



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(07)/Addl.DGFT/ECA/Chen/AM 18/Madurai

Dated 05 /04/2018

Name of the Appellant

M/s Sathya Bama Poly Printers
3/645-K, Sattur Road,
Sivakasi 626123

Order appealed against

Order –in-Original No.
35/21/021/000109/AM 11 dated
18.04.2017
passed by Jt.DGFT, Madurai

Order-in-Appeal
Passed by

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

Order-in-Appeal

M/s Sathya Bama Poly Printers, Sivakasi 626 123 has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 35/21/021/000109/AM 11 passed by Jt.DGFT Madurai.

2. M/s Sathya Bama Poly Printers, Sivakasi 626 123 had obtained an EPCG Authorisation No. 3530004099 dated 02.07.2010, for duty saved amount of Rs. 29,59,991/- from the Office of JDGFT, Madurai, for import of Capital Goods, with export obligation to export 'Poly Bags' for a FOB value of US\$ 3,71,158.74, within a period of 6 years from the date of issue of authorization. The Firm had not submitted documents evidencing fulfillment of export obligation after the completion of export obligation period. Therefore, Order-in-Original dated 18.04.2017 imposing penalty of Rs. 1,20,00,000/- was passed and the firm was also placed in Denied Entity List vide Order dated 18.04.2017, by the Adjudicating authority.

3. Aggrieved by the above said Order-in-Original, the firm has preferred the present appeal on 06.06.2017. In the Appeal the firm has requested for waiver of pre-deposit of penalty since the heavy penalty would put the firm in severe financial distress and would force them out of business and also jeopardize the future of the families of their staff. After considering the circumstances enumerated in the appeal, the condition of pre-deposit of penalty is hereby waived.

4. The firm in their appeal have stated that they could not fulfill the export obligation due to fall in sales due to unfavourable market conditions owing to global recession, fluctuations in price of raw materials, flooding of market with Chinese goods and continuous power outages in their region. In view of the above facts the appellant has requested to set aside the penalty and remove them from DEL.
5. The appellant has further submitted additional facts and grounds on 4.9.2017 in continuation of the earlier appeal dated 6.6.2017. In the additional grounds it has been stated that entire customs duty on imported capital goods has been paid back to the Customs Department including the forfeited Bank Guarantee amount. After these payments, only interest portion on the Customs Duty remained to be paid and had sought permission to pay the same in instalments since the amount was quite huge and required time to mobilize funds for the same. In view of the detailed submission of facts the appellant has sought that the non fulfillment of export obligation may be treated as a bonafide default and also since there was no intent to defraud the Government.
6. The firm was given opportunity of Personal Hearing on 16.10.2017 which was attended by Shri J.S.Vijay Shridhar Proprietor and two others. During the Personal Hearing, it was stated that they were bonafide exporters who could not fulfill the export obligations due to very difficult market conditions and also the consequential precarious financial situation of the firm. They said that they had already paid the Customs duty and requested that the interest portion be allowed to be paid in instalments. They also wanted waiver of penalty. The appellant was asked to produce the original evidence of payment of interest which they assured shall be submitted in their next Hearing date. For various reasons, the appellant wanted extension of time for submission of evidence of payment during their Personal Hearings granted on 28.11.2017 and 28.12.2017. During the Personal Hearing on 1.2.2018, the firm's proprietor produced the challans evidencing payment of interest. He was asked to produce a certificate from Customs that all duty and interest have been paid by the firm. Accordingly the firm vide their letter submitted on 2.3.2018 to this office has enclosed a letter from Customs Tuticorin dated 26.2.2018, confirming the calculation of duty and interest and payment of the same.
7. I have carefully gone through the appeal submitted by the firm and arguments put forth during the Personal Hearings. It is seen from the above submissions by the firm that the Customs duty has been paid by the firm even before the date of issue of Order-in-Original. The entire interest payable on the duty has also been paid by the firm in instalments as confirmed by Customs Tuticorin. From the appeal and the additional grounds submitted, it can be observed that the firm was willing to make good the loss of revenue to the Government and there seemed to be no willful intent to defraud the government. However, it is a fact that the firm did not fulfill the export obligation as per the terms and conditions of the licence and therefore are liable for penalty under the FTDR Act.

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:

ORDER

F.No. A(07)/Addl.DGFT/ECA/Chen/AM 18/Madurai

Dated 05/04/2018

1. The penalty imposed is reduced to Rs. One lakh which shall be paid within 30 days from the date of this Order.
2. The case is Remanded back to the Office of Jt.DGFT, Madurai for denovo examination. RA, Madurai to examine the documents submitted by the firm and also seek confirmation from Customs Tuticorin regarding the duty and interest payment by the firm.
3. After examination of the documents submitted by the firm and confirmation from Customs, appropriate orders may be passed by RA Madurai.


Sd/-

(D.K.SEKAR)

Zonal Additional Director General of Foreign Trade

M/s Sathya Bama Poly Printers
3/64⁵K, Sattur Road,
Sivakasi 626123

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


(D.K.SEKAR)