

BY SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE
OFFICE OF THE ADDL. DIRECTOR GENERAL OF FOREIGN TRADE
4, ESPLANADE EAST :: KOLKATA-700069
e-mail no.dgft@wb.nic.in : Tel.: 2248-6831-34

No.ALS-G/02/24/40/00253/AM'08

Dated: 16 /11/2015

ORDER – IN - ORIGINAL

Passed by:-

S.Bhattacharya, Dy. Director General of Foreign Trade.

1. Any person aggrieved by the order may, under section 15 of the Foreign Trade(Development and Regulation) Act,1992 file an appeal against the same to the appropriate authority i.e. the Additional Director General of Foreign Trade, 4, Esplanade East, Kolkat-700069 within a period of 45 days from the date of serving of this Order together with a copy of this order and a complete set of evidence to be relied upon in support of the appeal in the form of an annexure.
2. Any person/party desirous of filing an appeal against this order shall deposit the penalty amount along with the appeal to the Appellate Authority failing which, the appeal is liable to be rejected for non-compliance of the provisions of Section 15(I) of the Foreign Trade(Development and Regulation)Act,1992.
3. The penalty amount is to be deposited within a period of 15 days from the date of issue of this order under the head of account "1453 Foreign Trade & Export Promotion", Minor Head – 102 other receipts, fines and penalties etc. failing which, the Importer Exporter Code Number 0288038428 allotted to the party may be suspended without any further notice, till payment of the full fiscal penalty amount under File No. 02/24/40/00253/AM'08.
4. I have gone through the facts and records of the case carefully. I find that M/s. K.K.Polycolor (I) Ltd., 405, Ajit Sen Bhawan, 13, Crooked Lane, Kolkata-700069 had obtained Advance Authorisation bearing No. 0210124577 dt. 19.03.2009 for duty free import of items as allowed on the authorisation for a CIF Value US\$.88597.42 (Rs. 3517312.54) with the obligation to export 100000 kg of Filled LLDPE compound (containing 49%+/-1% LLDPE,49%+/- 1% Calcium Carbonate and 2% Polyethylene Wax) for a FOB Value of US\$.95570.00 (Rs.3775000.00/-) mentioned in the authorisation which has not been fulfilled within the stipulated period as mentioned in the Condition sheet of the authorisation . E.O. period has already expired on 18.03.2012.
5. As per para 2.15 of Foreign Trade policy, if an Authorisation holder violates any condition of such Authorisation or fails to fulfil export obligation, he shall be liable for action in accordance with FT (D &R) Act, the Rules and orders made there under, FTP and any law for time being in force.

Contd...p/2

6. As per para 4.45 (b) of Hand Book of Procedures, Vol.1, 2009-2014, Authorisation holder shall submit requisite evidence in discharge of export obligation in accordance with paragraph 4.46 ibid.
7. As per para 4.44(f) of said Hand Book of procedures in case Authorisation holder fails to complete EO or fails to submit relevant information/documents, RA shall take action by refusing further Authorisations, enforce condition of Authorisation an Undertaking and also initiate penal action as per law.
8. Export obligation period expired on 18.03.2012, The firm did not submit full set of export documents. Therefore, a notice of even number dated 15/01/2013 was issued to M/s. K.K.Polycolor (I) Ltd., 405, Ajit Sen Bhawan, 13, Crooked Lane, Kolkata-700069 W.B. (hereinafter referred to as the "Noticee firm") under section 7(1)(K) of Foreign Trade (Development & Regulation) Act, 1992, calling upon the notice firm to show cause as to why they should not be put under "Denied Entity List" for non submission of documents towards fulfillment of export obligation and why Legal undertaking should not be enforced.. The firm was given 15 days time for submission of their reply and an opportunities for personal hearing was allowed. The reason for the notice arose from the fact that the firm had failed to fulfill the export obligation imposed against the above mentioned Advance Authorisation.
9. The firm neither submitted any export documents nor availed the opportunity of personal hearing. Therefore, the firm was placed under "Denied Entity List" vide order of even number dated 26.04.2013. Thereafter, a Show Cause Notice of even number dated 20.09.2013 under section 11(2) of Foreign Trade (Development & Regulation) Act, 1992 was issued to the firm calling upon to show cause as to why fiscal penalty should not be imposed against them for violation of the condition of the Authorisation. An opportunity of personal hearing was also allowed to the noticee firm . The firm was granted personal hearing on 29.10.2014 . The firm was also given several opportunities to submit full set of documents towards fulfillment of E.O.
10. After expiry of the export obligation period, the firm have not produced full set of documents prescribed as evidence for fulfillment of export obligation. The description of export documents mentioned in the S/Bills differed with the decision of the Norm Committee. The firm have imported the full extent of imported goods & value as allowed in the Authorisation, but export of full quantity is not established. Hence he has imported goods in violation of the provisions of the export-import policy. He has diverted duty free imported goods for purposes other than export.
11. Since the firm have not produced full set of documents in support of full exports, as such, I am left with no option but to conclude that the firm have failed in fulfillment of the export obligation that was imposed upon them.

