



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(06)/Zonal Addl.DGFT/ECA/Che.CBE

Dated 07/08/2018

Name of the Appellant

M/s A Tex Home Collection
No.23, Upstairs,
Sengunathapuram II Cross,
Karur 639 002

Order appealed against

Order-in-Original No.
32/24/040/00051/AM 13 dated 6.10.2017
passed by Office of Jt.DGFT Coimbatore

Order-in- Appeal
passed by

Shri D.K.Sekar
Appellate Authority & Zonal Additional
Director General of Foreign Trade, Chennai

Order-in-Appeal

1. M/s A Tex Home Collection, Karur has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992 against Order-in-Original No. 32/24/040/00051/AM13 dated 6.10.2017 passed by Office of Jt. Director General of Foreign Trade, Coimbatore.
2. M/s A Tex Home Collection, Karur had obtained an advance authorisation no. 3210060859 dated 19.02.2013, for a c.i.f. value of Rs. 8,92,375/- from the Office of Jt.DGFT, Coimbatore with an export obligation to export for FOB value of US\$ 19,470/- within a period of 18 months from the date of issue of authorisation. The firm had not submitted the required documents evidencing fulfilment of export obligation, and neither had they regularised the case by payment of custom duty plus interest. Therefore, Order in Original dated 06.10.2017 with penalty of Rs. 8,92,375/- was imposed on the firm and the firm was also placed under Denied Entity List by the Adjudicating authority.
3. Aggrieved by the above said Order in Original, the firm has preferred the present appeal on 02.02.2018. The firm has requested to set aside the order of penalty as the export obligation had been fulfilled and have also regularised the case and as there is no loss to the exchequer. The firm has also requested for condonation of delay in filing of appeal.

...contd.2/-

4. The firm in its appeal has stated that they had exported the said goods but failed to fulfil the export obligation in terms of quantity. The firm further states that since they had not exported the required quantity, they made additional exports beyond the export obligation period and that the delay in submission of redemption documents was mainly due to late realisation of the export proceeds. Subsequently they have requested for a personal hearing to present their case.
5. The firm was called for personal hearing on 6.8.2018. Smt. N.Leelavathi, authorised by the firm, attended the Personal Hearing and stated that they were unable to obtain REX registration due to placing of their firm in DEL and as a result of which they were unable to execute their export orders. They also pleaded that their appeal be entertained as they were not aware of the procedural requirements. The representative stated that they filed redemption documents with the O/o Jt.DGFT Coimbatore shortly after issue of order-in-original, i.e. by 30.10.2017 and expected that their case would be finalised / regularised based on the same. However, they stated that they became aware of the need of approaching the appellate authority only towards the end of November 2017, when they approached RA Coimbatore to know the status of redemption.
6. On perusal of the submissions made by the firm both in the appeal and during the personal hearing, it is observed that immediately after issue of the adjudication order dated 6.10.2017(received by the firm on 19.10.2017) the firm had responded by submitting a letter to RA Coimbatore on 24.10.2017, i.e. within a week of issue of the order, and subsequently they have submitted redemption documents. The firm has said that at no point of time were they informed that they have to file the appeal in Zonal Addl.DGFT , Chennai. They also pleaded that they were not conversant with the procedures of filing the appeal and hence they had only filed a reply to the Order with the RA Coimbatore. They further stated that only at the time of their visit to RA in connection with redemption in the end of November 2017, were they told that the appeal has to be filed with the Zonal office, Chennai. On perusal of the documents, it is seen that since the exports beyond the export obligation period cannot be considered towards export obligation fulfillment, there was shortfall in quantity in fulfilment of export obligation. This shortfall, the firm has regularised by payment of Customs duty with interest towards the excess imports, and has submitted copy of the challan evidencing payment of the same with Customs. Hence there seems to be no intent on the part of the firm to defraud the Government. But the fact remains that the firm had not submitted export obligation fulfilment documents even after completion of the export obligation period.
7. The only other point to be considered is, if the firm had filed the appeal within the stipulated time period. The firm has stated that they received the order on 19.10.2017. They have immediately replied to RA Coimbatore and subsequently submitted the redemption documents to that office. RA Coimbatore has stated that they do not have details of when the order was actually delivered to the firm. Here it is pertinent to point out that the order has only said that the appeal has to be filed with Addl.DGFT and nowhere does the order mention about the place of the appellate authority, i.e. Chennai, where the appeal has to be filed. The appellant states that since they were not aware of the procedure for filing of appeal, they had replied to the order and submitted the documents to RA Coimbatore. The licensing authority neither returned the documents nor advised the firm to approach the appellate authority to Chennai. Hence I allow the plea of the firm for condoning the delay in filing the appeal because of their not being well conversant regarding the jurisdiction of filing appeal, and consider the date of filing of reply with RA Coimbatore as the effective date of filing appeal.

8. 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(06)/Addl.DGFT/ECA/Che/AM 18/Cbe.

Dated 07 /08/2018

ORDER

1. The condition of pre-deposit of penalty is waived.
2. The penalty levied is reduced to Rs. 10000/- and the Order placing them under DEL is set aside.
3. The case is remanded back to the Office of R.A., Coimbatore for denovo examination. The firm shall produce all required documents to R.A. Coimbatore within 15 days of receipt of Order. R.A., Coimbatore may examine the documents submitted by the firm and appropriate orders be passed.

Sd/-

(D.K.SEKAR)

Zonal Additional Director General of Foreign Trade

**M/s A Tex Home Collection
No.23, Upstairs,
Sengunathapuram II Cross,
Karur 639 002**

Copy to: Jt.DGFT, Coimbatore for necessary action.


(D.K.SEKAR)