

**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. 18/25/2017-18/ECA-I /173

Date of Order August, 2018

Date of Dispatch 27<sup>th</sup> August, 2018

Name of Appellant : M/s HGL Laboratories Pvt. Ltd.,  
Village-Nandabhanga,  
P.O.-Kanganberia, Via-Vishnupur,  
Dist.-South 24 Parganas,  
West Bengal-743503.

Order Appealed against : Order-in-Appeal No. 18 / 294 / 14-15 / ECA / KOL /  
Appeal / 1944 dated 31.03.2016 passed by Addl. DGFT,  
Kolkata.

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

**Order-in-Review**

M/s HGL Laboratories Pvt. Ltd., Village - Nandabhanga, P.O. - Kanganberia, Via - Vishnupur, Dist.-South 24 Parganas, West Bengal-743503 has filed a Review Petition vide letter dated 04.08.2017 against Order-in-Appeal No. 18/294/14-15/ECA/KOL/Appeal/1944 dated 31.03.2016 passed by Addl. DGFT, Kolkata.

**Facts of the case:**

2. M/s HGL Laboratories Pvt. Ltd., South 24 Parganas, West Bengal obtained EPCG Authorization No. 0230000579 dated 17.05.2004 from RA, Kolkata as per provision of Foreign Trade Policy of AM05 for import of goods for a Duty Saved Value of Rs. 4,90,812/- with an Export Obligation of Rs. 39,26,496/- (US\$ 84714.04) to be completed within a period of 8 (eight) years from the date of issue of the Authorization.

2.1 It is noted that as per condition of the authorization, the original Export Obligation period expired on 16.05.2012 but the firm did not submit the export documents.

2.2 The firm was liable to complete certain conditions of the authorization which was also explicitly mentioned in the condition sheet. The firm should have submitted the installation certificate issued by the Chartered Engineer / Central Excise Authority within six months from the date of last import.

2.3 Further, the export obligation was to be completed within the stipulated time as per the condition sheet. The original export obligation period already expired on 16.05.2012 but they failed to submit the documents.

2.4 After expiry of Export Obligation period, the firm did not submit any export documents. Hence, a Show Cause Notice under Rule 7(1)(k) of Foreign Trade (Regulation) Rules, 1993 was issued to the firm on 01.10.2012 followed by a circular dated 02.01.2014 for refusal of authorization.

2.5 Since the firm did not submit any documents towards fulfillment of Export Obligation, Show Cause Notice was issued under Section 11(2) read with Section 14 of Foreign Trade (Development and Regulation) Act, 1992 giving opportunity for a personal hearing.

2.6 An Order-in-Original dated 14.10.2014 was passed by the Joint DGFT, Kolkata (Adjudicating Authority), in exercise of the powers vested in the Adjudicating Authority under Section 11 (2) of Foreign Trade (Development and Regulation) Act 1992, as amended, imposing fiscal penalty of Rs. 5.00 lakhs on the firm and its Directors for violation of the conditions of the EPCG Authorization.

3. Aggrieved by the Order-in-Original dated 14.10.2014, the firm filed appeal on 13.10.2015 under Section 15 of FT (DR) Act, 1992, as amended, before the Addl. DGFT, Kolkata.

3.1 An opportunity of Personal Hearing was granted to the Appellant on 02.11.2015 but they failed to appear before the Appellate Authority.

3.2 However, opportunities for personal hearing were granted on 16.11.2015, 01.12.2015 and 16.12.2015 but again no body appeared.

3.3 A further personal hearing was fixed on 03.02.2016. The Accountant of the firm appeared before the Appellate Authority. He was advised to deposit the 10% of pre-deposit penalty amount or 100% BG of the penalty amount before appearing for next hearing.

3.4 The firm informed that the company had been completely shut down since July, 2013 and they were not in a position to pay the pre-deposit amount. The firm also informed that they had not received the Order-in-Original through post. They collected the Order-in-Original in person on 09.09.2015.

3.5 As per advice of the Appellate Authority, the firm vide their letter dated 11.03.2016 deposited the pre-deposit penalty amount of Rs. 50,000/-.

3.6 The Appellate Authority observed that the firm failed to submit the export documents including the installation certificate issued by the Jurisdictional Excise Authority within the prescribed period. Also the appeal was not filed within the prescribed time limit. Hence, the appeal was dismissed.

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

4.1 They have obtained an EPCG Authorization No. 0230000579 dated 17.05.2004 for import of Capital Goods for a Duty Saved value amounting to Rs. 4,90,812 with an Export

Obligation of Rs. 39,26,496/- (US\$ 84714 later revised to US\$ 86701.87) which was to be completed by 16.05.2012.

4.2 They have completed the Export Obligation to the tune of US\$ 65,385.40 in the year of 2004-2005 and onwards, which was 75.41% of the total Export Obligation.

4.3 Later on despite their best efforts, they failed to find the buyer from abroad as their product cost was higher than the International Market prices for the same products.

4.4 However, the Joint DGFT erred in passing ex-party Order in this regard without representation from the aggrieved party due to lack of communication from the department concerned.

4.5 Export Obligation was almost completed to the extent of 75% and due consideration for the same was not given while passing the Penalty Order.

4.6 In the absence of buyer from abroad for their products, they have no alternate way to complete the export obligation due to international market pressure as China's economy with other countries had radical changes in technological advancement, thereby making their products obsolete and overpriced products in the international market.

4.7 Company is non-performing since July, 2013 and there is complete shutdown persisting at factory place. The reason behind the closure of the factory operation was purely due to heavy losses which the company was passing through many years and in spite of best efforts, it could not revive. Ultimately the company/factory became a big burden for its Directors.

4.8 In view of the above circumstances beyond control, the firm has requested for waiver of the interest or penalty on the balance portion of the duty saved i.e. Rs. 490812/- x 24.60% = Rs 1,20,671.30. They will pay the amount of Rs. 1,20,671.30 immediately on hearing from the Reviewing Authority. They will produce all the export documents pertaining to the shipments made against this.

5. The applicant was granted Personal Hearing on 06.06.2018 at 3.15 PM to be heard by the Reviewing Authority. Shri Ajay Kumar Tiwary, Authorized Representative of the firm appeared before the undersigned on the given date. During the personal hearing, the Applicant has submitted a written representation reiterating the same facts as stated in the Review Petition.

5.1 I have heard the firm and read the Review Application and the related documents. It is observed that the primary document i.e. installation certificate has not been submitted and duty and interest on shortfall of 25%, as claimed by the applicant, has not been paid. The documents in support of E O fulfillment under the EPCG scheme are also not in order. The License had expired on 16.05.2012. The Appellate Order was passed on 31.03.2016. The applicant had sufficient time to get their case regularized. Therefore, the Order-in-Appeal need not be interfered with.

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

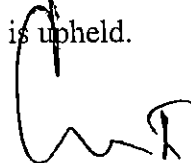
**ORDER**

Date of despatch: 27.08.18

F. No. 18/25/2017-18/ECA-I | 174


Date of Order August, 2018

The Review Appeal is dismissed. Order-in-Appeal dated 31.03.2016 is upheld.

  
**Alok Vardhan Chaturvedi**  
Director General of Foreign Trade

To

1. M/s HGL Laboratories Pvt. Ltd.,  
Village - Nandabhanga,  
P.O. - Kanganberia, Via - Vishnupur,  
Dist. - South 24 Parganas,  
West Bengal - 743503.
2. Addl. Director General of Foreign Trade,  
4, Esplanade, East,  
Kolkata-700069.

  
**Tika Ram Majhi**  
Deputy Director General of Foreign Trade