



भारत सरकार Govt. of India

वाणिज्य एवं उद्योग मंत्रालय M/o Commerce and Industry

ऑचलिक अपर महानिदेशक विदेश व्यापार का कार्यालय

Office of the Zonal Additional Director General of Foreign Trade

26 Haddows Road, शास्त्री भवन अनेक्स, Shastri Bhavan Annexe

Phone: 044-28283404/08 * चेन्नै/CHENNAI - 600 006 * Fax: :044-28283403

ईमेल/Email: chennai-dgft@nic.in

F.No. A(51)/Addl.DGFT/ECA/Chen/AM 16/
Name of the Appellant

Dated 29/05/2019

M/s Sindhu Granites (IEC No. 0493012371)
1015, Trichy Main Road,
Near PRC Depot, Melur,
Madurai 625 106

Order appealed against

Order -in-Original No.
04/84/040/00032/AM 05 dated 13.02.2013
issued by Office of Addl.DGFT, Chennai

Order-in-Appeal passed by

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

Order-in-Appeal

1. M/s Sindhu Granites Madurai 625 106 has filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original, passed by Jt.DGFT Chennai.

2. M/s Sindhu Granites Madurai 625 106, had obtained an Advance Authorisation No. 0410057815 dated 02.06.2004 for a CIF value of Rs. 27,13,365/- (US \$ 59700) from the Office of Addl.DGFT, Chennai for import of duty free inputs with export obligation to export the resultant product for a FOB value of US\$ 11,94,000/- within a period of 18/24 from the date of issue of authorization. The firm had fulfilled the export obligation to the extent of US \$ 2,00,051.10. Proportionately the entitlement to import had worked out to US\$ 5,001.28. But the firm had utilized the licence to the extent of US \$ 29,783 and hence there was an excess utilization of CIF US \$24,781.72. As such the firm was advised to regularize the excess imports. As there was no reply to this letter, a Show Cause Notice was issued to the firm and its directors with an opportunity of Personal Hearing. The firm had not complied with the Demand Notice nor submitted any reply to the Show Cause Notice. In the above circumstances, the firm and its directors were found guilty of violating the conditions of the licence and were liable to penalty. Therefore, Order-in-Original dated 13.02.2013 imposing penalty of Rs. 3,90,000/- was passed towards non-fulfillment of export obligation in full against the licence and the firm was also placed in Denied Entity List by the Adjudicating authority.g

3. Aggrieved by the above said Order-in-Original, the firm has filed the present appeal on 10.04.2013. The appellant has stated that they were unable to make the pre-deposit of penalty due to financial constraints and has hence requested to waive the condition of pre-deposit. The plea of the appellant is allowed.

4. The appellant in the appeal has stated that they had received a letter dated 25.02.2011 for regularization of excess imports. It is stated that RA Chennai had not considered the request to fix the norms as done in the case of another firm with a higher wastage. It was stated that they therefore had submitted re ed ANF 4F showing both direct exports and supplies to 100 percent EOUs for the period 2004-05 and 2005-06. In this regard, they state that they had approached the 100 percent EOUs with a letter dated 04.07.2011 to attest their supply invoice from their stores. As Central Excise Certification of supplies to 100 percent EOUs was not available it is stated, that the same was obtained after some delay from Central Excise vide their letter dated 26.02.2013. It is stated that in the meanwhile Order in Original dated 12.02.2013 had been issued. As the export obligation had been fulfilled the appellant has sought to set aside the Order and to remove the firm from DEL.

5. Shri P.K.S. Surya Prakash authorized by the Proprietor of the firm, attended the Personal Hearing. He stated that they had fulfilled the export obligation and there was no excess imports and all documents have been submitted to RA. He further stated that the appeal may be upheld considering that the firm had submitted the EODC documents.

6. I have gone through the arguments put forth in the appeal and submissions made during the Personal Hearing. It is seen that an Interim Order dated 12.02.2016 was passed in which it was observed that the party had submitted copy of ANF 4D without certification by Chartered Accountant. Hence the party had been advised to sort out the issues with RA by 3rd week of February 2016 so that a final decision in the matter could be taken. RA was advised to furnish a report after examining the same by 29.02.2016 based on which final order would be passed. However it is seen that the report submitted by RA was not complete and did not consider all the documents submitted by the appellant.

7. On perusal of the documents, it is seen that the firm had applied for 2 import items out of which one was invalidated for local purchase. However the same was not procured locally and only one item had been imported directly. The applicant has returned the original ARO to the licensing authority and also furnished a letter from the supplier that no goods have been supplied to the appellant. The appellant has shown both direct exports and supplies to 100 percent EOUs towards export obligation fulfillment. Imports made were prima facie found to be lesser than their eligibility. On going through the export obligation fulfillment documents submitted, it appears that the appellant has fulfilled the export obligation in proportion to the imports made. Though at the time of issue of the Order in Original the appellant had not furnished documents to show export obligation fulfillment, they have subsequently submitted revised documents evidencing fulfillment after receipt of Central Excise Certification for the deemed exports. There does not also seem to be any intent on the part of the appellant to defraud or cause wrongful loss to the government exchequer.

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(51)/Addl.DGFT/ECA/Chen/AM 16/

Dated 29/05/2019

1. The Order of the adjudicating authority is set aside.
2. The licensing authority shall make de-novo examination of the case and pass appropriate orders.



(D.K.SEKAR)

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

✓
**M/s Sindhu Granites
1015, Trichy Main Road,
Near PRC Depot, Melur,
Madurai 625 106**