

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF COMMERCE
OFFICE OF THE DIRECTOR GENERAL OF FOREIGN TRADE
Udyog Bhawan, New Delhi-110011

F. No. 18/16/2018-19/ECA-I/235

Date of Order **November, 2018**

Date of Dispatch ^{14th} **November, 2018**

Name of Appellant : M/s Midas Care Pharmaceuticals Pvt. Ltd.,
Lotus Corp Park, B Wing, 3rd Floor,
Jay Coach, Graham Firth Compound,
W E Highway, Goregaon (East),
Mumbai-400063.

Order Appealed against : Order-in-Appeal No. 03/16/144/00032/AM.18/0072 dated
26.03.2018 passed by the Addl. DGFT, Mumbai.

Order-in-Review passed by : Shri Alok Vardhan Chaturvedi, Director General of
Foreign Trade.

Order-in-Review

M/s Midas Care Pharmaceuticals Pvt. Ltd., Lotus Corp Park, B Wing, 3rd Floor, Jay Coach, Graham Firth Compound, W E Highway, Goregaon (East), Mumbai-400063 has filed Review Petition against Order-in-Appeal No. 03/16/144/00032/AM.18/0072 dated 26.03.2018 passed by Additional Director General of Foreign Trade, Mumbai.

Facts of the case:

2. M/s Midas Care Pharmaceuticals Pvt. Ltd., Mumbai obtained an Advance Authorization No. No. 0310604971 dated 07.12.2010 from RA, Mumbai for CIF value of Rs. 2,86,60,996/- subject to fulfillment of Export Obligation to export 5,00,000 Nos. Perfumed Shaving Foam for FOB value of Rs. 4,71,50,500 within a period of 36 months from the date of issue of the authorization.

2.1 The export obligation in this case expired on 07.12.2013. After expiry of export obligation, a Demand Notice asking the firm to submit the prescribed documents was issued on 03.04.2014. The firm failed to submit the required documents. The firm was placed under DEL vide letter dated 06.08.2014 for refusal of further authorization.

2.2 Vide letter dated 10.06.2016, some export documents were submitted by the firm to RA office for redemption. However, these documents were returned to them with deficiency letter dated 05.07.2016 stating that EO position could not be calculated as debit sheet not showing CIF value debited for Bill of Entry No. 7777327 dated 27.08.2012 and in the statement quantity of import items shown as per Bill of Entry was not as per import item wise. In the statement of imports, CIF value against Bill of Entry No. 4828502 dated 03.10.2011 shown as US\$ 521614.79 instead of US\$ 28811.90 and for Bill of Entry 4967347 dated 19.10.2011 shown as US\$ 492802.89 instead of US\$ 85091.90.

2.3 Hence, they were directed to submit revised statement of imports showing description of import items as per authorization, Bill of Entry No., date, quantity, CIF value in Rupees terms and Dollar terms. They were also informed that the description of export items mentioned in the statement of exports was not correlating with the shipping bill description. They were accordingly directed to submit revised statement of exports showing description of export items as per authorization, shipping bill No., date, quantity, FOB value in Rupees terms and Dollar terms as

per shipping bill and also as per BRC. Total should be shown export item wise i.e. quantity in numbers and FOB value as per shipping bills and as per BRC.

2.4 The firm again submitted some documents vide their letter dated 06.02.2016 but these were also deficient. They were accordingly informed vide RA's letter dated 02.03.2017 to submit the required documents within 30 days, but they failed to do so.

2.5 In spite of repeated opportunities extended to them, the firm failed to submit complete proof showing fulfillment of export obligation. Hence, the Adjudicating Authority had no option but to decide the case on merit on the basis of facts and records available with RA office.

2.6 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 having 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.

2.7 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.

2.8 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. 03/01/002/00460/AM18 dated 30.10.2017 imposing fiscal penalty of Rs 10,00,000/- on the firm and its directors.

3. Aggrieved by the Order-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 26.10.2017 with reply / clarification. She also handed over copy of receipt vide Key No. 4013144 dated 31.10.2017 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 also 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 2794916 Nos. against exported quantity of 1716864 Nos. resulting excess quantity of 1078052 Nos. for which the appellant was required to pay Customs Duty, dues etc. The appellant failed to pay customs duty and submit requisite original challan.

3.4 The appellant failed to pay Customs Duty and to 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.

3.4 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. 03/16/144/00032/AM.18/0072 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 1200000 Nos. of Gillette Shave Foam packed in Tin Cans of relevant sizes with actuators and valves. They have made exports of total 1716864 Nos. against this Advance Authorization which means they fulfilled more than 100% of the Export Obligation.

4.2 To the last deficiency letter dated 02.03.2017 issued by RA, Mumbai, they have replied on 20.10.2017 where they have mentioned that the description of the product does not matter as they have imported only packing materials. The size of the Cans exported and the size of Cans imported against are the same. Hence, they have requested to consider the size of the Cans exported and the size of Cans imported against and not on the type and flavor of the export product as the type and flavors vary as per the buyers' demands and the same Cans are used for all types and flavors only the size varies.

4.2 The redemption application was delayed because in the debit sheet of Custom purpose, there was no information mentioned in the entries No. 7777327 dated 27.08.2012 about the CIF value in Rupees as well as in USD and also the description or import Sl. No. of the product for which DGFT issued them with deficiency letter dated 05.07.2016. 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 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. They submitted the application for redemption to RA, Mumbai on 30.10.2017 and the Order-in-Original was issued on 30.10.2017 which means the reply is crossed with the Order on the same day.

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 is changed from Andheri to Goregaon and they have 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. 10,00,000/- and remand back the case to the concerned Section for De Novo consideration. 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 27,94,916 Nos. against exported quantity of 17,16,864 Nos. resulting excess quantity of 10,78,052 Nos. for which the appellant was required to pay Customs Duty, dues etc. The appellant failed to pay customs duty and submit requisite original challan.”

4.5 In this case, they have clarified that the product of imports are (i) 1,04,950 Nos. of Tin Cans 196 G LMNL, (ii) 200000 Nos. of Tin Cans 196 G Reg. Total numbers of Tin Can of 196 G are 3,04,950 Nos., (iii) 65,210 Nos. of Tin Cans 98 G SNST, (iv) 95,256 Nos. of Tin Cans 98 G Reg. Total number of Tin Cans 98 G are 1,60,466 Nos., (v) 11,29,500 Nos. of Actuators of relevant sizes, (vi) 12,00,000 Nos. of Valves of relevant sizes. Against the imports, they have exported (i) 85,920 Nos. of Gillette Shaving Foam 418 G, (ii) 5,77,968 Nos. of Gillette Shaving Foam 196 G, (iii) 10,52,976 Nos. of Gillette Shaving Foam 98 G which are combined product of Valves, Can and Actuators. If clubbed together, they have overall exported 17,16,864 Nos. of Gillette shaving foams containing Valves, Actuators and Cans and as such there is no excess imports made in the said Advance Authorization.

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. 10,00,000/- was imposed.

4.7 They have now requested to review the appeal and condone the delay for not 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 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 25.07.2018 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 has exported 17,16,864 No. of Gillette shaving foams having cans, valves and actuators and as per the firm there is no excess import in the advance licence and they have fulfilled complete export obligation. The firm has pleaded that if they are given an opportunity before the Adjudicating Authority they will account for imported inputs. They did not get an opportunity to present their case before the Adjudicating Authority as they did not get Demand Notice and Show Cause Notice due to change in address. In my opinion, 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:

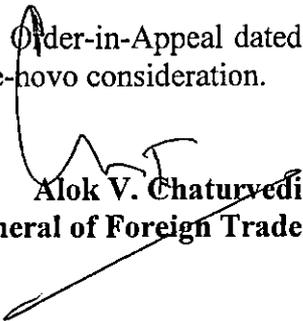
Order

F. No. 18/16/2018-19/ECA-I

Date of Order

November, 2018

The Review Appeal is admitted. Order-in-Original dated 31.10.2017 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

1. M/s Midas Care Pharmaceuticals Pvt. Ltd.,
Lotus Corp Park, B Wing, 3rd Floor,
Jay Coach, Graham Firth Compound,
W E Highway, Goregaon (East),
Mumbai-400063.
2. The Addl. Director General of Foreign Trade,
CGO Complex, Nishtha Bhawan,
New Marine Lines, Churchgate,
Mumbai-400020.



Tika Ram Majhi
Deputy Director General of Foreign Trade