



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(21)/Addl.DGFT/ECA/Che/AMIT/Cbe.

Dated 14 /12/2018

Name of the Appellant

M/s K.G.Farms and Flavours
Ramapattinam,
Pollachi 642 005

Order appealed against

Order -in-Original No.
32/21/040/00143/AM 16 dated
16.03.2018 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 K.G.Farms and Flavours, Pollachi 642 005 has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 32/21/040/00143/AM 16 dated 16.03.2018, passed by Office of Jt.DGFT Coimbatore.

2. M/s K.G.Farms and Flavours, Pollachi 642 005 had obtained an Advance Authorisation No. 3210077801 dated 21.01.2016 for CIF value of Rs.29,00,095/- from the Office of Jt.DGFT, Coimbatore, with export obligation to export Organic Virgin coconut oil for a FOB value of US\$ 6,86,36,160/- within a period of 18 months 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. 32/21/040/00143/AM 16 dated 16.03.2018 imposing penalty of Rs. 29,00,095/- 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 12.06.2018. The appellant pleaded that due to current business situation the company was barely trying to meet the expenditures for the day to day affairs of the company and it was therefore not in a position to generate adequate financial resources to deposit the amount. The request of the appellant has been considered and condition of predeposit of penalty is waived.

4. In the appeal they have stated that majority of their productions are supplied to US and Europe. But due to buyer changing the required weights, they were unable to utilize the import items cleared under said advance authorization. Due to continuous resignation of staff in their documentation department, they stated that they could not surrender the advance authorization, and that only after receipt of the Order-in-Original did they come to know of the same. Whereas on receipt of the Orders, they had regularized the excess imports by payment of Customs duty with interest and also submitted copy of TR Challan and letter from Customs evidencing payment of the same.

5. The appellant was granted Personal Hearing on 30.11.2018, Shri Bala Dhandapani, Managing Partner attended the Personal Hearing. During the hearing, it was stated that they had regularized the import by payment of duty and interest and requested for waive of condition of pre-deposit of penalty and to set aside the order. He also stated that they furnished the redemption documents to RA on 4.6.2018, when they were informed that they have to file appeal before the Addl.DGFT Chennai. They stated that they had sent the appeal by post on 9.6.2018 and contended that the appeal was thus filed within 75 days from the date of receipt of Order in Original.

6. I have carefully gone through the appeal and the submissions made before me during the Personal Hearing. It is seen that the appellant became aware that they had to file the appeal before the Addl.DGFT when they went to submit their redemption documents and that immediately thereafter they had filed the appeal. It also appears that the firm had regularized the excess imports voluntarily and had submitted proof of the same to RA Coimbatore. Since there seems to be a postal delay in receipt of the appeal, the request of the appellant to consider the date of sending the appeal by post as the appeal date is therefore accepted. The firm has also voluntarily regularised the excess imports and there appears to be no intent on the part of the appellant to defraud the government.

7. The firm on receipt of the order in original had voluntarily opted for payment of Customs duty and interest in May 2018, as reported by the Dy. Commissioner of Customs (DEEC-EODC) Chennai. The firm has requested that their failure to submit the EODC documents on time may be condoned considering the difficult business conditions.

8. While there is no doubt that the firm had failed to fulfill export obligation as per the terms of the licence and they had also failed to regularize the case within the stipulated time, the fact that they had deposited the duty and interest voluntarily on receipt of the order-in-original indicates that the firm had the bonafide intents to fulfill its commitments/obligations. Though the firm's failure merits imposition of penalty under the FTDR Act, the intent of the firm in honouring its obligations and their plea on the basis of their current business situation deserves to be considered to determine the quantum of penalty.

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(21)/Addl.DGFT/ECA/Che/AM/1/Cbe.

Dated 14/12/2018

1. The penalty of Rs. 29,00,095/- is reduced to Rs. 1 Lakh which shall be paid within 30 days of date of Order.
2. The Order that no further authorization shall be issued to the firm or any other firm in which the Proprietor/Partners/Directors of the firm are directly involved, is set aside.
3. The case is Remanded back to the Office of Jt.DGFT, Coimbatore for denovo examination. RA, Coimbatore may examine the documents submitted by the firm and pass appropriate orders.

(D.K.SEKAR)

Zonal Additional Director General of Foreign Trade

M/s K.G.Farms and Flavours
Ramapattinam,
Pollachi 642 005