

2.3 On going through the facts and records of the case, the Adjudicating Authority observed that the firm had obtained the Advance-Authorization for import of raw material as per the list attached with the authorization with obligation to export resultant product manufactured out the imported goods within a period 36 months from the date of issue of the authorization. In terms of Para 4.24 of the Hand Book of Procedures, the authorization holder was required to submit documents showing fulfillment of export obligation and as prescribed under Para 4.25 of the said procedure within 2 months from the date of expiry of the said obligation period. However, the firm failed to comply with the requirement.

2.4 Hence, the Adjudicating Authority held the firm guilty of violation of Para 2.10 of FTP and Rule 13 and 14 of Foreign Trade (Regulation) Rules, 1993.

2.5 In view of the above observations, the Adjudicating Authority, in exercise of powers conferred upon him under Section 13 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, passed the Order-in-Original No. 03/01/002/00005/AM18 dated 17.10.2017 imposing fiscal penalty of Rs 25,00,000/- on the firm and its directors.

3. Aggrieved by the Orders-in-Original, the applicant filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Additional Director General of Foreign Trade (Appellate Authority), Mumbai.

3.1 Personal Hearing was given on 23.01.2018 by the Appellate Authority. Ms. Supriya Adake, Chief Export Executive of the firm appeared for personal hearing on the given date.

3.2 She informed that they had fulfilled 100% Export Obligation and all the required export documents were submitted vide letter dated 14.11.2017 with reply / clarification. She also handed over copy of acknowledgement showing submission of documents for redemption, copy of authorization, copy of Order-in-Original and statement of export and import. The appellant vide letter dated 26.02.2018 submitted copy of shipping bills and e-bank realization certificates and statement of exports and imports.

3.3 After going through the adjudication order as well as the documents available on record, the Appellate Authority found that import was allowed on net to net basis. The appellant imported 34,30,000 Nos. against exported quantity 15,35,502 Nos. resulting excess quantity 18,94,498 Nos. for which the appellant was required to pay Customs Duty, dues etc.

3.4 The appellant failed to pay Customs Duty and submit requisite original challan. Hence, the Appellate Authority did not find any justification to interfere with the Order-in-Original passed by the Adjudicating Authority.

3.5 In view of the above findings, the Appellate Authority, in exercise of the powers vested in her under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, dismissed the appeal vide Order-in-Appeal No. 03/16/144/00030/AM.18/0073 dated 26.03.2018.

4. Aggrieved by the decision of Appellate Authority, the applicant has filed the present Review Petitions stating that:

4.1 In this Authorization, they were supposed to export 1500000 Nos. of Inhalers and the import items are Aluminium Cans (size 19 ml), Aerosol Valves and Actuators on net to net

basis. The size of Aluminium Can is 19 ml. The export product Inhaler which contains different concentrations of active bulk drugs like Salbutamol, Beclometsone, Budesonide etc. required same Can for all the Inhalers similarly the one No. of Aerosol Valve is fitted on each Can for inhaling system.

4.2 The redemption application was delayed because in the debit sheet for Custom purpose, there was no information mentioned in the last two entries of Advance Authorization about the CIF value in Rupees as well as in USD for which they had sent it to the Customs for getting it amended. The Custom Authority returned them the revised debit sheet with the values mentioned on it but the same was not attested by the concerned Authority. Hence, they again sent it back for getting it attested but no response was received from Custom's end. After regular follow up from their side, finally the Customs provided them with the ledger copy which indicates the complete details of imports made in the Authorization. This process took nearly one and half year to get it done from the Customs and as such there was delay in submission of the file.

4.3 In the personal hearing granted by Mrs. Sonia Sethi, Zonal DGFT on 23.01.2018 against the Order-in-Original which was passed for not attending the Demand Notice and Show Cause Notices issued prior to the issue of order, they explained her that their office premises was changed from Andheri to Goregaon and they had made the necessary amendment in their IEC. However, all the correspondence was dispatched to their old address which they now use as godown and for records purpose. As the notices were dispatched on old address they could not attend the same. When the Order-in-Original was delivered to Director's residence, they got it.

4.4 They had, therefore, requested the Appellate Authority to condone the penalty of Rs. 25,00,000/- and remand back the case to the concerned Section for De Novo. But the Appellate Authority scrutinized the case and dismissed the appeal stating that:

"After going through the adjudicating order as well as the documents available on record, I found that import was allowed on net to net basis. The appellant imported 34,30,000 Nos. against exported quantity 15,35,502 Nos. resulting excess quantity 18,94,498 Nos. for which the appellant was required to pay Customs Duty, dues etc. The appellant failed to pay Customs Duty and to submit requisite original challan."

4.5 In this case, they have clarified that the product of imports are (i) 15,15,000 Nos. of Aerosol Valves of relevant sizes, (ii) 15,15,000 Nos. of Aluminium Cans of relevant sizes and (iii) 4,00,000 Nos. of Actuators with covers of relevant sizes. Against the imports, they have exported 15,35,502 Nos. of Inhalers which are combined product of Valves, Actuators and Cans. As such, there is no excess imports made in the said Advance Authorization and they have completed Export Obligation.

4.6 They have further stated that the Appellate Authority has not mentioned anything about the facts that why they were unable to reply the Demand Notice and Show Cause Notice due to change of address for which the penalty of Rs. 25,00,000/- was imposed.

4.7 They have now requested to review the appeal and condone the delay for non attending the Demand Notice and Show Cause Notice on the ground that they did not get the same in time due to change of address. They have also requested to consider their request and review the dismissal of appeal, and to instruct Appellate Authority to accept their appeal and



grant them chance to remand back the case for De Novo consideration to the concerned Section without imposing any penalty as they have made the 100% Export Obligation. They have enclosed copies of following documents:

- (a) Photocopy of Advance Authorization with debit Sheet, condition sheet, import and export list and amendment sheet.
- (b) Statement of Import and Export.

5. The applicant was granted Personal Hearing on 025.07.2018 at 3.00 PM to be heard by the Reviewing Authority. Mrs. Jahnvi Jain, Mrs. Supriya Adake and Shri M.M. Gupta appeared before the undersigned on the given date on behalf of the applicant and explained their case.

5.1 I have gone through the facts and records of the case carefully. It is observed that the firm was allowed to import (i) 15,15,000 Nos. of Aerosol Valve of relevant size (ii) 15,15,000 Nos. of Aluminium Cans of relevant size and (iii) 15,15,000 Nos. of Actuator with dust Covers/Caps of relevant size subject to fulfillment of export obligation of 15,00,000 Nos. of Inhalers. However, the firm has clarified that they have imported (i) 15,15,000 Nos. of Aerosol Valves of relevant sizes, (ii) 15,15,000 Nos. of Aluminium Cans of relevant sizes and (iii) 4,00,000 Nos. of Actuators with covers of relevant sizes. Against the imports, they have exported 15,35,502 Nos. of Inhalers which are combined product of Valves, Actuators and Cans. As such there are no excess imports and they have fulfilled the complete export obligation. They have requested to provide them an opportunity and they will be able to justify full accounting of the inputs, i.e., cans/valves/actuators and obviously one export unit will have can, valve and actuators. They have also stated that they could not get an opportunity to present their case before the Adjudicating Authority because they could not receive show cause notice due to address problem. The firm needs to be given one more opportunity.

6. I, therefore, in exercise of powers vested in me under Section 16 of FTDR Act, 1992, as amended, pass the following order:

Order

F. No. 18/15/2018-19/ECA-I / 238

Date of Order ^{14th} November, 2018

The Review Appeal is admitted. Order-in-Original dated 17.10.2017 and Order-in-Appeal dated 26.03.2018 are set aside. The case is remanded back to RA, Mumbai for De-Novo consideration.



Alok V. Chaturvedi
Director General of Foreign Trade

To

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Tika Ram Majhi
Deputy Director General of Foreign Trade