



भारत सरकार Govt. of India

वाणिज्य एवं उद्योग मंत्रालय M/o Commerce and Industry

ऑफ़लिक अपर महानिदेशक विदेश व्यापार का कार्यालय
Office of the Zonal Additional Director General of Foreign Trade

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F.No.A(09)/Zonal Adl.DGFT/ECA/Che/AM 19-Cbe

Dated 08/10/2018

Name of the Appellant

M/s Western India Cashew Co.(P) Ltd.
No.88, II Floor, R.P.Towers,
Coimbatore Road, Pollachi-642002

Order appealed against

Order –in-Original No.
32/21/040/00101/AM 13
Dated 14/03/2018 issued by
Office of Jt.DGFT, Coimbatore

Order-in-Appeal passed by

Shri D.K.Sekar, Appellate Authority and
Zonal Adl.Director General of
Foreign Trade, Chennai

Order-in-Appeal

M/s Western India Cashew Co.(P) Ltd., Pollachi 642002 has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 32/21/040/00101/AM 13 dated 14/03/2018, passed by Office of Jt.DGFT Coimbatore.

2. M/s Western India Cashew Co.(P) Ltd., Pollachi 642002 had obtained an Advance Authorisation No. 3210059103 dated 11.12.2012 for CIF value of Rs.7,63,84,347/- from the Office of JDGFT, Coimbatore, with export obligation to export Roasted Cashew Nuts Broken for a FOB value of US\$ 16,10,305/- within a period of 18 months from the date of issue of authorization. The Firm had not submitted documents evidencing fulfillment of export obligation and also failed to regularize the case by payment of customs duty plus interest as directed by the office. Therefore, Order-in-Original dated 14.03.2018 imposing penalty of Rs. 7,63,84,347/- was passed and the firm was also placed in Denied Entity List by the Adjudicating authority.

3 .Aggrieved by the above said Order-in-Original, the firm has preferred the present appeal on 17.04.2018. Owing to the reasons submitted in the appeal the firm has requested to waive the condition of pre-deposit of penalty.

4. The firm in their appeal has requested to set aside the Order. In the appeal the firm has stated that as per one shipping bill no. 6096410 dated 17.11.2014, the description of the export item has been given as Roasted Cashew Nuts instead of Roasted Cashew Nuts Broken. Because of this mismatch, the Regional Authority had rejected this shipment, against redemption of the Advance Authorisation. The appellant also stated that the office of Jt.DGFT Coimbatore, therefore issued SCN and later adjudication order imposing penalty.

...2/-

4(i) The firm states that as per Cashew Export Promotion Council (CEPCI) description, LWP refers to Large White Pieces, which means Kernels broken into more than two pieces. It is stated by the appellant that Customs allowed shipment after finding the export consignment in order.

4(ii) The firm further stated that there was only one item of import in the licence, i.e. Cashew Kernels-BROKEN, which has been imported and available in the bill of entries. The related shipping bill of export bears advance licence number thereby proving that the import item was utilized for the export product. It also pleaded that the minor discrepancy in export description in shipping bill (omission of word- broken) does not mean that the product exported was not broken cashews and hence requested to overlook the minor discrepancy and set aside the order of penalty

5. The appellant was given an opportunity of Personal Hearing on 28.09.2018. Shri R.Vinod Kumar, Director, attended the Hearing.. He stated that Order in Original has been issued by disallowing a shipping bill for export obligation against the advance authorization on the ground of mis-match in item description. The firm stated that the exported product was the same as mentioned in the licence and that the packing slip of shipping bill provides evidence for the same.

6. I have gone through the submissions made in the appeal and during the Personal Hearing. It is seen from the above that there is a mismatch in export product description in one of the shipping bills, which is prima-facie outside the export obligation period, which had expired on 30.6.2014. CRA audit has also pointed out the discrepancy in respect of the description in this particular shipping bill. There appears to be not much difference in the exported product under this shipping bill going by the documents submitted by the firm in support of the same. I therefore do not find rejection of the shipping bill on description mismatch to be reasonable.

6(i) The Order in Original states that the firm had not submitted original documents. However the export obligation documents were submitted on 30.10.2015 and the letter to the firm asking them to regularise was issued on 10.3.2017, i.e. after the CRA had objected to the mismatch in description on 9.3.2017. which is almost 16 months from the date of submission of documents by the firm. As the firm had not replied to the SCN the case was adjudicated on 14.3.2018. Hence the Order in Original stating that original documents were not furnished is factually incorrect, as there is adequate evidence that the export obligation documents have been submitted by the firm.

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:

...3/-

ORDER

F.No.A(09)/Zonal Addl.DGFT/ECA/Che/AM 19-Cbe

Dated 08 /10/2018

1. The condition of pre-deposit of penalty is waived
2. The Order in Original is set aside
3. The case is remanded back to the adjudicating authority for de-novo examination and appropriate orders after examination of documents with reference to the terms of the advance authorization and relevant policy provisions.


(D.K.SEKAR)

Zonal Additional Director General of Foreign Trade

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M/s Western India Cashew Co.(P) Ltd.
No.88, II Floor, R.P.Towers,
Coimbatore Road,
Pollachi-642002