

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

F.No. 18/41/2018-19/ECA-I/239

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. 18/352/15-16/ECA/KOL/Appeal-115/219 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 06.08.2018 under section 16 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as 'the act'), against Order-in-Appeal No. 18/352/15-16/ECA/KOL/Appeal-115/219 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 applicable interest thereon vide Order-in-Original dated 29.12.2015.

Brief facts of the case

2.1 The petitioner obtained an Advance Authorization No. 0210109763 dated 29.02.2008 from Regional Authority (RA), Kolkata as per the provisions of the Foreign Trade Policy (FTP) prevalent during that period, for import of materials free of customs duty for a CIF value of Rs. 32,55,000/- (US\$ 81,375) with an obligation to export specified products for an FOB value of Rs. 37,00,000/- (US\$. 92,500) to be completed within a period of 36 months from the date of issue of the Authorization. As per the conditions of the authorization, the petitioner was required to submit the prescribed export documents towards fulfillment of export obligation within the time frame as mentioned in the relevant FTP.

2.2 The Export Obligation (EO) period expired in 28.02.2011. The petitioner did not submit complete export documents towards fulfillment of export obligation despite several reminders and opportunities of personal hearing. A Notice dated 14.02.2012 was issued under Section 7(1)(K) of the act to show cause as to why the petitioner should not be put under Denied Entity List for non-submission of documents towards fulfillment of export obligation. The petitioner did



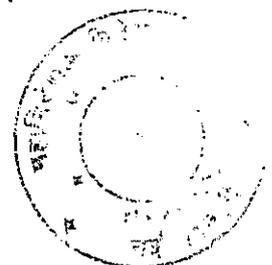
not submit the export documents and it was placed under DEL vide the order dated 07.06.2012. A show cause Notice dated 18.10.2012 was issued to the petitioner under Section 11(2) of the act for imposition of fiscal penalty. The petitioner was granted many opportunities of personal hearing and to submit complete documents towards fulfillment of export obligation. The petitioner neither responded to notices nor appeared for personal hearings. The Adjudicating Authority passed Order-in-Original dated 29.12.2015 imposing a fiscal penalty of Rs. 10,00,000/- on the petitioner in addition to payment of Customs Duty and applicable interest thereon.

2.3 The petitioner filed an appeal on 10.02.2016 before the Appellate Authority against Order-in-Original dated 29.12.2015. As per 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 hearing on 05.04.2016, 19.04.2016 and 16.05.2016. 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 07.02.2018, RA, Kolkata suspended the Importer Exporter Code (IEC) of the petitioner w.e.f. 07.02.2018.

3.0 The petitioner submitted a review petition dated 06.08.2018 before the undersigned requesting to set aside Order-in-Original dated 29.12.2015 and Order-in-Appeal dated 27.11.2017 and Suspension Order dated 07.02.2018. The petitioner has, inter-alia, submitted the following:

- (i) It imported/ locally procured under invalidation goods worth US\$ 49395.98 (Rs. 2443141.20) and exported products made out of entire import materials. It fulfilled the export obligation. It submitted all documents vide its letter dated 25.06.2012 and 27.11.2013. However, one shipping bill dated 16.03.2008 was provisional.
- (ii) It has taken up with the concerned Customs Authority. Despite its best efforts with the concerned custom authority, finalization of the shipping bill is pending.
- (iii) It is the fact that it was granted several personal hearings but it could not attend the same due to pre-occupation and the same be condoned.
- (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 reminder dated 8/03/2019 and 11/04/2019, the petitioner was advised to furnish the 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 letter dated 9.09.2019 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 fulfilment 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. 18/41/2018-19/ECA-I

Dated: 27.09.2019

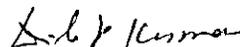
Order-in-Appeal dated 27.11.2017 and Order-in-Original dated 29.12.2015 are upheld.
Review Petition is rejected.


(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