



**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE
OFFICE OF ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE
NISHTA BHAVAN (NEW CGO BLDG.), NEW MARINE LINES,
CHURCHGATE, MUMBAI-400020
APPEAL DIVISION**

Appeal File No: 03/16/144/00075/AM.18

Date: 28.03.2019

Name of the Applicant : M/s. Marvel Industries Ltd.
A-6, MIDC Industrial Area,
Malegaon, Sinnar,
Nasik - 422 103.

Order Appealed Against : Order-in-Original No. 03/01/002/00319/AM.12
Dated 08.01.2018 passed by Dy. DGFT, Mumbai.

ORDER-IN-APPEAL

Passed by Smt. Meeta Rajivlochan, Appellate Authority and
Additional Director General of Foreign Trade, Mumbai.

Present on behalf Of Appellant : Shri Lalit P. Tapuriah, Ex.Director.

This appeal is preferred on 21.02.2018 against Order-in-Original No. 03/01/002/00319/AM.12 dated 08.01.2018 passed by Dy. DGFT, Mumbai.

The relevant brief facts of the case are as under:

1. M/s. Marvel Industries Ltd., holding IEC No.0392038536 situated at A-6, MIDC Industrial Area, Malegaon, Sinnar, Nasik - 422 103. hereinafter referred to as "Appellant". had applied and obtained an Advance Authorisation No. 0310436815 dated 19.07.2007 to import P.P. Granules (Type and grade to conform with export item) for a CIF value of Rs.2,20,33,620/- (US\$ 548100/-) subject to fulfilment of export obligation to export Polypropylene Woven Fabrics Leno Bags for FOB value of Rs.2,74,36,500/- (US\$ 6,82,500/-). One of the conditions of the Authorization was that the

appellant would fulfil stipulated export obligation within 24 months from the date of issue of authorisation and would submit the original export documents within the prescribed period after the expiry of the export obligation period.

2. The appellant submitted a letter on 18.12.2010 along with the above mentioned unutilized authorisation with a request to cancel the same as they could not utilize the authorization. The licensing authority, after examination of the records, advised the appellant to obtain non-utilization certificate from the Customs. However, the appellant failed to comply the requirement. Hence, the appellant was issued a Demand Notice on 21.07.2011 and subsequently a Refusal Order on 18.01.2012 refusing to issue further authorisations to them.

3. As the appellant failed to comply with this office communication referred above, a Show Cause Notice dated 18.01.2012 under section 14 for action under Section 11(2) of Foreign Trade (Development & Regulation) Act 1992 was issued. By this notice, the appellant was also given an opportunity of personal hearing on 04.02.2012.

4. Since the appellant failed to respond, they were served with Summons on 14.02.2012 to appear before adjudicating authority on 28.02.2012. The appellant appeared before adjudicating authority with a letter dated 27.02.2012 reiterating the earlier statement. They also stated that they lost the original authorisation and filed FIR. As per principle of natural justice, the adjudicating authority again granted last and final opportunity of personal hearing to the appellant on 19.12.2012. But nobody turned up for personal hearing on the given date nor submitted required documents. Therefore adjudicating authority had to take a decision on the basis of documents available on record.

5. The Adjudicating Authority passed an order dated 08.01.2018 imposing a fiscal penalty of Rs.5,00,000/- and also directed to pay

Customs duty plus interest as applicable to the concerned Customs authorities under Section 13 of the Foreign Trade (Development & Regulation) Act 1992 and under Section 11(2) of the said Act as the appellant did not submit required documents i.e. Non Utilisation Certificate from Customs.

6. Aggrieved by the aforesaid Adjudication Order dated 08.01.2018 passed by the adjudicating authority, the appellant has preferred this appeal under Section 15 of the of Foreign Trade (Development and Regulation) Act, 1992.

7. An opportunity of personal hearing was granted to the appellant on 18.07.2018. Nobody turned up for personal hearing. A letter of personal hearing was received back undelivered by postal authorities with remarks "Company Closed". Second opportunity of personal hearing was given on 27.08.2018. Nobody turned up for personal hearing. Third opportunity of personal hearing was granted on 18.09.2018. Nobody turned up for personal hearing. A letter of personal hearing was received back undelivered by postal authorities with remarks "Company Closed".

8. As per natural justice, the last and final opportunity of personal hearing was granted to the appellant on 27.02.2019. Shri Lalit P. Tapuriah, Ex. Director of the firm, appeared before me. He has stated that they have not utilised the Advance Authorisation and handed over original Non-Utilisation Certificate against Advance Authorisation No.0310436815 dated 19.07.2007.

Findings:-

After going through the adjudication order as well as the documents available on record and after due application of mind, I find that :

1. The Adjudicating Authority had passed the order imposing fiscal penalty as the appellant did not submit Non-Utilisation Certificate.

2. The appellant had submitted Non Utilisation Certificate during personal hearing.

In view of the above and in the interest of natural justice, I, 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

1. The Order-in-Original No.03/01/002/00319/AM12 dated 08.01.2018 passed by the Dy. DGFT, Mumbai is set aside.
2. The Advance Licensing File No.03/86/040/00137/AM08 is remanded back to the adjudicating authority for consideration of closure of the file. The case should be disposed off within 30 days.
3. The Appellant to approach the concerned Adjudicating Authority for closure of the case.

Meeta

(Meeta Rajivlochan)
Additional Director General of Foreign Trade

To,

1. M/s. Marvel Industries Ltd.,
A-6, MIDC Industrial Area,
Malegaon, Sinnar,
Nasik - 422 103.
2. M/s. Marvel Industries Ltd
20, Podar Chambers,
S. A. Brelvi Road, Fort,
Mumbai - 400 001.
2. Licensing Section/Post Adj. & Recovery Cell.
3. DGFT, New Delhi.
4. Commissioner of Customs.
5. All concerned.