



भारतसरकार Govt. of India

वाणिज्यएवंउद्योगमंत्रालय M/o Commerce and Industry

ऑचलिकअपरमहानिदेशकविदेशव्यापारकाकार्यालय

Office of the Zonal Additional Director General of Foreign Trade

26 HaddowsRoad, शास्त्रीभवनअनेक्स, Shastri Bhavan Annexe

Phone:044-28283404/08\* चेन्नै/CHENNAI - 600006\* Fax: :044-28283403

ईमेल/Email:chennai-dgft@nic.in

F.No. A(21)/Addl.DGFT/ECA/Che/AM 20

Dated 12/02/2020

Name of the Appellant

M/s Kerry Indev Logistics Pvt. Ltd.  
New No. 81, Old No. 41,  
Thambu Chetty Street,  
Chennai 600 001  
IEC No. 0408018887.

Orders appealed against

Orders-in-Original No.  
35/21/094/80001/AM 18 dated 13.06.2019  
issued by Office of Jt.DGFT, Madurai  
*(since merged with Office of Jt.DGFT  
Coimbatore)*

Order-in-Appeal  
Passed by

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

**Order-in-Appeal**

M/s Kerry Indev Logistics Pvt. Ltd., Thambu Chetty Street, Chennai 600 001 has filed Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992 against the Order-in-Original No.as tabulated below, passed by Jt.DGFT, Madurai, as detailed below:

S. No.	Appeal File No./ date of appeal	Order in Original No. and date	Scrip No. and date	Penalty imposed ( Rs.)
1.	A(21)/Addl.DGFT/ECA/Che/AM20/Mdu, 30.07.2019	35/21/094/80001/AM 18 dated 13.06.2019	SEIS 3519008685 dt.08.06.2017	5,00,00,000/-

3.M/s Kerry Indev Logistics Pvt. Ltd., Chennai had obtained the above SEIS scrip from the Office of Jt.DGFT, Madurai for duty credit value of Rs. 1,13,14,068.64 in respect of supply of a 'notified service' under Service Exports from India Scheme in India appearing in Appendix 3E, relating to services where value is realized in Indian Rupees which are otherwise considered as having been paid for in free foreign exchange by RBI, pertaining to the year 2015-16. The services rendered by the firm is cargo handling services'and classified under Sl.No. 9(D)(a) of Appendix-3D. On review of the case it was observed that the firm had not claimed SEIS benefit under para 9.51(i) and 9.5(ii) of FTP (2015-20) and the claim is related to supply of notified service, appearing in Appendix 3E. As per list of services given in Appendix-3E, notified by PN No. 7/2015-20 dated 4.5.2016, where payment has been received in Indian Rupees, which can be treated as receipt in deemed foreign exchange as per guidelines of RBI in terms of para 3.08 (c ) of FTP 2015-20. it is observed that the services rendered do not fall under RBI guidelines, which says that payment would have been received out of the amount remittable to the overseas principal or out of the remittances to be sent by overseas buyer, for services rendered in Customs Notified Areas to a foreign liner only. In this case the Company had just provided the services to fellow, local Indian entities which is not eligible for SEIS. The Company was asked vide letter dated 8.2.2018 to surrender the

scrip as they are not entitled to claim the SEIS benefit in respect of services rendered by them. But the Company vide their letter dated 17.2.2018 replied that the services rendered by them are covered under Appendix-3E and had not surrendered the authorization as called for. Hence Show Cause Notice dated 16.05.2019 was issued to the Company and its directors along with an opportunity of Personal Hearing on 04.06.2019. As there was no response either from the Company or its Directors, Order in Original dated 13.06.2019 was issued imposing penalty of Rs. Five Crores and the Company was placed under Denied Entities List (DEL).

4. Aggrieved by the Order, the Company has filed the appeal against the appeal on 30.07.2019. The Company has requested for waiver of the condition of pre-deposit of penalty as they are one of the authorized economic operator and payment of penalty would cause undue financial hardship on them. The plea of the appellant is allowed.

5. The appellant has put forth mainly, the following arguments in the appeal:

- (i) That a Show Cause Notice was issued by the Jt.DGFT dated 16.05.2019 through E-Mail
- (ii) That upon receipt of Show Cause Notice, they were in the process of preparation of reply and in the process of appearing for the personal hearing.
- (iii) That the Scrip was issued by the R.A. based on their documents/records after which the credit scrip was issued and hence the same is legal and correct.
- (iv) That they have rendered services concerning export of goods and all the services are rendered in Customs Notified Area and that they have received the service charges concerning exports either in foreign exchange and also in Indian Rupees and thus the criteria prescribed under Appendix-3E are properly satisfied.
- (v) That a clarification from Reserve Bank of India was issued stating that payments received in foreign exchange or which would have been received in foreign exchange but paid in rupees, out of the amount remittable to then overseas principal or out of the remittances to be sent by the overseas buyer, would be considered as deemed to be received in foreign exchange.
- (vi) That as per the above clarification from Reserve Bank of India dated 25.09.2012, the service charges were paid to them by the exporter from the remittance sent by the overseas buyer of the goods for the goods exported to foreign country and thus the receipt of such consideration in the form of Indian rupees directly and in the form of foreign exchange indirectly through the exporter is qualified and considered as deemed to be received / earned in foreign currency/exchange.
- (vii) That their claim is covered under Para 9.51 (i) read along with Para 3.08(c) and Appendix-3E of the Foreign Trade Policy read along with the services as notified under Appendix 3E.
- (viii) That the Company has not committed any mistake and all the records as per provisions were submitted prior to issuance of the Scrip by the R.A.

In view of the above the Company has sought to set aside the Order and grant Personal Hearing.

6. As sought for in the Appeal, an opportunity of Personal Hearing was granted on 10.01.2020. Shri C.Manickam, Advocate authorized by the appellant, attended the Personal Hearing. It was stated during the Hearing that their claims were as per rules and therefore the Order in Original should be dismissed. He explained that the appellant fulfills the conditions as per the Foreign Trade Policy.



scrip as they are not entitled to claim the SEIS benefit in respect of services rendered by them. But the Company vide their letter dated 17.2.2018 replied that the services rendered by them are covered under Appendix-3E and had not surrendered the authorization as called for. Hence Show Cause Notice dated 16.05.2019 was issued to the Company and its directors along with an opportunity of Personal Hearing on 04.06.2019. As there was no response either from the Company or its Directors, Order in Original dated 13.06.2019 was issued imposing penalty of Rs. Five Crores and the Company was placed under Denied Entities List (DEL).

4. Aggrieved by the Order, the Company has filed the appeal against the appeal on 30.07.2019. The Company has requested for waiver of the condition of pre-deposit of penalty as they are one of the authorized economic operator and payment of penalty would cause undue financial hardship on them. The plea of the appellants is allowed.

5. The appellants have put forth mainly, the following arguments in the appeal:

- (i) That a Show Cause Notice was issued by the Jt.DGFT dated 16.05.2019 through E-Mail
- (ii) That upon receipt of Show Cause Notice, they were in the process of preparation of reply and in the process of appearing for the personal hearing.
- (iii) That the Scrip was issued by the R.A. based on their documents/records after which the credit scrip was issued and hence the same is legal and correct.
- (iv) That they have rendered services concerning export of goods and all the services are rendered in Customs Notified Area and that they have received the service charges concerning exports either in foreign exchange and also in Indian Rupees and thus the criteria prescribed under Appendix-3E are properly satisfied.
- (v) That a clarification from Reserve Bank of India was issued stating that payments received in foreign exchange or which would have been received in foreign exchange but paid in rupees, out of the amount remittable to then overseas principal or out of the remittances to be sent by the overseas buyer, would be considered as deemed to be received in foreign exchange.
- (vi) That as per the above clarification from Reserve Bank of India dated 25.09.2012, the service charges were paid to them by the exporter from the remittance sent by the overseas buyer of the goods for the goods exported to foreign country and thus the receipt of such consideration in the form of Indian rupees directly and in the form of foreign exchange indirectly through the exporter is qualified and considered as deemed to be received / earned in foreign currency/exchange.
- (vii) That their claim is covered under Para 9.51 (i) read along with Para 3.08(c) and Appendix-3E of the Foreign Trade Policy read along with the services as notified under Appendix 3E.
- (viii) That the Company has not committed any mistake and all the records as per provisions were submitted prior to issuance of the Scrip by the R.A.

In view of the above the Company has sought to set aside the Order and grant Personal Hearing.

6. As sought for in the Appeal, an opportunity of Personal Hearing was granted on 06.12.2019 which was not availed. Another opportunity was granted on 10.01.2020. Shri C.Manickam, Advocate authorized by the appellants, attended the Personal Hearing. It was stated during the Hearing that their claims were as per rules and therefore the Order in Original should be dismissed. He explained that the appellants fulfill the conditions as per the Foreign Trade Policy.

7. I have gone through the submissions made by the appellant in the appeal and during the Personal Hearing. The appellant's main argument is that as per Appendix-3E, their services are eligible for the duty credit as the payment has been made by the exporter in Indian Rupees for services rendered by the Company for export of the said goods, for which the exporter has been paid in foreign currency and in turn the Company has been paid in Indian rupees from the foreign currency so earned by the exporter. But it appears that services provided by the appellant Company are not in the manner specified in para 9.51(i) of FTP 2015-20. The appellant has not claimed any SEIS benefit under para 9.51(i) and (ii) of FTP 2015-20. Their claim is related to supply of a notified service appearing in Appendix-3E, where payment has been received in Indian rupees which can be treated as deemed foreign exchange earned as per RBI guidelines in terms of para 3.08 (c) of FTP 2015-20. However the services rendered by the appellant do not seem to come under the RBI guidelines, which says that the payment would have been received out of the amount remittable to the Overseas Principal, or out of the remittances to be sent by the overseas buyer for services rendered in Customs Notified Area to a foreign liner only. But in the case of the appellant Company, the services have been provided to fellow, local Indian entities. Therefore, I do not find any merit in the argument of the appellant.

8. The R.A should have rejected the appellant Company's application for the Scrip at the issue stage itself if the application had been scrutinized properly with reference to the relevant Policy in force, and there would not have been a need to ask the company to surrender the scrip after such issue. The Company is at fault for refusing to surrender the scrip when called upon to do so.

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:

F.No. A(21)/Addl.DGFT/ECA/Che/AM 20

Dated 12/02/2020

**Order**

Appeal of the firm is dismissed.



(D.K.SEKAR)

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

M/s Kerry Indev Logistics Pvt. Ltd.  
New No. 81, Old No. 41,  
Thambu Chetty Street,  
Chennai 600 001