



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

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F.No. A(79)/Addl.DGFT/ ECA/AM 20

Dated

26/05/2020

Name of the Appellant

M/s Borg Warner Cooling Systems (India) P.Ltd.
Plot No. E.14, SIPCOT Industrial Park,
Mambakkam Village, Sriperumbudur Taluk
Kancheepuram Dist. 602105
IEC No. 0401008819

Order appealed against

Order-in-Original No.
04/21/21/00897/AM 07 dated 22.10.2019
issued by Dy.DGFT, 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 Borg Warner Cooling Systems(India) P.Ltd., Chennai 602105 had filed this Appeal under Section-15 of the Foreign Trade (Development & Regulation) Act, 1992, against Order-in-Original No. 04/21/21/00897/AM 07 dated 22.10.2019 issued by Dy.DGFT, Chennai.

2. M/s Borg Warner Cooling Systems(India) P.Ltd., Chennai 602105 had obtained an EPCG licence No. 0430004468 dated 21.12.2006 for a duty saved value of Rs. 626,826/- from the Office of Zonal Addl..DGFT Chennai with an obligation to export "Fan Drive Assembly, EGR Valves Proportional Solenoids Valves" for a FOB value of US \$ 111,559.68 within a period of 8 years from the date of issue of authorization. The The firm had not submitted export obligation documents, even after expiry of export obligation period. Hence a Show Cause Notice dated 14.06.2019 was issued with an opportunity of Personal Hearing on 27.06.2019. The firm had requested for 30 days time to submit the redemption application..But even after that period, the export obligation fulfillment documents nor evidence to show payment of duty with interest, were not submitted. Hence Order in Original dated 22.10.2019 imposing a penalty of Rs. 200000/- was issued and the firm was also placed in Denied Entities List.

3. Aggrieved by the above said Order-in-Original, the firm has preferred the present appeal on 05.12.2019. The firm has requested for waiver of the condition of pre-deposit of penalty as there is no breach in meeting the export obligation and as they have been affected financially. The plea of the appellant is allowed.

4.The appellant has stated in the appeal that

- (i) they have fulfilled the export obligation in proportion to the actual duty saved amount and the delay in submission of redemption documents was due to setback in obtaining the Bank Realization Certificates from banks as they had lost the invoices, shipping bills and other documents, and that, now they had obtained all the relevant BRCs.
- (ii) That the installation certificate obtained from Central Excise Authority had been submitted

In view of the aforesaid contentions, the appellant has sought for setting aside the Order of penalty and interest. It has also been requested to grant them a Personal Hearing to substantiate their contentions.

5.The appellant was given a Personal Hearing on 21.02.2020. Shri X.Edison Manager of the firm attended the Personal Hearing. During the Hearing, the firm's representative stated that they had submitted the export obligation documents. They further stated that they paid the duty and also the interest to avoid difficulties in their import / export operations. The appellant was asked to produce the evidence of payment of duty and interest and based on that their case can be further looked into. They requested that the redemption application be processed and shortfall if any be intimated.

6.Vide their letter dated 25.02.2020, the appellant has stated that they have paid the entire duty foregone along with interest. The appellant has claimed exemption vide Public Notice No. 7/2002 dated 11.07.2002, for not mentioning EPCG licence numbers in the shipping bills. The appellant further stated that they were approaching the EPCG Committee for any deficiencies in this regard. Vide letter dated 13.03.2020 the appellant has furnished copy of letter from Customs confirming payment of Customs duty with interest. Copy of TR-6 Challans have also been submitted. Hence they have requested to set aside the Order of penalty and to remove them from DEL.

6. I have gone through the appeal and the submissions made during the Personal Hearing. The appellant had not initially submitted the export obligation documents due to delay in obtaining BRCs, They have paid the duty along with interest, though belatedly. They have stated that they have approached EPCG Committee to condone the deficiencies, which is under consideration and the decision is awaited. However in the meanwhile, the firm has regularized the case pending decision of the EPCG Committee, after which they stated that they intended to seek refund of the duty and interest paid by them from Customs. Prima facie there does not seem to be any intent on the part of the appellant to defraud the Government.

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(79)/Addl.DGFT/ ECA/AM 20

Dated 26/05/2020

1. The Order of the adjudicating authority is set aside.
2. The case is remanded back to the adjudicating authority for de-novo examination. The appellant firm shall furnish all original documents to the licensing authority within 30 days from the date of receipt of this Order. The documents so submitted shall be examined and appropriate orders may be passed.


(D.K.SEKAR)

Appellate Authority &

Zonal Additional Director General of Foreign Trade

1) M/s Borg Warner Cooling Systems (India) P.Ltd Plot No. E.14 SIPCOT Industrial Park Mambakkam Village Sriperumbudur Taluk, Kanchipuram Dist.602105

2) 12, Kasturi Indl. Estate, Ponniamman Nagar, Aynambakkam Chennai 600095