

Government of India
Ministry of Commerce & Industry
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi -110011

F.No. 18/39/2018-19/ECA-I/237

Date of Order: 26.09.2019
Date of Dispatch: 27.09.2019

Name of the Appellant:

Concord Nonwoven Industries Pvt. Ltd., 8, Ho Chi Minh Sarani, Suit No. 26, 2nd floor, Kolkata – 700071.

IEC No.

0205030009

Order reviewed against:

Order-in-Appeal No. 18/340/15-16/ECA/KOL/Appeal-156/219 dated 27.11.2017 passed by Addl. DGFT, Kolkata.

Order-in-Review passed by:

Shri Alok Vardhan Chaturvedi, DGFT

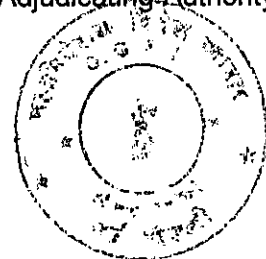
Order-in-Review

Concord Nonwoven Industries Pvt. Ltd., Kolkata filed a Review Petition dated 26.07.2018 under section 16 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as 'the act'), against Order-in-Appeal No. 18/340/15-16/ECA/KOL/Appeal-156/219 dated 27.11.2017 passed by the Addl. DGFT, Kolkata dismissing the appeal. The Adjudication Authority imposed a penalty of Rs.10,00,000/- on the petitioner in addition to payment of Customs Duty and 15% interest per annum on the petitioner and its directors vide Order-in-Original dated 11.01.2016.

Brief facts of the case

2.1 The petitioner obtained an EPCG Authorisation No. 0230001637 dated 13.07.2006 from RA, Kolkata as per provisions of Foreign Trade Policy (FTP) prevalent during that period for import of capital goods for a duty saved value of Rs. 36,30,415/- with an obligation to export specified products for an FOB value of Rs. 2,90,43,320/- (US\$. 6,23,916) to be completed within a period of 8 years from the date of issue of the Authorization. As per Condition of the Authorization, the petitioner was required to submit the prescribed export documents towards fulfilment of export obligation within the time frame as mentioned in the FTP during the policy period.

2.2 The Export Obligation (EO) period expired on 13.07.2014. The petitioner did not submit complete export documents towards fulfilment of export obligation despite several reminders and opportunities of personal hearings. A Show Cause Notice and a Refusal Order was issued on 17.09.2015 in terms under Section 9(2) of the act read with rule 7(i) (a) and (k) of Foreign Trade (Regulation) Rules, 1993. The petitioner did not respond to Show Cause Notice and Refusal Order and also did not appear for personal hearing. The Adjudicating Authority passed



Order-in-Original dated 11.01.2016 imposing a fiscal penalty of Rs. 10,00,000/- in addition to payment of Customs Duty and 15% interest per annum on the petitioner and its directors.

2.3 The petitioner filed an appeal on 06.05.2016 before the Appellate Authority against Order-in-Original dated 11.01.2016. As per the provisions of the act, the petitioner was required to make a pre-deposit of penalty before filing an appeal but it did not do so. The Appellate Authority gave personal hearings on 05.04.2016, 19.04.2016, 16.05.2016 and 20.06.2016. The Appellate Authority advised the petitioner to deposit 10% of pre-deposit of penalty amount or 100% Bank Guarantee of the penalty amount. The petitioner did not submit any of these two. The Appellate Authority observed that the petitioner failed to fulfill the conditions of authorization and also failed to submit the pre-deposit of penalty amount. The Appellate Authority vide the Order-in-Appeal dated 27.11.2017 dismissed the appeal. Vide the Suspension Order dated 12.04.2016, Regional Authority (RA), Kolkata suspended the Importer Exporter Code (IEC) of the petitioner w.e.f. 12.04.2016.

3.0 The petitioner submitted a review petition dated 26.07.2018 before the undersigned requesting to set aside Order-in-Original dated 11.01.2016 and Order-in-Appeal dated 27.11.2017, Suspension Order dated 12.04.2016, deleting the petitioner's name from Denied Entity List and redemption of EPCG Authorization. The petitioner has, inter-alia, submitted the following:

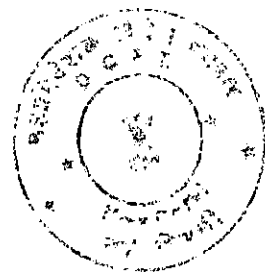
(i) It imported machinery for duty saved value of Rs. 36,30,945.04 and installed the said machine on 26.09.2006. It exported the products made out of the said machine from time to time and fulfilled 80% of export obligation in FFE terms and realizations of export proceeds has already been received.

(ii) It failed to submit the export documents as the concerned persons were out of station for a considerable period.

(iii) In terms of para 5.09 of FTP, physical export to the tune of more than 75% to be considered towards fulfillment of EO for complete discharge of the EPCG License.

(iv) It submitted a Bank Guarantee of Rs. 1 lakh towards penalty amount as it could not submit 100% penalty amount due to financial constraint.

4.0 The petitioner was afforded an opportunity of personal hearing on 06.12.2018. During the personal hearing the petitioner reiterated its earlier submissions. The petitioner was asked to approach the Regional Authority Kolkata and submit the prescribed export documents. Again, vide this office letter dated 26.12.2018 followed by reminders dated 8/03/2019 and 11/04/2019, the petitioner was advised to furnish complete prescribed export documents to the Regional Authority Kolkata. However nothing was heard from the petitioner. Therefore, another opportunity of personal hearing was provided to the petitioner on 30.05.2019. During the course of personal hearing, the petitioner stated to have submitted all the export documents to RA Kolkata. A report was obtained from RA Kolkata. RA Kolkata, vide e mail dated 26.6.2019



informed that the documents submitted by the petitioner were still deficient. As per information received from RA Kolkata on 27.08 2019, the petitioner again asked for 7 days time to complete the papers. RA Kolkata vide mail dated 26.09.2019 has now informed that the petitioner has still not completed the deficiencies.

5.0 I have carefully gone through the written and oral submissions of the petitioner, information received from the RA Kolkata and other related documents. I observe that although the petitioner has claimed to have fulfilled the export obligation but it has failed to submit the prescribed documentary evidence showing fulfillment of export obligation inspite of several opportunities given to it again and again.

6.0 I, therefore, in exercise of the powers vested in me under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended) pass the following order:

Order

F.No. 18/39/2018-19/ECA-I

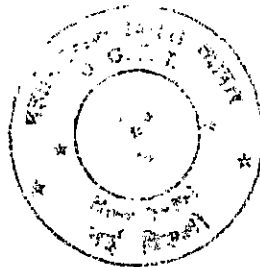
Dated: 27 .09. 2019


Order-in-Appeal dated 27.11.2017 and Order-in-original dated 29.12.15 are upheld.
Review Petition is rejected.


(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- ✓ (1) Concord Nonwoven Industries Pvt. Ltd., 8, Ho Chi Minh Sarani, Suit No. 26. 2nd floor, Kolkata – 700071.
- (2) Additional DGFT, 4, Esplanade East, Kolkata – 700069.
- (3) DGFT website.




(Dilip Kumar)
Dy. Director General of Foreign Trade