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भारत सरकार
वाणिज्य एवं उद्योग मंत्रालय, वाणिज्य विभाग
विदेश व्यापार महानिदेशालय
संघीय प्राधिकरण : कोची



GOVERNMENT OF INDIA
Ministry of Commerce & Industry, Department of Commerce
DIRECTORATE GENERAL OF FOREIGN TRADE
Regional Authority-Kochi

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फा सं 54/21/040/00355/AM 17/
53/21/040/00482/AM17
53/21/040/00144/AM18

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दिनांक:12/04/2023

आदेश(मूल)/ORDER(ORIGINAL)

1. इस आदेश से किसी भी व्यक्ति /पार्टी को हानि हुई है तो वे 2010 में यथासंशोधित विदेश व्यापार (विकास एवं विनिमय) अधिनियम 1992 के अंतर्गत इस न्याय निर्णय आदेश के जारी होने के 45 दिनों के अंदर अपील अधिकारी नामतः आंचलिक अपर महानिदेशक विदेश व्यापार, शास्त्री भवन, चेन्नै को इस आदेश की प्रति एवं अपील के अनुबंध के रूप में अपील के समर्थन के लिए साक्ष्य के पूर्ण सेट के साथ इस के विरुद्ध अपील फाइल कर सकते हैं।

Any person/party aggrieved by this order may, under Section 15 of the Foreign Trade (Development and Regulation) Act 1992, as amended, file an appeal against the same to the Appellate Authority, viz., Additional Director General of Foreign Trade, Shastri Bhawan, Chennai within 45 days from the date of serving of this Adjudication Order together with a copy of this order and a complete set of evidence relied upon in support of the appeal in the form of annexure to the appeal.

2. जो भी व्यक्ति/पार्टी इस आदेश के विरुद्ध अपील फाइल करना चाहता है वे दंड राशि जमा करना है तथा अपील अधिकारी को जुर्माना चुकाने के प्रमाण अपील के साथ प्रस्तुत करना है, ऐसा न करने पर अपील को 2010 में यथा संशोधित विदेश व्यापार (विकास एवं विनिमय) अधिनियम 1992 के अनुभाग 15(1) के प्रावधानों के गैर-अनुपालन के लिए अस्वीकार किया जाएगा।

Any person/party desirous of filing an appeal against the order shall deposit the penalty amount and produce proof of payment of penalty amount along with appeal to the Appellate Authority, failing which the appeal will be liable to be rejected for non-compliance of the provisions of Section 15(1) of the Foreign Trade (Development & Regulation) Act 1992, as amended in 2010.

3. दंड राशि को "1453- विदेश व्यापार एवं निर्यात संवर्धन-लघु शीर्ष 102-अन्य रसीदें, जुर्माना एवं दंड राशि आदि" नामक लेखा शीर्षक के तहत जमा किया जा सकता है।

The penalty amount is to be deposited under the Head of Account "1453-Foreign Trade and Export Promotion - Minor Head 102- Other receipts, fines, and penalties etc."

4. दंड राशि चुकाने के साक्ष्य को इस न्याय निर्णय जारी करने के तारीख से 45 दिन के अंदर न्याय-निर्णय प्राधिकारी को प्रस्तुत करना है, अन्यथा 2010 में यथा संशोधित, व्यापार नीति(विकास एवं विनिमय)अधिनियम 1992 के अनुच्छेद 11(7) के प्रावधानों के तहत निर्यातक के आयात निर्यात कोड संख्या को निलंबित किया जा सकता है।

Evidence of payment of penalty is required to be furnished to the Adjudicating Authority within 45 days from the date of service of this Adjudication Order, failing which the Importer Exporter Code Number of the exporter is liable to be suspended under the provisions of Section 11(7) of the Foreign Trade (Development and Regulation) Act 1992, as amended in 2010.

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Facts of the case

5. M/s. St. Mikhael Cashew Exports, NP-XVIII/369, Nallila PO, Kollam, Kerala-691515 (AA holder) obtained three Advance Authorisations (AA) for a total CIF value of ₹ 9,99,87,700/- (US\$ 1,471,750.00) for import of 8,00,000.000 kg. of raw cashew nut in shell with an obligation to export 1,84,523.81 kg. of cashew kernel for a FOB value of ₹ 12,09,85,300/- (US\$ 1,780,817.5) as follows:

Sl No.	AA No. & Date	Export Obligation Period (EOP)	CIF Value	FOB Value	Import (in Kg.)	Export (in Kg.)
1.	5310019009/ 10.06.2016	09.06.2018	₹21396200.00 \$314650.00	₹25889500.00 \$380726.50	200000	50000
2.	5310019146/ 22.07.2016	21.07.2018	₹36768400.00 \$532875.00	₹44489800.00 \$644778.75	300000	75000
3.	5310019472/ 04.08.2017	03.02.2019	₹41823100.00 \$624225.00	₹50606000.00/- \$755312.25	300000	59523.810
TOTAL			₹9,99,87,700 \$1,471,750	₹12,09,85,300 \$1,780,817.5	8,00,000	1,84,523.81

6. The AA holder did not furnish the requisite documents for redeeming the abovementioned AAs upon expiry of the respective EOPs. Consequently, this office requested the AA holder for the requisite documents by issuing demand notices. However, the AA holder has not complied with the demand notices. A final Show Cause Notice (SCN) was issued with an opportunity for a Personal Hearing on 27-12-2022. The AA holder did not attend the hearing or even respond to the SCN.
7. The AA holder has not taken any steps to have the AAs closed thus far despite having been provided multiple opportunities to do so. The AA holder remains in default till date.

Findings:

8. I have carefully gone through the facts of the case. As the AA holder remains in default and has failed to take any steps in response to the SCN dated 06.12.2022, the matter has been decided *ex-parte*, utilizing the information and evidence that is available on record. I find that the AA holder attracts the provisions of para. 4.44(f), HBP in the light of the facts of this case elaborated above. I find that the AA holder is liable under the penal provisions of Sections 11(2), 11(3), 11(5), and 11(6) of the Foreign Trade (Development & Regulation) Act, 1992, as amended in 2010 (FTDR Act).

ORDER

9. In the light of the above findings and in exercise of powers vested in me under Section 13, FTDR Act, I hereby impose a fiscal penalty of Rs.25,00,000/- (Rupees Twenty Five Lakh Only) under Section 11(2), FTDR Act, upon M/s. St. Mikhael Cashew Exports, Kollam. This order is issued without prejudice to any other action that may be taken against the AA holder under any other law, rules, or regulations in force.

(K.M.HARILAL)

JOINT DIRECTOR GENERAL OF FOREIGN TRADE

Copy to:

1. M/s. St. Mikhael Cashew Exports, NP-XVIII/369, Nallila PO, Kollam, Kerala-691515. Mob-9048003183.
2. Commissioner of Customs, Cochin, for information.
3. Zonal Additional Director General of Foreign Trade, Shastri Bhawan, Chennai.
4. Audit Section.
5. ECA Section.

6. PA Section

7) Director