

C. I. 106

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. 18/27/2017-18/ECA-I / 2408

Date of Order 4th March, 2018

Date of Dispatch.....^{6th April} March, 2018

Name of Appellant : M/s Bakul Pharma Pvt. Ltd.,
Sterling Centre, 4th Floor,
16/2, Dr. Annie Besant Road, Worli,
Mumbai-400018.

Order Appealed against : Order-in-Appeal No. 03/16/144/00056/AM.17/228 dated
16.08.2017 passed by Addl. DGFT, Mumbai.

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

Order-in-Review

M/s Bakul Pharma Pvt. Ltd., Mumbai has filed a Review Petition vide letter dated 03.10.2017 against Order-in-Appeal No. 03/16/144/00056/AM.17/228 dated 27.03.2017 passed by Addl. DGFT, Mumbai.

Facts of the case:

2. M/s Bakul Pharma Pvt. Ltd., Mumbai obtained an Advance Authorization No. 0310216244 dated 04.08.2003 for CIF value of Rs. 23,17,635/- for import of goods without payment of applicable duties under duty exemption scheme under Exim Policy 2002-2007. The authorization was issued with "Actual User" and other terms and conditions as prescribed in the prevalent policy and procedures. One of the conditions was that the firm would fulfill stipulated export obligation within 18 months or extended period and would submit the prescribed documents within two months from the expiry of the obligation period to the RA towards discharge of the obligation and redemption of LUT / BG, as the case may be.

3. An Order-in-Original dated 23.04.2012 was passed by Joint DGFT, Mumbai (Adjudicating Authority) imposing fiscal penalty of Rs. 5,00,000/- on M/s Bakul Pharma Pvt. Ltd., Mumbai and its Directors, in exercise of the powers as vested in Adjudicating Authority under Section 13 of FT (DR) Act, 1992, as amended, holding the firm guilty of non submission of proof of realization and other documents required for discharge of the case.

3.1 It is noted that the firm failed to submit the documents evidencing fulfillment of export obligation against the Advance Authorization. Hence, a demand notice was issued on 05.01.2007 asking the firm to submit the required documents. The firm did not submit the required documents. Hence, the RA placed them under DEL vide order dated 28.05.2010 for refusal of issuance of further Authorization / Incentives.

4. Aggrieved by the Order-in-Original dated 23.04.2012, the appellant filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Appellate Authority, Mumbai.

4.1 Personal Hearing was given on 21.03.2017 by the Appellate Authority. Shri Ignatius A.V., Assistant Manager of the appellant appeared before the Appellate Authority for Personal Hearing.

4.2 Shri Ignatius A.V. stated that they had fulfilled the export obligation and submitted original export documents. They contended that they had submitted original BRC vide letter dated 02.04.2007. They agreed to follow the provisions of loss of original BRC.

4.3 After hearing the appellant and going through the adjudication order as well as the documents available on record, the Appellate Authority found that the appellant had submitted Xerox copy of Shipping Bill No. 2307203 dated 27.08.2003 and the respective ARE-I showing that 6000 kgs of Chlorohexan-2-One were exported. However, they had not submitted original export documents i.e. shipping bill, payment realization certificate, original authorization etc. In the absence of original documents, the contention was not acceptable.

4.4 In view of above findings, the Appellate Authority, in exercise of the powers vested in her under Section 15 of FT (DR) Act, 1992, as amended, dismissed the Appeal.

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

5.1 The Appellate Authority had clearly accepted that the appellant had submitted Xerox copy of Shipping Bill No. 2307203 dated 27.08.2003 and the respective ARE-I showing that 6000 kgs of Chlorohexan-2-One were exported.

5.2 Once the exports stand completed, there was no reason to levy the penalty for loss of the documents.

5.3 While passing the Order-in-Appeal No. 03/16/144/00056/AM.17/228 dated 16.08.2017, the issue of requirement of the original documents has been examined by the DGFT and in the subsequent revision of the HBP the solution has been spelt out. The solution is in place as on the date of the issue of the order. Therefore, the Appellate Authority who is quasi judicial was duty bound to implement the same.

5.4 The Para 4.30A of HBP (valid as on date), spells out the solution in respect of the loss of the original documents such as Shipping Bill as well AS the BRC. The exporter is required to pay 1% of the duty saved amount for regularization of the loss of the original documents.

5.5 - When there is provision in Import & Export Policy Book, Para 4.30A to consider cases against lost EP copy of Shipping Bills and/or Bank Realization Certificate. No opportunity was given to the firm for submission of Affidavit, Indemnity Bond along with composition fees equivalent to 1% of the Duty Saved Amount.

5.6 Since, they completed the 100% Export Obligation by value and quantity wise and submitted the photo copies of Export documents, the RA should have asked the firm to follow the procedure for loss of EP copy of Shipping Bill and BRCs instead of dismissing the firm's appeal.

5.7 The RA was required to calculate the duty saved amount and ask the exporter to pay 1% applicable fee for the condonation of the loss of original documents. However, a penalty of Rs. 5 Lakhs has been imposed on them.

5.8 They have requested for stay recovery of penalty and waive pre-deposit of the amount till final Hearing and to allow them to furnish the documents Affidavit and Indemnity Bond as per Para 4.30A of HBP against loss of Shipping Bill and BRC with 1% composition fees and pass the order to finally close the case.

6. The applicant was granted Personal Hearing on 21.02.2018 at 4.00 PM. Shri Ignatius A.V., Assistant Manager of the appellant appeared before the undersigned. The Applicant, vide letter dated 07.03.2018 and 28.03.2018, has submitted the following:

6.1 As explained earlier, they have completed 100% Export Obligation and Xerox copies of Shipping Bill and BRC were attached as evidence in their appeal.

6.2 Their only fault was that they had misplaced Original Export Documents and hence were unable to produce the same to DGFT while closing the authorization.

6.3 The Reviewing Authority had also appreciated the same and had inquired that if given an opportunity whether the firm would comply the procedure for loss of original documents as per HBP guidelines. Assurance was given for the same from their side.

7. I have gone through the facts and records of the case, carefully. It is observed that the Authorisation in question was obtained on 04.08.2003 under duty exemption scheme of FTP, 2002-2007. As per policy and procedure in force, the Authorisation is issued with condition that the exporter will fulfil stipulated export obligation within 24 months from the date of issue of Authorisation and shall submit documents towards discharge of EO within two months from the date of expiry of said export obligation period. Accordingly, EOP expired in the month of August, 2005. The applicant was under obligation to submit documents by Oct, 2005. However, he has failed to submit the same. RA, therefore, issued demand notice in January, 2007 asking the petitioner to submit documents. Thereafter, they were placed under DEL on 28.05.2010. Despite that they did not submit the required documents in terms of Para 4.25 and 4.30A of HBP, 2009-2014. Finally, RA issued SCN U/s 11(2) of F.T.(DR)Act, 1992 on 27.09.2011 and adjudicated the matter on 23.04.2012 after giving personal hearing to the petitioner.

7.1 Export obligation cannot be discharged against Advance Authorisation unless documents evidencing fulfilment of stipulated EO are submitted to the RA concerned. Duplicate documents are accepted subject to post verification of the same by the respective Authority. In the instant case, the documents are pertain to year 2003, which are not verifiable at this stage, as no Authority is under obligation to preserves documents for so long. Further, Xerox copy of documents i.e. shipping bill and BRC, submitted by the applicant are not even countersigned by the issuing Authority. Therefore, such self-certified documents, which cannot be verified at this stage, cannot be accepted towards discharge of EO. Therefore, I do not see any reason to intervene in the orders passed by the Authorities.

Order

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The Review Appeal is dismissed.

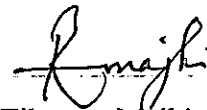


Alok V. Chaturvedi

Director General of Foreign Trade

To

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2. Addl. Director General of Foreign Trade,
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Tikaram Majhi

Dy. Director General of Foreign Trade