



भारत सरकार Government 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(01)/Addi.DGFT/ECA/Che./AM18/Cbr.

Dated 22 /10/2020

Name of the Appellant

M/s Kishore Industries
No.8-10 Vel Industries Estate,
B.S.S.Road,
Tirupur 641601
IEC No. 0598033408

Order appealed against

Order-in-Original No.
32/24/40/002/AM08 dated 14.02.17
issued by Dy.DGFT, Coimbatore

Order-in-Appeal
passed by

Shri M.K.Shanmuga Sundaram
Appellate Authority &
Zonal Additional Director General
of Foreign Trade, Chennai

Order-in-Appeal

M/s Kishore Industries, Tirupur 641601 had filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 32/24/40/002/AM 08 dated 14.02.2017 issued by Dy.DGFT, Coimbatore.

2. M/s Kishore Industries, Tirupur had obtained an Advance Licence No. 3210036081 dated 28.08.2007 for CIF value of ₹1,50,00,000/- from the Office of Joint DGFT Coimbatore with an obligation to export for a FOB value of US \$ 461822 within a period of 24 months from the date of issue of authorisation. The firm had not submitted the export obligation fulfillment documents, even after expiry of export obligation period. Hence a Show Cause Notice dated 05.05.2011 was issued. The firm had not replied to the Show Cause Notice. Hence Order in Original dated 14.02.2017 imposing a penalty. ₹1,50,00,000/- was issued and the firm was also placed in Denied Entities List.

3. Aggrieved by the above said Order-in-Original, the firm has preferred the present appeal on 05.04.2017. The firm has requested for waiver of the condition of pre-deposit of penalty since they have accumulated losses and are finding it difficult to run the day to day operations. The plea of the appellant is allowed.

4. In the appeal the appellant has stated that due to some technical problem against the export order they have made some imports against which they have made export shipments. It is stated that due to lack of administrative staff they have lost lot of papers from their Tirupur factory and due to shifting the whole business to their Head Office in New Delhi, they have lost the tracking papers of the advance licence and also not received any correspondence issued by Office of Jt.DGFT, Coimbatore. It is further stated that against their imports they have made necessary exports and fulfilled the export obligation proportionately and that they are ready to pay Customs Duty with interest for any unutilised import. In view of the aforesaid, the appellant has sought to remove the firm from DEL.

5. The appellant was given a Personal Hearing on 1.8.2017. Shri Prashanth Aggarwal, Partner of the Firm, attended the Hearing. During the Hearing, he stated that the firm had only made partial imports against the licence and had already made some exports within the export obligation period. It was stated that they are willing to pay the duty and interest for any shortfall and asked for some time to produce documents in support of the exports made. As requested, the appellant was given a Personal Hearing on 3.10.2017. During the Hearing, Shri

Prashanth Aggarwal showed Exchange Control Copy of the Shipping Bills. He said that Export Promotion Copy of Shipping Bills were lost and requested for redemption of the case based on the Exchange Control copy of shipping bills. When asked about Bank Realisation Certificates, he requested for some time to produce the same. Hence he was called for another Personal Hearing on 16.10.17. During this hearing he showed Bank Realisation Certificates and an affidavit stating that they had lost the Export Promotion Copy of Shipping Bills and that they undertake against any loss due to its possible misuse. Finally another Personal Hearing through Video Conferencing, in view of the pandemic situation, was held on 29.09.2020, during which the Partner, Shri Prashanth Aggarwal reiterated the above points stated during the earlier hearings and requested to waive the penalty and remove the firm from DEL.

6. I have gone through the appeal and the submissions made during the Personal Hearings. On perusal of the above and other documents submitted by the appellant, it is seen that the appellant had closed the Firm and shifted the operations to its Head Office in New Delhi. Due to which, it appears that communications from the licensing authority had not been received by them and were unable to trace the documents necessary to be submitted in support of fulfilment of export obligation. Subsequently, after efforts, the appellant claims to have got Shipping Bills and BRCs in support of proportionate fulfilment of export obligation. But have not been able to produce Export Promotion Copy of Shipping Bills but only Exchange Control Copy of Shipping bills and have undertaken to make good any loss due to possible misuse. The appellant has also stated that they are willing to pay duty plus interest, in case of any shortfall in exports. Hence there does not *prima facie* seem to be any intent on the part of the appellant to defraud the Government. But the fact remains that there has been an inordinate delay in submission of export obligation documents, though the same appears to be due to some genuine difficulties faced by them.

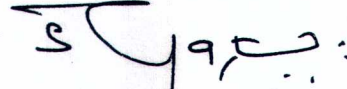
7. I, therefore, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, as amended, pass the following Order:

ORDER

F.No.A(01)/Addl.DGFT/ECA/Che./AM18/Cbr.

Dated 22 /10/2020

1. Order placing the firm under Denied Entity List is set aside and the penalty payable is reduced to ₹10,000/- (Rupees Ten Thousand).
2. The case is remanded back to the adjudicating authority for *de-novo* examination. The appellant may be asked to submit the necessary documents required evidencing fulfillment of export obligation and after verifying the documents submitted, appropriate orders may be passed.



(M.K.SHANMUGASUNDARAM)

Appellate Authority &

Zonal Additional Director General of Foreign Trade

**M/s Kishore Industries
No.8-10 Vel Industries Estate,
B.S.S.Road,
Tirupur 641601**