

**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. 18/43/2017-18/ECA-I / 2410

Date of Order 18<sup>th</sup> March, 2018

Date of Dispatch..... March, 2018

18.04.2018

Name of Appellant : M/s Mahalaxmi Seamless Limited.,  
Pipe Nagar (Sukeli), via Nagothane,  
Taluka Roha,  
District Raigad,  
Maharashtra-402126.

Order Appealed against : Order-in-Appeal No. 03/16/144/00006/AM.17 dated  
10.10.2017 passed by Addl. DGFT, Mumbai.

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

**Order-in-Review**

M/s Mahalaxmi Seamless Limited., Raigad has filed a Review Petition u/s 16 of F.T.(D&R)Act, vide letter dated 15.12.2017 against Order-in-Appeal No. 03/16/144/00006/AM.17 dated 27.03.2017 passed by Addl. DGFT, Mumbai.

**Facts of the case:**

2. M/s Mahalaxmi Seamless Limited., Raigad obtained an Advance Authorization No. 0310503261 dated 21.01.2009 for CIF value of Rs. 66,33,000/- (US\$ 1320000) for import of 60 MT of Alloy Steel Pipe / Tubes (Hot Finished) without payment of duty with a condition to export 55.814 MT of Alloy Steel Seamless Tubes / Pipes (Cold Finished) for FOB value of Rs 77,20,192/- (US\$ 156279) within 24 months from the date of issue of the Authorization and to submit documentary evidence in this regard to RA within a period of 2 months from the expiry of the export obligation period.

3. An Order-in-Original dated 30.12.2015 was passed by Assistant DGFT, Mumbai (Adjudicating Authority) imposing fiscal penalty of Rs. 66,33,000/- on M/s Mahalaxmi Seamless Limited., Raigad in exercise of the powers as vested in Adjudicating Authority under Section 11(3) of FT (DR) Act, 1992, as amended, holding the firm guilty of non fulfillment of export obligation and not replying to DN or SCN.

3.1 It is noted that Export Obligation of the authorization had expired on 31.01.2011. Even after the expiry of EOP, no document towards discharge of export obligation was submitted. Therefore, a demand notice dated 27.07.2012 was issued. When no reply was received to the DN, Refusal Order dated 04.10.2012 was issued and name of the firm was put under Denied Entity List. No document towards discharge of export obligation had been submitted till the date of issuing Order-in-Original.

4. Aggrieved by the Order-in-Original dated 30.12.2015, 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 07.03.2017 by the Appellate Authority. Shri Rajiv Gupta and Kiran Vora, Authorized Representatives of the appellant appeared before the Appellate Authority for Personal Hearing on 07.03.2017.

4.2 They handed over a written submission contending that the Show Cause Notice sent to them at their address 185, 5/B Sanjay Building, Mittal Industrial Estate, Andheri-Kurla Road, Mumbai-400059 was not received by them as the address of the firm is Pipe Nagar, (Sukeli), via Nagothane. The address appears on the face of the authorization. This address was modified on 06.10.2005.

4.3 They further stated that they had made imports to the extent of 24.405 MT against this authorization and exports stands completed on the basis of clubbing of this authorization with Advance Authorization No. 0310503338 dated 21.01.2009, as permitted under the Advance Licensing Scheme. Therefore, there is no liability of any duty payment against this authorization as the export obligation stands discharged on clubbing.

4.4 In support of their contention, they enclosed copy of ANF-4C with their letter dated 09.04.2016 and photocopies of Tax Invoices along with their appeal application.

4.5 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 not submitted documentary evidence for submission of application for clubbing before issue of Order-in-Original and the documents required for clubbing / redemption as prescribed in HBP. There was an inordinate delay on the part of Appellant in submitting their request for clubbing / redemption. As per Para 4.38 of HBP, clubbing of Authorization issued on or before 31.03.2009 is not allowed.

4.6 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, rejected the Appeal.

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

5.1 The Show Cause Notice as well as the Order-in-Original was not received by the exporter as these were dispatched at wrong address.

5.2 The address of the firm is Pipe Nagar, (Sukeli), Via Nagothane. The same appears on the face of the authorization. However, the Show Cause Notice was sent on the wrong address. Therefore, it is self evident that the notice was never received by the exporter and thus the exporter

was deprived of the vested rights of making the representation and being heard in the matter before the issue is decided. Thus the Principles of Natural Justice were violated.

5.3 If the said Show Cause Notice and the Order-in-Original were received by the exporter then the exporter would have submitted the relevant documents for clubbing and redemption and then the redemption would have been carried out as the export obligation stands completed when the two Advance Authorizations are clubbed for the purpose of clubbing.

5.4 The Appellate Authority is relying on the Public Notice No. 16/2015-2020 dated 04.06.2015 in rejecting the case whereas the fact remains that the Advance Authorizations are governed by the FTP and relevant HBP, as on the date of Advance Authorization. Therefore, once again the denial of clubbing and redemption in this case is not in accordance with the FTP / HBP provisions applicable as on the date of the issue of Advance Authorization. The Public Notice is prospective and not retrospective.

5.5 The clubbing and redemption facility can not be denied on the basis of equity because after clubbing and redemption, no import and export can be conducted under the clubbed Advance Authorizations.

5.6 There is no case of any misrepresentation, fraud or even default in the fulfillment of the export obligation. There is simply a case of non submission of documents in time by the exporter. The penalty cannot be 194% of the duty exemption for non submission of documents in time.

5.7 There is no liability of any duty payment because the export obligation stands discharged in respect of Advance Authorization No. 0310503261 dated 21.09.2009 under the clubbing provision. As a matter of fact, exports far in excess of the export obligation have been carried out by the exporter.

5.8 The exporter has not taken any undue advantage or misused the Advance Authorization at any point of time. Therefore, there is absolutely no valid reason to levy penalty.

5.9 It is incumbent upon the DGFT to accept the clubbing and permit the redemption of the Advance Authorizations and treat the cases as closed in terms of the Public Notice No. 34/2015-2020 dated 24.10.2017, as permitted by the DGFT on the recommendation of the PRC.

5.10 There is no excess import under the Advance Authorization upon clubbing being permitted in terms of the law. Therefore, there is no absolutely no liability of duty payment and there is no violation of the FT (DR) Act, 1992 in any case.

5.11 In view of the above, they have requested for setting aside the Order-in-Appeal.

6. The applicant was granted Personal Hearing on 06.03.2018 at 3.30 PM before the undersigned. Shri Rajiv Gupta, Authorized Representative and Shri Selvaganesh, Manager of the appellant appeared before the undersigned on the given date and reiterated the same facts as per their written representation.

7. I have gone through the facts and record of the case, carefully. It is observed that the Authorisation in question was obtained on 21.01.2009 for CIF value of Rs. 66,33,000/- (US\$ 1320000) for import of 60 MT of Alloy Steel Pipe / Tubes (Hot Finished) without payment of duty with a condition to export 55.814 MT of Alloy Steel Seamless Tubes / Pipes (Cold Finished) for FOB value of Rs 77,20,192/- (US\$ 156279). The export obligation period was 24 months from the date of issue of the Authorization and the applicant was required to submit prescribed documents towards discharge of EO to the RA concerned within a period of 2 months from the expiry of the export obligation period. However, the petitioner has failed to do so. They admitted that they have made imports to the extent of 24.405 MT of CIF value Rs. 17,99,974.22/- under this authorization but no exports were affected towards discharge of EO. However, they had obtained another Authorisation No. 0310503338 on the same date i.e. on 21.01.2009 for export of similar resultant product under which they have exported 30.285MT for FOB value Rs. 76,53,462/- but did not import 32.40MT eligible quantity. And, if these authorisations were clubbed together, there would be no shortfall.

7.1 However, it is noted that two Authorisations were obtained on the same date but the Authorisation No 0310503338 dated 21.01.2009 is issued for import of Alloy Steel Pipes/Tubes (Hot finished) Grade: T11XX Grade whereas Authorisation No. 0310503261 dated 21.01.2009 is issued for import of Alloy Steel Pipes/Tubes (Hot finished) Grade ASME SA 335 Grade P11. Therefore, grade of steel permitted in two Authorisations is totally different. Whereas, in terms of Para 4.38 (xi) of HBP, 2015-2020, inputs which are common in all Authorisations shall only be clubbed and duty free inputs shall be accounted for as per SION/Ad-Hoc Norms fixed by NC. In the instant case, grade of input is different in both the Authorisations. Therefore, resultant product exported under Authorisation No No. 0310503338 cannot be taken into account towards discharge of EO against Authorisation No. 0310503261 because accountability clause cannot be confirmed in such cases. Therefore, clubbing of such Authorisation is not allowed.

7.2 Further, each Authorisation is independent Authorisation and carries its independent terms and conditions. The exporter has to fulfill that condition. The facility of clubbing of Authorisation is allowed as per procedure on the date of application filed. Therefore, the contention of the applicant that clubbing should be allowed as per policy on the date of issue of Authorisation is not correct. The petitioner has failed to read the provisions of Para 4.27 of HBP, 2009-2014 and 4.48 of HBP, 2015-2020, which categorically states that extension of EOP and clubbing provisions shall apply as per the current procedure. It is not binding upon exporter to avail such facility. He has option to get the case regularised under Para 4.49 of HBP, on payment of duty and applicable interest before adjudication order is passed. However, once adjudication order is passed by Adjudicating Authority under F.T.(DR)Act, only remedy available to file an appeal under section 15 of the said Act. In the instant case, the applicant has failed to get the case regularised as a bona fide default. Therefore the Adjudicating Authority has issued adjudication order imposing fiscal penalty, which has been confirmed by the appellate Authority.

7.3 I am of the considered view that Authorisation in question cannot be clubbed even as per Public Notice No 34 dated 24.10.2017, which allows one time relaxation for clubbing of Authorisations issued under FTP, 2002-2007 and 2004-2009 provided other conditions of Para 4.38 of HBP, 2015-2020, as mentioned in the Para 7.1 above, are fulfilled, which is not the case here. I,

therefore, do not see any ground to interfere in the orders passed by Adjudicating as well as the appellate Authority. Accordingly, the following order is passed.

**Order**

F. No. 18/43/2017-18/ECA-I /2411

Date of Order 18<sup>th</sup> March, 2018

The Review Appeal is dismissed.

18.04.2018



Alok V. Chaturvedi

Director General of Foreign Trade

To

1. M/s Mahalaxmi Seamless Limited.,  
Pipe Nagar (Sukeli), via Nagothane,  
Taluka Roha,  
District Raigad,  
Maharashtra-402126.
2. Addl. Director General of Foreign Trade,  
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Tika Ram Majhi

Dy. Director General of Foreign Trade