

**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. 18/17/2018-19/ECA-I/243

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. 03/16/144/00029/AM 18/0070
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. 03/16/144/00029/AM 18/0070 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. 0310603340 dated 29.11.2010 from RA, Mumbai for CIF value of Rs. 53,80,000/- (US\$ 118,000) for FOB value of Rs. 1,07,28,000/- (US\$ 240,000) with EO period of 36 months from the date of issue of the authorization.

2.1 The export obligation period against the authorization expired on 29.11.2013. However, the firm failed to furnish documentary evidence showing fulfillment of export obligation against the authorization.

2.2 A Demand Notice dated 28.01.2014 was issued to the firm to show cause as to why action under Rule 7 of Foreign Trade (Regulation) Rules, 1993 should not be initiated. The firm failed to reply to the notice. Hence refusal order was issued on 23.03.2014 and firm's name was put under DEL.

2.3 In the meanwhile, the firm submitted export documents vide their letter dated 23.03.2016. As the documents were deficient / incomplete, the same were returned to the firm vide letter dated 20.04.2016 directing them to remove the deficiencies within a period of 30 days.

2.4 As the firm failed to furnish the required documents towards fulfillment of export obligation, a Show Cause Notice under Section 14 of the Foreign Trade (Development and Regulation) Act, 1992, was issued on 03.02.2017 directing the firm to explain as to why action should not be taken against them under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992.

2.5 A personal hearing was also granted to the firm on 02.03.2017 to explain the case in person. But the firm failed to avail the opportunity of personal hearing granted to them nor did they submit any reply in this regard.

2.6 On scrutiny of the case, it was noticed that vide their letter dated 21.03.2016, the firm had submitted documents viz. advance authorization, original shipping bills and relevant BRCs, Part H - statement of imports and exports, ANF 4F, Appendix - 4H, Declaration as per Public Notice no. 21 and NBC, for redemption. The firm had completed exports within the export obligation period. However, following discrepancies were pointed out from the documents:

- (a) Export product was not the same as per SION i.e. Bonair 100 mcg, Besone 50 MCG / 200 meg, Budesonide Inhaler 200 meg were not matching with the export product description i.e. Salbutamol Inhaler 200 metered dose (each metered inhalation supplies contains Salbutamol BP 100 meg);
- (b) Some shipping bills did not indicate Aluminium Cans as exempted material, Aluminium Cans used were also of different sizes i.e. 100 mcg / 50 meg / 200 mcg, etc. and they did not submit the statement giving utilization of Aluminium Cans and Aerosol Valves bill-wise based on exempted material; and
- (c) The firm did not furnish the copy of Bill of Entry No. 4841438, dated 05.10.2011 which indicated the size of imported Aluminium Cans.

2.7 The documents submitted by the firm for redemption were returned to the firm vide letter dated 20.04.2017 directing to remove the deficiencies within a period 30 days. The firm failed to remove the deficiencies.

2.8 As the firm failed to submit proof showing fulfillment of export obligation against the authorization, the Adjudicating Authority held the firm guilty of violation of rules attracting the provisions contained in Section 11(3) of the Foreign Trade ((Development and Regulation) Act, 1992 and Rule 7(c) of Foreign Trade (Regulation) Rules, 1993.

2.9 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. 03/01/002/00456/AM17 dated 28.09.2017 imposing fiscal penalty of Rs. 5,00,000/- on the firm.

3. Aggrieved by the Order-in-Original No. 03/01/002/00456/AM17 dated 28.09.2017, 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 on 20.11.2017.

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 23.11.2017 with reply / clarification to the DL dated 20.04.2016. She also handed over copy of reply, copy of DL, 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-BRCs and statement of exports and imports.

3.3 After going through the adjudicating order as well as the documents available on record, the Appellate Authority found that the appellant had made exports of 4,43,200 Nos. of Inhalers of different sizes and made import of (i) 3,00,000 Nos. of Aerosol Valve and 2,00,000 Nos. of Aluminium Cans.

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. 03/16/144/00029/AM 18/0070 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 3,00,000 Nos. of Salbutamol Inhalers 200 metered dose. The Aluminium Can's size is 19 ML. Their export product is Inhaler which contains 12 gm of actual product having active content Bulk Drug i.e. Salbutamol 100 mcg. The required Can size is same for all the Inhalers. Similarly the one No. of Aerosol Valve is fitted on each Can for inhaling system.

4.2 They have exported Salbutamol Inhalers where Salbutamol is a Generic name of the Drug while Bonair is the Brand name which is registered by the customer in their respective countries. Hence the export was done in either of Generic name or as brand name as suggested by the buyer to mention on the export documents. These names also vary from country to country. Since they have made import of only packing material i.e. Cans and Valves the description of Bulk Drugs should be ignored and the sizes mentioned in the description should be taken into consideration, where 12 gm of actual product is filled in one 19 ml Can and an Aerosol Valve is fitted on each Can for inhaling system. Accordingly, they have submitted the statement of exports to RA. But they received same type of discrepancy that description is not matching.

4.3 To the last deficiency letter dated 20.04.2016 issued by RA, Mumbai, they have replied on 14.11.2017 where they have mentioned that the description of the product does not matter as they have imported only packing materials. Secondly, they have mentioned 200 metered dose and 100 mcg but mcg is a concentration of Salbutamol, which is active content of the export product and it is not concerned with the size of Cans, the product quantity is the same i.e. 12 gm in all types of concentrate and it requires the same size of Cans i.e. 19 ml Cans.

4.4 RA, Mumbai asked the firm to submit Bill of Entry which was not readily available in their office and factory and it was arranged by their CHA from Customs. Hence, there was delay in submission. They submitted the last reply on 14.11.2017 and Order-in-Original date is 27.10.2017 which was received in the firm's office on 27.11.2017. As such the firm already submitted the required documents with reply before they received the Order.

4.5 In the personal hearing on 23.01.2018 granted by Mrs. Sonia Sethi, Additional DGFT, Mumbai for their appeal against 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.

4.6 In this case, they have already submitted all the original export documents well within the prescribed time of submission of redemption. But due to deficiencies in the export documents they failed to obtain the redemption.

4.7 They had, therefore, requested the Appellate Authority to condone the penalty of Rs. 5,00,000/- and remand back the case to the concerned Section for De Novo consideration .

4.8 They have further stated that the Appellate Authority has not mentioned anything about the facts that they were unable to reply the Demand Notice and Show Cause Notice due to change of address for which the penalty of Rs. 5,00,000/- was imposed.

4.9 The firm has 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 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.
- (c) Photocopy of Bill of Entry.
- (d) Photocopy of RA, Mumbai's last DL letter dated 20.04.2016 and firm's reply dated 14.11.2017.

5. The applicant was granted Personal Hearing on 06.06.2018 at 3.00 PM to be heard by the Reviewing Authority. Mrs. Jahnvi Jain, Mrs. Supriya Adake and Shri Milan Gupta appeared before the undersigned on the given date on behalf of the applicant and explained their case.

5.1 The Appellant firm is engaged in aerosol products such as Sulbutamol Inhalers in different dosages. The cans used for export would vary in size. They have obtained license for import of 3,06,000 nos. of aluminum cans and 3,06,000 nos. of aerosol valves. Exports item is 3,00,000 nos. of Sulbutamol Inhalers. The said import items are allowed on net to net basis and the firm should account for the same in export product (Inhaler). The import items valve and can are used together for export of 1 unit of export item. If one container(inhaler) is exported ,obviously it would contain both can and valve. Based on the statements submitted during the appeal, the appellate authority has concluded that against imports of 3 lakhs valve and 2 lakhs cans only and 4,43,200 Inhalers of different capacity have been accounted. But the appellant's contention is that they will be able to justify full accounting of the imported inputs, i.e., cans/ valves and obviously one unit export product will have both valve and can. They have pleaded that if an opportunity is given they would be able to justify and complete with all the requirements before the Adjudicating Authority. 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. 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

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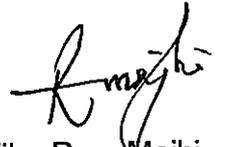
The Review Appeal is admitted. Order-in-Original dated 28.09.2017 and Order-in-Appeal dated 26.03.2018 are set aside. The case is remanded back to RA, Mumbai for De-Novo consideration.



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