



भारतसरकार Govt. of India

वाणिज्यएवंउद्योगमंत्रालय M/o Commerce and Industry

ऑचलिकअपरमहानिदेशकविदेशव्यापारकाकार्यालय

Office of the Zonal Additional Director General of Foreign Trade

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F.No. A(18)/Addl.DGFT/ECA/Che/AM 20

Dated 10/01/2020

Name of the Appellant

M/s A.I.Enterprises Pvt. Ltd.
No. F-41/A, Annanagar East,
Opp.Chintamani Supermarket,
Chennai 600 102
IEC No. 0488014751

Order appealed against

Order –in-Original No.
04/21/021/00728/AM 12 dated 24.06.2019
issued by Office of Zonal Addl.DGFT
Chennai

Order-in-Appeal
Passed by

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

Order-in-Appeal

M/s A.I.Enterprises Pvt. Ltd., No. F-41/A, Anna Nagar East, Chennai 600102 has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 04/21/021/00728/AM 12 dated 24.06.2019 issued by Office of Zonal Addl.DGFT Chennai.

2. M/s A.I.Enterprises Pvt. Ltd., No. F-41/A, Anna Nagar East, Chennai 600102 had obtained EPCG licence No. 0430010452 dated 31.10.2011 for a duty saved value of Rs. 12,96,448/- from the Office of Zonal Addl.DGFT, Chennai with an obligation to export Readymade Garments, for a FOB value of US\$ 209,083.43, within a period of 8 years from the date of issue of authorization. The Firm had submitted export obligation documents including installation certificate . On scrutinizing the said documents certain defects were noticed for which a deficiency letter was issued asking them to submit among other things, revised installation certificate, original shipping bills for specific export obligation and revised annual average statement. The firm had replied to the above letter on 04.01.2016 enclosing therewith revised installation certificate and had stated that their original shipping bills have been submitted for getting chapter 3 benefits. On scrutiny of the documents so furnished, it was observed that the firm had not fulfilled the specific export obligation over and above the annual average fixed. Hence a Show Cause Notice dated 26.03.2019 was issued with an opportunity for Personal Hearing on 23.05.2019. During the Personal Hearing, the firm made a request to grant some more time to reply. However even after expiry of two months from the date of issue of Show Cause Notice, no reply was received, by which time first block export obligation period had expired. Hence Order in Original dated 24.06.2019 imposing a penalty of Rs. 50,000/- was issued and the firm was also placed under Denied Entities List.

3. Aggrieved by the abovesaid Order-in-Original, the firm has preferred the present appeal on 17.07.2019. The appellant has requested for waiver of the condition of pre-deposit of penalty as it will cause undue harm to them. The request of the appellant is allowed.

4. The appellant has stated in the appeal that their annual average has to be refixed since at the time of applying for the authorization, they had given combined figures related to their unit manufacturing Woven Fabrics and also that of the unit manufacturing Knitted Garments. As the EPCG authorization was obtained only for manufacturing woven garments, they state that only the export performance of the unit manufacturing Woven Garments should have been given in the application. It is further given that the export performance of the unit manufacturing knitted garments was also included by mistake while filing the application for the authorisation, as this item will not be covered under the category same and similar products. As a result, the appellant states that if the export performance of woven garments only was taken into account, then their annual average fixation would have been lower and that they would have fulfilled their export obligation. Hence it has been requested to refix the annual average accordingly and to set aside the Order in Original and remove the appellant firm from DEL.

5. The appellant was given a Personal Hearing on 14.10.2019. The appellant requested for an adjournment and another date was given on 13.11.2019. During the hearing which was attended by its Chairman, Shri Abdul Azeez, it was stated that they were approaching EPCG committee for re-fixation of annual average, and pending decision of the same, the firm would pay duty amount involved and give an affidavit to regularise the case if decision of the EPCG Committee was not in their favour. The firm therefore sought temporary withdrawal of DEL so as to enable them to obtain Advance Authorisations, which had been filed. On 14.11.2019, the appellant paid the duty saved amount to Customs and submitted the Challan for having paid and also furnished an affidavit as above. The plea was considered and the firm was temporarily removed and later put back in DEL after issue of the advance authorizations considering their Two Star status. The appellant vide their letter dated 25.11.2019, requested for 2 months time to submit the permission from EPCG Committee. Accordingly Personal Hearing was fixed on 20.01.2020. A request was made again to fix a short date for Personal Hearing and hence the date was advanced to 09.01.2020. During the Hearing, attended by the Chairman, it was stated that pending decision of the EPCG Committee, the firm had decided to pay interest and therefore Customs have been requested to calculate the interest which will take time. The firm also stated that they had firm export orders and their placement in DEL had serious implications on their operation. The firm therefore requested that they would submit a bond for the interest amount as calculated by them which worked out to Rs. 13 Lakhs and they further assured that the entire transaction would be regularised before 31st March 2020. The appellant further stated that in case the firm failed to obtain decision of the EPCG Committee in their favour or settle the interest due with Customs before 31.03.2020, the dues be recovered from the bond provided. In view of the above the appellant requested to remove them from DEL for the purpose of obtaining Advance Authorisation to get inputs for meeting their export orders.

7. I have gone through the appeal and submissions made during the Personal Hearings. The appellant has sought re-fixation of annual average. It has been contended that the past export performance was wrongly given by them by clubbing exports of both the items of export i.e., Woven Garments and Knitted Garments, while applying for the authorisation, which had led to fixation of higher annual average. As the authorisation applied for was for export of Ready Made Garments, the licensing authority had rightly pointed out that both woven and knitted garments are Ready Made Garments and are same and similar products and hence annual average as fixed has to be maintained. The appellant was asked to regularise the case by payment of duty plus interest. The appellant has paid the duty part and has approached Customs to furnish statement of interest amount to be paid. The appellant has also stated that they were approaching the EPCG Committee for re-fixation of Annual Average based on their contention that both the export products are not same and similar products. In the meantime since the firm expected delay on obtaining interest calculations from Customs, the appellant has undertaken to furnish a bond for the approximate interest amount calculated by them and that in the case of any adverse decision by EPCG Committee, the Bond can be enforced before 30.04.2020. The appellant had showed wrong

higher past performance at the time filing their application and at the time of redemption seeking to refix a lower annual average based on the export performance of only one product saying that both the export products were different, which cannot be accepted by the licensing authority as per the Policy in vogue. However, the appellant has paid the duty saved amount to Customs and has undertaken to pay the interest amount after receipt of confirmation from Customs. They have also sought to secure the revenue interests of the Government by providing a bond. There seems to be no intent to defraud or cause loss to the exchequer. Due to pending export orders, which they are not able to fulfill because of having been placed in DEL, they have requested to set aside the Order and remove them from DEL so that their operations are not hampered. The firm is a regular exporter having Two Star status and they have provided reasonable security to protect the interests of Government. There is however default in fulfilment of export obligation within the period provided in the EPCG authorisation.

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. A(18)/Addl.DGFT/ECA/Che/AM 20

Dated 10 /01/2020

1. The Order placing the firm in the Denied Entities List is set aside. The firm may be removed from DEL on submission of bond for an appropriate amount towards the estimated interest due.
2. The appellant shall regularize the case by obtaining the decision of the EPCG Committee or through payment of interest before 31st March 2020. In case of default, necessary action to recover the Government dues be taken by the licensing authority.
3. No MEIS or other export incentives be granted till regularization of the case by the appellant.
4. Penalty imposed is reduced to Rs. 25000/-


(D.K.SEKAR)

**Appellate Authority &
Zonal Additional Director General of Foreign Trade**

M/s A.I. Enterprises Pvt. Ltd.
No. F-41/A, Annanagar East,
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Chennai 600 102