



भारतसरकार Govt. of India

वाणिज्यएवंउद्योगमंत्रालय M/o Commerce and Industry

ऑचलिकअपरमहानिदेशकविदेशन्यापारकाकार्यालय

Office of the Zonal Additional Director General of Foreign Trade

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F.No. A(29,30)/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.
(as tabulated below)
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 Orders-in-Original Nos. 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(29)/Addl.DGFT/ECA/Che/AM20/Mdu, / 21.08.2019	35/21/071/00002/AM18 dated 16.07.2019	SFIS 3510045185 dt.07.06.2017	4,31,10,000/-
2.	A(30)/Addl.DGFT/ECA/Che/AM20/Mdu, / 21.08.2019	35/21/071/00001/AM18 dated 16.07.2019	SFIS 3510045184 dt.07.06.2017	3,46,15,000/-

3. M/s Kerry Indev Logistics Pvt. Ltd., Chennai had obtained the above SFIS scrips from the Office of Jt.DGFT, Madurai for duty credit value as mentioned in the respective authorization, from the Office of Jt.DGFT Madurai in respect of supply of a service in India relating to exports paid in free foreign exchange or in Indian Rupees which are otherwise considered as having being paid for in free foreign exchange by RBI, rendered during the year 2014-15 under para 9.53(iv) of FTP 2009-14. The Company was asked vide letter dated 8.2.2018 to surrender the scrips as they are not entitled to claim the SFIS 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 17.05.2019 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 16.07.2019 was issued and the Company was placed under Denied Entities List (DEL).

4. Aggrieved by the Order, the Company has filed the appeals as given in the tabular column against the respective Order. 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 the following arguments in the appeal:

- (i) That the impugned Order had mentioned that a letter dated 08.02.2018 was issued asking them to surrender the Scrip to which a reply had been filed. However neither a notice nor any Personal Hearing was granted and contrary to the principles of natural justice the Order had been passed.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) That their claim is covered under Para 9.53 (iv) of the Foreign Trade Policy read along with the services as notified under Appendix 3E.
- (vi) 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.

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 para 9.53 (iv) they were eligible for the duty credit as the payment has been made by the exporter in Indian Rupees indirectly 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 do not fall under the RBI guidelines, in respect of para 9.53 (iv) quoted by the appellant. The appellant has not claimed the benefit under para 9.53(i) and (ii) of FTP 2009-14. The claim is related to supply of a notified service appearing in Appendix 41 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 9.53 (iv) of the said Foreign Trade Policy. However the services 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 Indian entities and not to any foreign liner. Therefore, I do not find any merit in the argument of the appellant.

8. The R.A. in should have rejected the appellant Company's application for the Scrip in the issue stage itself if the same 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(29,30)/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**