



भारत सरकार Govt. of India

वाणिज्य एवं उद्योग मंत्रालय M/o Commerce and Industry

आँचलिक अपर महानिदेशक विदेश व्यापार का कार्यालय

Office of the Zonal Additional Director General of Foreign Trade

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F.No. A(27)Addl.DGFT/ECA/Che/AM 19/Cbe
Name of the Appellant

Dated 08 /10/2018

M/s NRK Impex
No. 30, Rajulu Illu,
Sri Bannari Amman Nagar,
Chandrapuram East,
Sevvanthampalayam Road, Tirupur

Order appealed against

Order –in-Original No.
32/21/040/00144/AM 16
dated 14/03/2018 issued by
Office of Jt.DGFT, Coimbatore

Order-in-Appeal passed by

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

Order-in-Appeal

M/s N.R.K.Impex, No. 30, Rajulu Illu, Sri Bannari Amman Nagar, Chandrapuram East, Sevvanthampalayam Road, Tirupur 641608, has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 32/21/040/00144/AM 16 dated 14/03/2018, passed by Jt.DGFT Coimbatore.

2. M/s N.R.K.Impex, Tirupur, had obtained an Advance Authorisation No. 3210077799 dated 21.01.2016 for CIF value of Rs.1,40,24,320/- from the Office of JDGFT, Coimbatore, with export obligation to export for a FOB value of US\$ 2,41,300/- 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 dated 14.03.2018 imposing penalty of Rs. 1,40,24,320/- 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 filed the appeal on 16.07.2018, and have requested to waive the condition of pre-deposit of penalty as provided for in the Act. The appellant has stated that they had fully utilized the licence for the imports. But due to some manufacturing defect there was some minor shortfall in fulfillment of export obligation. Since the original licence had been lost, they had to get the utilization certificate from Customs Chennai which was obtained on 23.03.2018. Only after getting the utilization certificate could they file the export obligation fulfillment documents. On 26.03.2018. consequent upon the submission, RA Coimbatore had asked the firm to regularize the shortfall in quantity, for which TR Challan evidencing payment made on 09.04.2018 was submitted to the RA.. Coimbatore. The appellant also states that letters dated 17.10.2017 and SCN dated 20.11.2017, mentioned in the adjudication order were not received by them. It is stated that that adjudication order dated 14.03.2018 was actually received by them only on 19.04.2018. Since the above letters were not received by them, it is stated that they could not attend to the notice and the adjudication order had been issued ex-parte.

5. The firm was given opportunity of Personal Hearing on 28.09.2018. Shri S.Kannan, partner attended the Hearing. During the hearing, it was stated that they had fulfilled the export obligation and had requested the RA to intimate the quantity shortfall well before receiving the Order in Original. They also stated that they have paid the duty plus interest for the quantity shortfall even before receipt of the Order in Original and hence requested to set aside the Order and also to condone the delay in filing of appeal.

6. I have carefully gone through the appeal submitted by the firm and arguments put forth during the Personal Hearing. From the above it is observed that the firm had submitted the export obligation documents even before receipt of the adjudication order. In fact the firm has regularized the shortfall in quantity even before the order in original was received by the firm. In such circumstances, it is apparent that the firm was unaware of the adjudication order till receipt of the same on 19.4.2018, by which time they had already submitted the documents and regularised the case. RA Coimbatore also has not been able to provide the actual date of receipt of the order by the firm and has only given the date of dispatch. It is also seen from the remarks made on the order that the same has been dispatched on 26.03.2018 only by Ordinary post. The firm had therefore submitted the documents for redemption of the licence before the stated date of dispatch of Order-in-Original by the R.A. It is also seen that the RA has sent a letter dated 06.04.2018 to the firm asking them to file appeal and also to regularize the shortfall, which was paid by the firm on 10.04.2018, i.e., before the receipt of the adjudication order. The firm has also stated that the order has been issued ex-parte since the notice had not been received by them at all. On the basis of this lapse alone, on the part of the office, of not having given the firm reasonable opportunity to represent their case, the issue of the Order becomes null and void. When such being the case, the question of not responding to the Order within the time limit, does not arise.

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

Dated 08 /10/2018

1. The condition of pre-deposit of penalty is waived.
2. The Order of the adjudicating authority is set aside.
3. The case is remanded back to the adjudicating authority for de-novo examination and appropriate orders after examination of documents.


(D.K.SEKAR)

Zonal Additional Director General of Foreign Trade

✓ M/s NRK Impex
No. 30, Rajulu Illu,
Sri Bannari Amman Nagar,
Chandrapuram East,
Sevvanthampalayam Road, Tirupur 641608