even before the receipt of Order in Original on 27.4.2018. Since they have paid the entire applicable import duty along with the interest to Customs, they have requested to drop the penalty and has also requested for a Personal Hearing to explain their case.

5. Personal Hearing was granted to the firm on 9/7/2018. Smt. C.Geetha, Exports Manager, authorised by the firm attended the hearing. During the Hearing, the representative of the firm showed evidence for having fulfilled the export obligation. She also showed documents evidencing voluntary payment of duty and interest before the actual receipt of the Order in Original and therefore requested for setting aside the Order.

6. On perusal of the documents submitted by the firm, it is seen that the duty plus interest has been paid by the firm voluntarily even before the receipt of the Order in Original. The delay appears mainly due to the non-receipt of confirmation from Customs, sought for by this office about genuineness of the endorsement made on the shipping bill by Customs. The firm has submitted a letter from Customs, Chennai confirming the voluntary payment of duty plus interest amounting to Rs. 8,31,666/. There seems to be no intent on the part of the firm to defraud the Government or misuse of the imported raw materials.

I, therefore, in exercise of the powers vested in me under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, as amended, pass the following Order:

F.NO. A(01)/Addl.DGFT/ECA/Che/Am 19

Date of Order: 13/07/2018

ORDER

1. The Order of the adjudicating authority is set aside.
2. The case is remanded back to the licensing authority for denovo examination. After examination of all the documents submitted by the firm appropriate orders may be passed .


(D.K.SEKAR)

Zonal Additional Director General of Foreign Trade

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M/s Shivsu Canadian Clear Waters Ltd.
Survey No. 682,
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Lilavathy Nagar, Sennar Kuppam,
Poonamalle, Thiruvallur 600 056