



भारतसरकार Government of India

वाणिज्य एवं उद्योग मंत्रालय Ministry of Commerce and Industry

आंचलिक अपर महानिदेशक विदेश व्यापार कार्यालय

Office of the Zonal Additional Director General of Foreign Trade

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F.No. A(22)/Addl.DGFT/ECA/Che/AM 20

Dated 11/03/2020

Name of the Appellant

M/s Gypcrete Building India Pvt.Ltd.  
Majestic Ashirwad,  
22, Sivasailam Street, T.Nagar,  
Chennai 600 017  
IEC No. 0402026616

Order appealed against

Order –in-Original No.  
04/36/021/00208/AM 05 dated  
01.07.2019 issued by  
Deputy Director General of Foreign  
Trade, 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 Gypcrete Building India Pvt. Ltd., Chennai 600017 has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 04/36/021/00208/AM 05 dated 01.07.2019 issued by Deputy Director General of Foreign Trade, Chennai.

2. M/s Gypcrete Building India Pvt. Ltd., Chennai 600017 had obtained EPCG licence No. 0430002054 dated 21.10.2004 for a duty saved value of Rs. 15250358/- from the Office of Zonal Addl.DGFT, Chennai with an obligation to export 'Gypcrete Panels and Gypsum Boards' for a FOB value of US\$ 2666729.27 within a period of 8 years from the date of issue of authorization. The Firm had not submitted installation certificate or the required documents evidencing fulfillment of export obligation even after expiry of the export obligation period. Hence a Show Cause Notice dated 10.05.2019 with an opportunity of Personal Hearing on 11.06.2019 was issued for which neither the firm attended the Personal Hearing nor had any reply been submitted. Hence, Order in Original dated 01.07.2019 imposing penalty of Rs. 100000/- was issued and the firm was placed under DEL.

3. Aggrieved by the above said Order-in-Original, the firm has preferred the present appeal on 01.08.2019. The firm has requested to waive the condition of pre-deposit of penalty for the reasons given in the appeal. The plea of the appellant is allowed.

4. In the appeal it is stated that the appellant's Counsel had appeared for the Personal Hearing on 11.06.2019 before the adjudicating authority, as granted to them in the Show Cause Notice and also filed written submissions along with relevant documents.

The appellant has sought to set aside the Order in Original on the following grounds:

- (i) The impugned Order in Original was passed without considering the above submissions made in response to the Show Cause Notice.
- (ii) That even before the machineries could be installed and the company could overcome the technical issues, the custom authorities initiated an investigation on certain grounds and after due process of law, Order in Original by Customs, was issued demanding additional duty with interest and the machinery was confiscated by the Customs.
- (iii) The appellant could not redeem the machineries by paying redemption fine and penalties imposed, and aggrieved by the Customs Order, filed an appeal before CESTAT.
- (iv) After pre-deposit of the amount, Final Order was passed by CESTAT remanding the matter to the adjudicating authority, i.e. Customs.
- (v) The Customs authority has filed appeal with the Hon'ble High Court of Madras contesting the direction given by CESTAT which is pending.
- (vi) Thus all the issues with regard to valuation, payment of duty, benefit of EPCG scheme, etc., are all under adjudication and the matter is pending with High Court.
- (vii) That since the machineries were confiscated by Customs authorities in 2009 itself, they could not complete the installation or make any exports after overcoming the technical difficulties and therefore could not fulfill the export obligation.
- (viii) That since the proceedings under the Customs Act are pending adjudication, the penalty imposed on the appellants is not legally proper and hence the impugned order is liable to be set aside as the whole order is premature.

The appellant has also requested for a Personal Hearing before a decision is taken on this appeal.

5. As sought for in the appeal, Personal Hearing was granted on 06.12.2019, which was attended by the authorized representative Shri R.Mansoor Ilahi, Advocate. He stated that they could not install and put the capital goods to use for export obligation fulfillment as the asset was seized by Customs on the pretext of undervaluation and that the case is still pending with the adjudicating officer of Customs. He was informed that either, documents evidencing fulfillment of export obligation or, payment of duty with interest should be produced, for consideration of the plea made in the appeal. The Counsel requested for time for the same. Hence another Personal Hearing was granted on 18.02.2020 which was attended by the firm's advocate Ms. K.Nancy. The Counsel stated that the firm could not put the machinery to use as the same had been in custody of Customs. It was also stated that the Order in Original be set aside as penalty cannot be levied for non-fulfillment of export obligation as per various Court decisions.

....contd.2/-

6. I have gone through the submissions made in the appeal and also during the Personal Hearings. Appellant's main plea is that they could not make use of the imported capital goods, because the same were confiscated by Customs authority and hence could not fulfill the export obligation. On perusal of the documents submitted, it is seen that the appellant was issued the licence dated 21.10.2004. All the Capital Goods were imported vide Bill of Entries on 02.11.2004, as can be seen as per Customs entries, on the reverse of the licence. The Customs Order of confiscating the goods was issued on 26.10.2009. As per conditions laid down in para 5.3.2 of Hand Book of Procedures, 2004-09 as amended, the appellant firm was required to submit the installation certificate issued by Central Excise Authority or Chartered Engineer as the case may be, within a period of 6 months from the date of import, to the concerned licensing authority. Even if we take the submission of the appellant that they could not utilize the imported goods, because the same were confiscated, there can be no reason as to why the goods imported on 02.11.2004 had not been installed even after almost five years from the date of import, after which period, the goods were confiscated by Customs. The imported machinery should have been installed within the prescribed time limit as laid down in Para 5.3.2 of Hand Book of Procedures and exports should have started, which has not been done. The issues of the appellant with Customs are independent of the action taken by the licensing authority. The purported reply given by the appellant firm in response to the Show Cause Notice issued by the licensing authority is only a repetition of what has been given in this appeal and hence the argument that the submissions made in the above reply have not been considered by the adjudicating authority, cannot be accepted for the above stated reasons. The appellant should have either installed the imported capital goods and fulfilled the export obligation or should have regularized by payment of Customs duty with interest, both of which had not been done.
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(22)/Addl.DGFT/ECA/Che/AM 20

Dated 11/03/2020

Appeal of the firm is dismissed.



**(D.K.SEKAR)**  
**Appellate Authority &**  
**Zonal Additional Director General of Foreign Trade**

**M/s Gycrete Building India Pvt.Ltd.**  
**Majestic Ashirwad,**  
**22, Sivasailam Street, T.Nagar,**  
**Chennai 600 017**