



भारत सरकार Government of India

वाणिज्य एवं उद्योग मंत्रालय Ministry of Commerce & Industry

आंचलिक अपर महानिदेशक विदेश व्यापारका कार्यालय

Office of the Zonal Additional Director General of Foreign Trade

26, हैडोसरोड 26, Haddows Road

चौथी मंज़िल, शास्त्री भवन अनेक्स 4th Floor, Shastri Bhavan Annexe

चेन्नै - 600 006 Chennai – 600 006

Phone: 044-28283404/08

E-mail: chennai-dgft@nic.in

F. No. 04/95/A(11)/AM 21

Dated: 24/11/2020

Name of the Appellant

M/s. APA Hotels Pvt. Ltd.,

115, Thyagaraya Nagar,

Chennai - 600 017.

IEC No. 0400021811

Order appealed against

Order-in-Original No.

04/SFIS/CAG/PA6/2008 dated 12.06.2020

issued by Deputy DGFT, Chennai.

Order-in-Appeal passed by
passed by

Dr. M.K. Shanmuga Sundaram IAS

Appellate Authority &

Zonal Additional Director General of Foreign
Trade, Chennai.

Order-in-Appeal

M/s. APA Hotels Pvt. Ltd. had filed this Appeal under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 04/SFIS/CAG PA6/2008 dated 12.06.2020 issued by the Deputy DGFT, Chennai.

2. M/s. APA Hotels Pvt. Ltd. had been issued a Duty Credit Scrip No. 0410068754 dated 22.03.2005 for ₹ 20,26,356/- under 'Served From India Scheme' (SFIS) in terms of Para 3.08 of the Foreign Trade Policy 2004-09. As per which, the hotels and other service providers under tourism sector registered with Department of Tourism were

...Contd.2/-

eligible for a duty credit of 5% of the foreign exchange realised for 2003-04 under DFCE for Service Providers. During the post review of the case, it was seen that the duty credit was computed @10% instead of 5% admissible rate for the hotel's services. The eligible duty credit computed @ 5% should have been ₹ 15,62,278/- for the hotel's services instead of ₹ 20,26,356/- and thereby resulting in an excess grant of duty credit of ₹ 4,64,077/- which was required to be refunded.

3. Hence, a Show Cause Notice dated 24.01.2020 was issued to the firm and also giving an opportunity of personal hearing. Neither reply was received nor did anyone appear for the personal hearing. Therefore, the Order-in-Original dated 12.06.2020 imposing a penalty of ₹ 5,00,000/- was issued and further directed the firm to refund the excess duty credit of the scrip along with applicable interest. The firm was also placed under Denied Entry List (DEL).

4. Aggrieved by the Order in Original, the firm has preferred an appeal on 13.08.2020. In the Appeal, the firm has requested the Appellate Authority to set aside the Order-in-Original and remove it from DEL. The firm has stated that the officer had erred in assuming that there was an excess value of SFIS scrip without considering the material evidence produced and facts of the case, and had also erred in levying penalty on a claim which had been made on technical grounds.

5. It is also stated in the appeal that the Show Cause Notice was not received by them due to administrative reasons on account of covid-19 lockdown and hence, it has requested to condone the non-payment of penalty towards the admission of the appeal. The request of appellant for waiver condition of pre-deposit of penalty is allowed after considering the extraordinary prevailing situation.



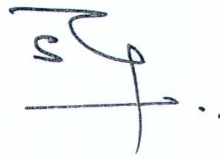
...Contd.3/-

6. The appellant was called for a personal hearing on 17.11.2020. Shri. S. Prabhakaran, Director, Finance of M/s APA Hotels Pvt. Ltd. appeared for the personal hearing and contested the Order-in-Original dated 12.6.2020 along with statements of facts and grounds of appeal.

7. He informed that their Company earned a total foreign exchange of ₹ 4,05,27,136/- during the financial year 2003-04 through the services rendered in their hotel and accordingly, they have claimed duty scrip at 5% amounting to ₹ 20,26,356/- which was in order. He has informed that they had given a clear break-up of total Forex earnings in the duty free entitlement application forms under direct and indirect earnings duly certified by a Chartered Accountant.

8. Both direct and indirect earnings were payments received against services rendered by their hotel on account of sale receipts of rooms and restaurants received through various international debit and credit cards, and also foreign currencies received in their restaurants and front office from the foreign tourists and realised through banks FIRC's statements. He has also given a copy of the Chartered Accountant Certificate as per Appendix 23-A for the Forex earned during 2003-04 and the certificate was issued by the same Auditor Shri. Ramachandra Rao, who did certify it earlier. He has also furnished copy of audited Annual Report of the company to evidence the total direct Forex earnings of their hotel for reference and records.

9. Now, he has requested this office to take stock of all the above documents as an evidence to prove that their claim was well within the norms of entitlement at 5% and not 10% as mentioned in the Order-in-Original and requested the Appellate Authority to drop the penalty imposed in the said Order and also to remove the firm from DEL and render justice.



...Contd.4/-

10. I have gone through the appeal and the submissions made during the personal hearing. On perusal of the above and other documents submitted by the appellant, the following is observed:

Total Foreign Exchange earned as available
in the application (for the period 2003-04) : ₹ 4,05,27,136/-
and as certified by the Chartered Accountant

Their entitlement at 5% works out to : ₹ 20,26,356/-

The duty credit scrip had been issued by this Office for the above.

11. It is seen that the contention of the appellant seems to be correct as it is evident that they have not claimed 10% and only claimed at 5% of their total Forex earnings for the period 2003-04 as certified by the Chartered Accountant and found in the audited Annual Report of the company which they have produced in the appeal.

12. 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. 04/95/A(11)/AM 21

Dated: 24/11/2020

1. Order of the Adjudicating Authority imposing penalty and placing them under DEL is hereby set aside.
2. The case is remanded back to the Adjudicating Authority for *de novo* examination.


(Dr. M.K. SHANMUGA SUNDARAM)

Appellate Authority &
Zonal Additional Director General of Foreign Trade

✓ **M/s. APA Hotels Pvt. Ltd.,**
115, Thyagaraya Nagar, Chennai - 600 017.