



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

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F.No. 04/95/A(01)/ECA/AM 21/Cbr

Dated 24/11/2020

Name of the Appellant

M/s Arunachala Gounder Textiles Mills Pvt. Ltd.,

No. 06, By Pass Road,
Pallipalayam, Erode – 638 006.
IEC No. 3295009953

Order appealed against

Order-in-Original No.
32/21/051/299/AM 08
dated 24.01.2020
issued by Joint DGFT, Coimbatore.

Order-in-Appeal
passed by

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

Order-in-Appeal

M/s. Arunachala Gounder Textiles Mills Pvt. Ltd., Erode had filed this Appeal under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 32/21/051/299/AM 08 dated 24.01.2020 issued by Joint DGFT, Coimbatore.

2. M/s. Arunachala Gounder Textiles Mills Pvt. Ltd., Erode had obtained DEPB Authorisation No. 3210035552 dated 11.06.2007 for a value of ₹ 24,48,223/- from the Office of Joint Director General of Foreign Trade, Coimbatore. An Objection was

raised on account of incorrect levy of late cut, an excess credit of ₹ 75,718/- had been granted. Since the firm failed to regularise the same by payment of Customs duty plus interest as directed by the Office letter dated 24.12.2019, a Show Cause Notice with an opportunity of personal hearing was granted. Neither anyone attended the personal hearing nor was there any reply from the firm. Hence, Order in Original dated 24.01.2020 had been issued imposing a penalty of ₹ 75,718/- in addition to payment of Customs duty with interest and the firm was placed under Denied Entry List (DEL).

3. Aggrieved by the above Order in Original, the firm has preferred the Appeal on 02.06.2020. The appellant has requested to condone the delay in filing of the appeal by taking the lockdown period on account of covid-19 pandemic into consideration. The plea of the appellant is accordingly allowed.

4. The firm in their appeal has put forth the following points for consideration:

(i) that they had exported 100% Viscose Yarn and applied for DEPB benefit which was granted for a value of ₹ 16,91,014.45 @ 6.7% under Public Notice No. 29 dated 03.07.2006.

(ii) that within one month from the date of receipt of DEPB authorisation, a Public Notice No. 17 dated 12.07.2007 was issued revising the new DEPB rates @ 9.7% for the shipments made with Let Export Date up to 31st March 2008. Thus, it is contended that the last date with eligible exports was revised with Let Export Date of 31.03.2008 as per the Public Notice.

(iii) that any late cut in filing the application would start from 31/03/2008 read with Para 4.46 of HBP 2004-09 and that application can be filed without any cut within one year from the date of export.

(iv) that thereafter they had applied for enhancement of the DEPB value as per the said Public Notice and the same was considered by the amendment by enhancing the value to ₹ 22,48,223.37. This enhancement was done on 07.12.2007 and that both the original scrip and the enhancement were done within 07.12.2007, which is well within the last date of filing of the application.

(v) that the finance audit vide their audit memo had observed that late cut of 10% should have been imposed on the supplementary claim and thus ordered to recover ₹ 75,718/- which is equivalent to 10% cut for late application.

(vi) that the above audit objection of the Finance Audit is not correct in as much as the enhancement was due to a new Public Notice dated 12.07.2007 and the supplementary claim was not made for the same rate for which the original application was filed.

(vii) that the supplementary claim for enhancement was applied and allowed long before the expiry of the last date for filing application and that there was no violation of Para 9.3 and Para 9.4 of Hand Book of Procedures.

5. The appellant vide their letter dated 07.09.2020 has requested for an early hearing of the appeal. Accordingly, a personal hearing was granted on 17.11.2020. Shri. G. Ravi, Export Manager and Smt. Nidhin K. Mookamkavil, Advocate on behalf of the appellant Company appeared for the personal hearing and informed that they have received the DEPB scrip No. 3210035552 dated 11.06.2007 and subsequently vide Public Notice No. 17 dated 12.07.2007, DGFT has revised the DEPB rate from 6.7% to 9.7% for the shipments made with Let Export Date up to 31st March 2008. They informed that they had applied for enhancement of DEPB as per the said Public Notice No. 17 and the same was considered by a suitable amendment by the Joint DGFT, Coimbatore for a value of ₹ 22,48,223/- in the same scrip on 07.12.2007. So, it is submitted that both the applications and the enhancement were done by 07.12.2007, i.e. well within the last date of filing of application, i.e. 31.03.2008, as per the said Public Notice. The Finance Audit had observed that late cut of 10% should have been imposed on the supplementary claim and thus ordered to recover ₹ 75,718/- which is equal to 10% for late application. The appellant contended that the above observation of the Finance Audit made with reference to Para 9.4 of HBP on late cut is not correct in as much as the enhancement was necessitated due to the new Public Notice No. 17 dated 12.07.2007 and they have not claimed any supplementary claim for the same rate for which the original application was filed. It was stated that they would like to submit that they have applied only for enhancement by surrendering the original DEPB licence and not applied for a supplementary application. Therefore, the mandate of HBP on late cut prescribed under Para 9.3 thereof has not been violated by their Company and that their claim for enhancement was applied and also allowed by Joint DGFT, Coimbatore long before the expiry of the last date for filing of application, i.e., 31.03.2008. Hence, she stated that the 10% cut as suggested by Audit is not applicable in their case and therefore requested the Appellate Authority to quash the

Order in Original dated 24.01.2020, issued by Joint DGFT, Coimbatore and also to remove the Company's name from DEL and render justice.

5. 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, it is seen that the contention of the appellant seems to be correct, as they have not filed any supplementary application which only would attract 10% cut as pointed out by the Finance Audit. They have submitted the DEPB scrip for enhancement of the value as per the Public Notice No.17 dated 12.07.2007. Hence, there is no merit in the objection and the Joint DGFT, Coimbatore should have taken up with the audit authorities for dropping the objection; instead, the recovery of the amount as pointed out by audit was proceeded with.

6. 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(01)/ECA/AM 21/Cbr

Dated: 24/11/2020

1. Order of the Adjudicating Authority, imposing penalty and placing them under DEL, is set aside
2. The case is remanded back to the Adjudicating Authority for *de novo* examination. RA, Coimbatore may take up the case with the audit authorities by presenting the proper facts of the applicant and for dropping the audit objection raised by the Finance Audit.

(Dr. M.K. SHANMUGA SUNDARAM)

Appellate Authority &
Zonal Additional Director General of Foreign Trade

M/s. Arunachala Gounder Textiles Mills Pvt. Ltd.,
No. 06, By Pass Road, Pallipalayam
Erode 638006

Copy to:
Joint DGFT, Coimbatore for necessary action.


(M.K. Shanmuga Sundaram)