



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(04)/Addl.DGFT/ECA/Che-AM-18

Dated 9/3/2018

Name of the Appellant

M.Sivaje
61, Pulikuthi Main Road,
Gugai,
Salem 636 006

Order appealed against

Order –in-Appeal No.
04/21/021/39/AM 07 dated
22.05.2017, passed by Dy.DGFT,
Chennai

Order-in- Appeal
Passed by

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

Order-in- Appeal

1. Shri M.Sivaje, 61, Pulikuthi Main Road, Gugai, Salem 636006 (erstwhile partner of M/s Leo Sales Corporation) has filed this appeal against the Order in Original No. 04/21/021/39/AM07 dated 22.5.2017 passed by Dy.DGFT, Chennai.
2. M/s Leo Sales Corporation, New No. 7, Old No. 5/26 Devi Nagar, Karambakkam, Porur, Chennai 600116 had obtained an EPCG licence No. 0430003640 dated 24.4.2006 for duty saved value of Rs. 83,524/- from the office of the Zonal Addl. Director General of Foreign Trade, Chennai for import of capital goods with an obligation to export ready made garments for an FOB value of US \$ 14898 within a period of 8 years from the date of issue of authorisation. The Firm had not submitted all the required documents evidencing fulfilment of export obligation after the completion of export obligation period. Therefore, Order-in-Original dated 22.05.2017 imposing penalty of Rs. 1,00,000/- was imposed on the firm and its partners and the firm was also placed under Denied Entity List by the Adjudicating Authority.

3. The appellant Shri M.Sivaje, in his appeal has stated that the adjudicating authority had imposed the penalty on the partner in the capacity as erstwhile Partner of M/s Leo Sales Corpn. He further states that he had exited the Partnership firm way back on 1.1.2008 and that he was not at all connected with the day to day affairs of the firm and only the other partners were doing the functions and hence the imposition of penalty on the appellant is not justified. He has also stated that once the firm is penalised, separate penalty is not imposable upon the partner of the firm and hence has prayed for setting aside the impugned order and grant of consequential relief.
4. The appellant was given a Personal Hearing on 16.1.2018. Ms.Minchu Punnoose, Advocate, authorised by the appellant, appeared for the Personal Hearing. She stated that the appellant was not served Show Cause Notice and therefore he cannot be punished without giving him a reasonable opportunity. She also stated that the appellant had exited from the partnership as early as in January 2008. Therefore the appellant should not be held accountable for the failure of the firm and requested for filing of written submission within ten days. Accordingly the appellant has submitted the same on 25.1.2018.
5. On going through the Order-in-Original issued by the adjudicating authority, it is observed that the show cause notice issued to the partner had been returned undelivered. As such the charges have not been communicated to the partner and an opportunity of personal hearing was not granted. It is also seen that the appellant had exited the Partnership firm and was no longer associated with the firm.

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:

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Dated 9/3/2018

ORDER

The Order of the adjudicating authority is partially modified by setting aside the imposition of penalty on Shri N.Sivaje, the then partner.

Sd/

(D.K.SEKAR)

Zonal Additional Director General of Foreign Trade

M.Sivaje
61, Pulikuthi Main Road,
Gugai,
Salem 636 006

Copy to: Dy.DGFT(EPCG) , Chennai for necessary action.



(D.K.SEKAR)