



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(19)/Addl.DGFT/ECA/Che/AM 19/Cbe Dated 27 /12/2018

Name of the Appellant

M/s Senthil Andavar Textiles
2/89, Avinashi Road,
Chinnampalayam,
Coimbatore 641062

Order appealed against

Order -in-Original No.
32/21/021/00281/AM 08 dated
23.03.2018 issued by Office of
Jt.DGFT Coimbatore

Order-in-Appeal
Passed by

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

Order-in-Appeal

M/s Senthil Andavar Textiles 641062, has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 32/21/021/00281/AM 08 dated 23.03.2018 passed by Office of Jt.DGFT Coimbatore.

2. M/s Senthil Andavar Textiles 641062 had obtained an EPCG Authorisation No. 3230009835 dated 21.05.2007 for a duty saved value of Rs. 28,48,033/- from the Office of Jt.DGFT, Coimbatore, for a FOB value of US\$ 5,43,129 within a period of 8 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 no. 32/21/021/00281/AM 08 dated 23.03.2018 imposing penalty of Rs. 56,96,066/- 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 06.06.2018. The appellant has stated in the appeal that the insistence of pre-deposit of penalty will financially cripple them and cause irreparable harm to the survival of the firm and has hence requested to waive the condition of pre-deposit of penalty imposed. The request of the firm for waiver of condition of predeposit of penalty is allowed.

4. In the appeal they have stated that the appellant had been given extension of export obligation period upto 20.5.2017. The Show cause notice (SCN) was issued on 17.3.2015 after which extension of export obligation period had been granted. The appellant has stated that since the extension of time for export obligation had been given after the issue of SCN, the SCN itself had been rendered infructuous and that the respondent had not acted upon the same for three years in view of the extension already granted. It is argued that since the earlier Showcause notice had been rendered infructuous because of the extension, a new SCN ought to have been issued before passing the adjudication order. The appellant has stated

that no new SCN was issued and opportunity of personal hearing had also not been granted. It is stated that the appellant was unable to fulfill the export obligation for reasons beyond their control which plagued the textile industry in Tamilnadu and hence to set aside the order. The appellant had also requested for personal hearing to present their case.

5. The appellant was granted personal hearings on 28.9.2018, 29.10.2018 and 17.12.2018. During the first two hearings the appellant sought time for producing documents and during the final hearing furnished copy of demand draft submitted to RA Coimbatore for payment of duty and stated that they were in the process of mobilizing resources to pay interest to Customs.

6. I have gone through the submissions made in the appeal and during the personal hearings. It appears that the firm had been granted extension of export obligation period after the SCN was issued, which makes the SCN null and void. No further SCN was issued after the expiry of the extended export obligation period and the Order in Original was issued without giving an opportunity of personal hearing to the applicant. The requirement of Section 14 of the FTDR Act, 1992 by giving an opportunity before making an order imposing a penalty cannot therefore be considered to have been fulfilled.

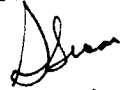
7. I, therefore, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, as amended, pass the following Order:

ORDER

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

Dated 27/12/2018

1. The Order-in-original is set aside.
2. The case is remanded back to the licensing authority for denovo examination and take appropriate action in terms of the Foreign Trade Policy/procedures and provisions of the FTDR Act.


(D.K.SEKAR)

Zonal Additional Director General of Foreign Trade

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M/s Senthil Andavar Textiles
2/89, Avinashi Road,
Chinnampalayam,
Coimbatore 641062