



सत्यमेव जयते

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(28)/Addl.DGFT/ECA/CHE/AM 20

Dated 05/06/2020

Name of the Appellant

M/s Vinkem Labs. Ltd
AH 29, Shanthi Colony, 4th Avenue,
Annanagar, Chennai 600040
IEC No. 0400024152

Order appealed against

Order-in-Original No.
04/21/021/00756/AM 10 dated 28/06/2019
issued by Dy.DGFT, Chennai

Order-in-Appeal
passed by

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

Order-in-Appeal

M/s Vinkem Labs Ltd., Chennai 600040 had filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 04/21/021/00756/ AM 10 dated 28/06/2019 issued by Dy..DGFT, Chennai.

2. M/s Vinkem Labs Ltd., Chennai 600040 had obtained an EPCG licence No. 0430007986 dated 17.12.2009 for a duty saved value of Rs. 21686226/- from the Office of Jt.DGFT Chennai with an obligation to export "Anti Cancer medicines" for a FOB value of US \$ 2783258.95 within a period of 6 years from the date of issue of authorization. The firm vide their letter dated 10.03.2015 requested for extension of total export obligation period against the EPCG licence for reasons mentioned therein. As such request was not made by the firm within the time prescribed under para 5.8.3 of Hand Book of Procedures 2009-14, the request was rejected on 27.03.2015 advising them to pay proportionate customs duty plus interest for non-fulfillment of first block export obligation and to produce documentary evidence of payment of the same. Since there was no reply from the firm, cautionary letter dated 06.03.2019 was issued to the firm. To this, the firm replied that they admit that though they imported the goods, they could not start the production for various reasons explained

therein, resulting in non-fulfillment of export obligation and that the banker had filed suit in various Court DRT/NCLT etc. for recovery of the finance and that an appeal had been filed in the Hon'ble High Court which was pending. As there is no provision in the Policy to waive the condition of non-fulfillment of export obligation, a Show Cause Notice dated 29.04.2019 was issued with an opportunity of Personal Hearing on 22.05.2019, During the Personal Hearing, the authorized representative informed that the firm had approached the High Court for Revival Order which was expected to be delivered within four months time and that then they would take the decision to regularize the case. The firm vide another letter stated that they had not fulfilled the export obligation for various reasons and requested to exempt the from the same. As there is no provision in the Policy exemption from fulfilment of export obligation, Order in Original dated 28/06/2019 was issued imposing a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs) and the firm was placed in the Denied Entities List.

3. Aggrieved by the Order, the firm has preferred an appeal on 13.08.2019. The firm has requested for waiver of the condition of pre-deposit of penalty for the reasons mentioned in the appeal and also since the circumstances were beyond their control.

4. The appellant has filed the appeal among others on the following grounds:

- (i) The impugned order is against law, facts and circumstances of the case;
- (ii) The order is passed contradicting and in violation of the evaluation report submitted by his own superior to Hon'High Court of Madras after floor visits to both the units of the appellant as a delegate of the four member Expert Committee deputed as per Order of the Court.
- (iii) That the respondent erred in passing the order on the premise that there were no documentary proof such as Court orders / directions, bank's letter etc., in support of its claim while the appellant had submitted the same.
- (iv) That the Dy.DGFT had erred in holding that the appellant had misutilised the EPCG scheme willfully defaulting in fulfilling the export obligation and produced no documents in support of fulfillment of export obligation, and it ought to have examined the documents on the file of the respondent while the company was in a functional state.
- (v) That the Order cannot be sustained as the company itself has remained in a lay off state for over five years and is being recommended for revival by Government of India.
- (vi) That there were no intentional omissions or commissions with an intention to default on the part of the appellant
- (vii) That the appellant is seeking revival on account of non sanction of funds by its bankers.

For the above stated reasons, the appellant has sought to quash the Order and enable the appellant to pursue its export obligation .

5. The appellant was given a Personal Hearing on 14.10.2019. The firm's Counsels attended the Personal Hearing and stated that the firm's loan restructuring case is pending before the Hon'ble High Court and that the case is likely to come to finality within one or two months. They also stated they were intending to approach PRC/EPCG Committee for extension in export obligation period based on High Court order as they were prevented from getting US-FDA approval and thereby enabling them to carry out the exports as per the authorization. They wanted that the appeal process be kept on hold for two months by which time they assured that they would submit the High Court Order. They requested for another date for personal hearing after two months. Accordingly another personal hearing was given on 23.12.2019 which none attended. Another opportunity was given on 28.01.2020 which also none attended. The appellant sought for postponement of Personal Hearing given on

11.03.2020 due to health reasons. Hence another Personal Hearing was given on 20.04.2020 which was not attended. Meanwhile vide letter dated 26.02.2020, the appellant has informed that even if they get favourable directions from the Hon'ble Court, considering the appellant's age and other circumstances and conditions, they have taken a decision to windup the company after the Hon'ble Chennai High Court and that they are waiting for legal formalities to complete to surrender the assets to the bank and wind up of the firm. Also as their assets were hypothecated to Bank of India and NABARD, the appellant has requested this office to take the necessary procedure to recover our dues from the Bank who hold the hypothecation of all their assets. Another Personal Hearing was given on 01.06.2020 to which the appellant sent an email expressing his inability to attend the Hearing and to take suitable action as per the law.

6.I have gone through the appeal and the submissions made during the Personal Hearing. The appellant has not been able to submit the export obligation documents. The Appellant has not submitted any Orders from High Court and are waiting for legal formalities to be completed to wind up their firm. As per the final communication sent by the appellant to this Office it has been stated that even if they get favourable direction from the Court, due to the age of the appellant and other circumstances they have taken a decision to windup and hence have asked to take necessary action to recover the dues from the respective banks who hold the hypothecation of all their assets. Hence it is clear that the appellant firm will not be able to fulfill their export obligation and hence are liable for action as per FTDR Act.

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(28)/Addl.DGFT/ECA/CHE/AM 20

Dated 05/06/2020

Appeal of the firm is dismissed.



(D.K.SEKAR)

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

**M/s Vinkem Labs. Ltd
AH 29, Shanthi Colony, 4th Avenue,
Annanagar, Chennai 600040**