

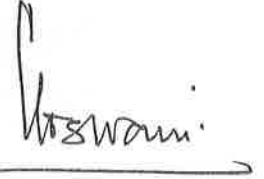
F. No. 11/38/2014-15/ECA-I
Government of India
Ministry of Commerce & Industry
Directorate General of Foreign Trade

Dated the 10th September, 2015
Udyog Bhawan, New Delhi

OFFICE MEMORANDUM

Subject: Examination of Review Petitions under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992

Enclosed herewith is a copy of the Review Order dated 21.08.2015 in the case of M/s. Rotomac Electricals Ltd., New Delhi for information and guidance on the points raised therein while possessing cases under Section 16 of the Foreign Trade (Development and Regulation) Act, 1992. A copy of the checklist prepared for the purpose is also enclosed.



(Arunoday Goswami)
Joint Director General of Foreign Trade
E-mail: arunoday.goswami@nic.in
Tel No. 23061562 Ext 225

To

1. PPS to DGFT.
2. Addl. DG (DKS)/ Addl. DG (LBS)/ Addl. DG (KCR)/Addl. DG (JS).
3. All the Officers in DGFT HQs.
4. Heads of all RAs (for information).
5. EDI for uploading on the DGFT website.

**Check List for examination of applications received by DG for Review under Section 16 of
the Foreign Trade (Development and Regulations) Act, 1992**

Name of the applicant firm:

Sl. No.	Criteria	Yes/No		Remarks, wherever applicable
1.	Whether the application is an Appeal under Section 15 or a Review Petition under Section 16 of the Act?	<input type="checkbox"/> Sec 15	<input type="checkbox"/> Sec 16	
2.	Whether an Adjudication Order has been passed by any Authority? If yes, then indicate name, designation of the RA/ Adjudicating Authority, File No. & date of Adjudication Order	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<u>If yes:</u> Adjudicating Authority: File No.: Date:
3.	Whether any Order-in-Appeal has been passed by any Authority? If yes, name, designation of Appellate Authority and date of Appellate Order.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<u>If yes:</u> Appellate Authority: File No.: Date:
4.	Date of filing of Review petition			Date:
5.	Whether Review appeal is within the time period prescribed under Section 16 of the FT (D&R) Act	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Period of Delay in years, months and days:
6.	Whether any apparent error/inaccuracy in the facts (arithmetical or clerical), considered by the Appellate Authority in its decision has been brought out?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, then mention the nature of inaccuracy in 2-3 words:
7.	Whether any lack of jurisdiction in the order of the Adjudicating/ Appellate Authority has been brought out?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, then indicate in yes/no, whether lacking in: Financial jurisdiction: Administrative jurisdiction:
8.	Whether any illegality in the procedure adopted by the Adjudicating/ Appellate Authority has been brought out?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, then indicate in few words:
9.	Whether any denial of opportunity for personal hearings by the	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If yes, then indicate in few words:

	Adjudicating/ Appellate Authority has been brought out?		
10.	Whether the arguments extended in the Review Petition have also been made before the Appellate Authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
11.	Whether the arguments extended in the Review Petition have already been considered and disallowed by the Appellate Authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
12.	Whether the documents mentioned for consideration by the Reviewing Authority could have been placed before the Appellate Authority but was not done?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
13.	Whether any additional document(s) have been brought out in the Review Petition which could have been placed before the Appellate Authority but was/were not available due to reasons mentioned in the petition?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, then indicate the document:
14.	Whether such a document would have had a bearing on the decision of the Appellate Authority clearly evident from the order of the Appellate Authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, then indicate which input for the decision is affected:
15.	Whether the Review has been sought on the grounds of disagreement or differences with the opinion of the Appellate Authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
16.	Whether in view of the above facts, prima facie the Review Petition is admissible for consideration under the provisions of Section 16 of the Act? If yes, then indicate the S. Nos. of the above stated reasons.	<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, then indicate the S. No. of the reasons from this Table which justify review:

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Government of India
Ministry of Commerce and Industry
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi-110001

F. No. 18/38/2014-15/ECA-I

Dated : 21st August, 2015
Date of dispatch 2A

Name of the Appellant

M/s. Rotomac Electricals Ltd
I-1624, Chittaranjan Park,
New Delhi-110019

Order against which Review is sought

Order-in-Appeal vide No. 11/53/2010-11/ECA-I/725 dated 05.01.2015 passed by Addl. DGFT, DGFT, Hqs., New Delhi.

Order-in-Review passed by

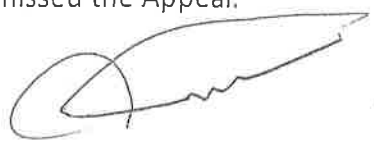
Shri Pravir Kumar
Reviewing Authority
& Director General of Foreign Trade

Order -in- Review

M/s. Rotomac Electricals Ltd, New Delhi has filed an application under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter to be referred as 'Act') on 23rd February, 2015 for Review of Order-in-Appeal vide No. 11/53/2010-11/ECA-I/725 dated 05.01.2015 passed by Addl DGFT, DGFT Hqs.

2. Briefly stated, the Adjudicating Authority in CLA, New Delhi had imposed a penalty of Rs. 3, 46, 30,500/- on M/s. Rotomac Electricals Ltd., New Delhi and its partners/Directors (hereinafter, referred to as 'the petitioner' on 05.04.2010 for non-submission of prescribed documents in support of fulfillment of export obligations within a specified period against the Advance License No. 0131276 dated 22.12.1999.

3. Aggrieved by the above said Adjudicating Order, the petitioner had preferred an appeal before the designated Appellate Authority in DGFT Hqs, New Delhi on 22.05.2010 stating that they have fulfilled the export obligation and have submitted the relevant documents to the CLA, New Delhi. The Appellate Authority had given repeated opportunities for Personal Hearings to the appellant and time for submission of prescribed documents as per the Foreign Trade Policy/ Procedures. As the petitioner failed to do so, the Appellate Authority in its Order dated 05.01.2015 dismissed the Appeal.



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4. This application for Review of the Order of the Appellate Authority has been filed by the petitioner under Section 16 of the Act with the following prayers:-

- a) To waive the pre-deposit of the penalty amount in terms of proviso to Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 and stay recovery thereof;
- b) Pending hearing and final disposal of the revision, the officers of DGFT be restrained from taking out any proceedings for the recovery of the said penalty amount;
- c) For such other and further relief(s) as the nature and circumstances of the case may require.

5. I have examined the facts of the case and observe as under:

- I. Section 15 of the Act provides for an appeal against the decision or order made by the Adjudicating Authority under the Act, which has already been resorted to by the petitioner.

Section 15(3) of the Act has categorically laid down as under:

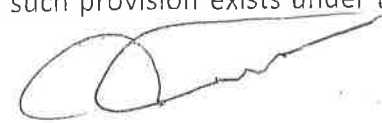
"The order made in appeal by the Appellate Authority shall be final."

Thus, no appeal lies before any Authority against the order of the Appellate Authority, within the scope of the Act. Therefore, prima facie, an appeal against the orders of Appellate Authority is inadmissible.

- II. Section 16 of the Act provides for review (not an appeal) whereby the Central Govt., (i) the case of any decision or order made by the Director General, or the Director General, in the case of any decision or order made by any officer subordinate to him, may on its own motion or otherwise, call for and examine the records of any proceeding, for the purpose of satisfying itself or himself, as the case may be, as to the correctness, legality or propriety of such decision or order and make such orders thereon as may be deemed fit. Thus, it has been laid down in the statute unambiguously that this is not an option of appeal against or re-examination of the decision of an Appellate Authority. Scope for review, *suo-motu*, or otherwise could arise only under following situations:

- a. Correctness: *Factual Inaccuracy (correctness) while taking a decision, which may include arithmetical/clerical omission of the facts brought before the Appellate Authority which would have obvious bearing on the decision/order sought to be reviewed;*
- b. Legality: *Lack of jurisdiction or competence of the Adjudicating/ Appellate Authority in taking the decision/order sought to be reviewed;*
- c. Propriety: *Due process of law, as laid down in the Act, has not been followed, especially in the context of the principles of natural justice, while taking the decision;*

- III. An application for review petition cannot be an appeal against or re-examination of the decision of an Appellate Authority, as no such provision exists under the



Act and, therefore, next level of redressal, if any, would have to lie with the competent court of law.

IV. The Supreme Court has observed in Criminal Original Jurisdiction Review Petition (CRL) No. 453 of 2012 in Writ Petition (CRL.) 135 of 2008 Kamlesh Verma....Petitioner (s) versus Mayawati & ors...Respondent(s) that the Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an 'error apparent on the face of the record'. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.

V. The Supreme Court, in Col. Avtar Singh Sekhon vs. Union of India & Ors. 1980 (Supp) SCC562, has held as under:

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice."

VI. In Sow Chandra Kante v. Sheikh Habib, the Supreme Court observed:

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... "

VII. The Supreme Court has in Criminal Original Jurisdiction Review Petition (CRL) No. 453 of 2012 in Writ Petition (CRL.) 135 of 2008 Kamlesh Verma....Petitioner (s) versus Mayawati & ors...Respondent(s) further observed that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. In Parsion Devi & Ors. vs. Sumitri Devi & Ors., (1997) 8 SCC 715, the Supreme Court has held that a review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise". The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review.

VIII. In the same case the Supreme Court has observed that the review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court (...to be understood as higher authority in this case) to correct all errors committed by a subordinate court



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(Appellate Authority in this case). A repetition of old and overruled argument is not enough to re-open concluded adjudications. -

IX. The Supreme Court, in **Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd.**, (2006) 5 SCC 501, held as under:

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

X. The Supreme Court of India, while considering the **Criminal Original Jurisdiction Review Petition (CRL) No. 453 of 2012** in **Writ Petition (CRL.) 135 of 2008 Kamlesh Verma...Petitioner (s) versus Mayawati & ors...Respondent(s)** examined at length the scope for review of a decision by a lower court or its own order in the context of various earlier judgments and analysis (some of them summarized in the earlier paragraphs) and laid down the Principles for Review as under:

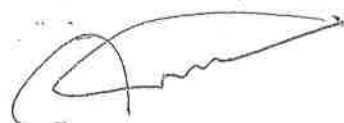
(A) When the review will be maintainable:-

- a) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- b) *Mistake or error apparent on the face of the record;*
- c) *Any other sufficient reason.*

The words "any other sufficient reason" has been interpreted in **Chhajju Ram vs. Neki**, AIR 1922 PC 112 and held by Supreme Court in the case of **Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors.**, (1955) 1 SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors.**, JT 2013 (8) SC 275.

(B) When the review will not be maintainable:-

- a) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- b) *Minor mistakes of inconsequential import.*
- c) *Review proceedings cannot be equated with the original hearing of the case.*



d) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

e) *A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.*

f) *The mere possibility of two views on the subject cannot be a ground for review.*

g) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*

h) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

i) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.*

6. In the instant case, the appeal had been rejected for non-submission of following documents required to substantiate the fulfilment export obligation against the impugned Advance License:

- a) Part 2 of the DEEC not logged by Customs;
- b) EP copy of Shipping Bill not having File no./ Advance Licence No.;
- c) MODVAT non-availment certificate not submitted;
- d) BRC not submitted to CLA, New Delhi in original;

7. Except for the submission of a copy of MODVAT non-availment certificate none of the documents mentioned above have been submitted with the Review Petition. The submissions made in the Review Petition in respect of the DEEC Book and the EP copy of Shipping Bill, required for verifying the fulfilment of export obligation, has already been considered and disallowed by the Appellate Authority and no new facts have brought out before me for consideration.

8. Thus, in view of Section 15(3) of the Act and the criteria laid down for review under Section 16 of the Act, along with the guidance available in the principles laid down by the Supreme Court for consideration of review cases, I find as under:

- a) **No factual incorrectness/inaccuracy** in respect of the documents/facts considered and relied upon by the Appellate Authority has been brought out in the Review Petition;
- b) **No fact relating to lack of jurisdiction/competence** of the Adjudicating/Appellate Authority has been brought out in the Review Petition;
- c) **No impropriety in terms of violation of the principles of natural justice** in the decision making process of the Appellate Authority has been brought out in the Review Petition;
- d) **Same arguments have been extended in the review petition** which have already been considered and disallowed by the Appellate Authority after giving due opportunities for personal hearings to the petitioner;

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9. Accordingly, therefore, in exercise of the powers vested in me under Section 16 of the Act, pass the following order:

Sl. No. 4008

Order -in- Review


F.No:18/38/2014-15/ECA-112159 to 1260

Dated: the 21st August, 2015

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The Review Application is rejected on the grounds of inadmissibility.

(Pravir Kumar)
Reviewing Authority &
Director General of Foreign Trade



(Pravir Kumar)
Reviewing Authority &
Director General of Foreign Trade

M/s. Rotomac Electicals Ltd
I-1624, Chittaranjan Park,
New Delhi-110019

o/c

Copy to: Addl DGFT, CLA, Delhi

g s
24/8/2015


(Munish Kumar)
Deputy Director General of Foreign Trade