

**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. 18/45/2017-18/ECA-I/43

Date of Order: 14<sup>th</sup> May, 2018

Date of Dispatch.....17<sup>th</sup> May, 2018

Name of Appellant : M/s Right Channel Resources,  
C-56, 2<sup>nd</sup> Floor, Malviya Nagar,  
New Delhi-110017.

Order Appealed against : Order-in-Appeal No. 05/16/140/00028 &  
29/AM17/Appeal/CLA dated 13.12.2017 passed by Addl.  
DGFT, CLA, New Delhi.

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

**Order-in-Review**

M/s Right Channel Resources, C-56, 2<sup>nd</sup> Floor, Malviya Nagar, New Delhi-110017 has filed a Review Petitionu/s 16 of FT(DR)Act, vide letter dated 16.01.2017 against Order-in-Appeal No. 05/16/140/00028 & 29/AM17/Appeal/CLA dated 13.12.2017 passed by Addl. DGFT, CLA, New Delhi.

**Facts of the case:**

2. M/s Right Channel Resources, New Delhi obtained following authorizations from CLA, New Delhi:

- (i) Advance Authorization No. 0510057575 dated 23.04.2002 for CIF value of Rs. 19,18,340/- (US \$39270) for import of items as per the list attached to the Authorization.
- (ii) EPCG Authorization No. 0530132424 dated 18.12.2001 for CIF value of Rs. 46,61,866/- and EPCG Authorization No. 05301132991 dated 19.06.2002 for CIF of Rs. 31,36,120/-. The authorization were issued subject the condition that the firm would fulfill export obligation 8 times of CIF value.

3. An Order-in-Original dated 02.02.2011 was passed by the Foreign Trade Development Office, CLA, New Delhi (Adjudicating Authority), in exercise of the powers vested in him under Section 11 (2) read with Section 13 of FT (DR) Act 1992, as amended, imposing fiscal penalty of Rs. 3,89,89,930/- upon the company and its Directors in respect of EPCG Authorization No. 0530132424 dated 18.12.2001 and EPCG Authorization No. 05301132991 dated 19.06.2002. In addition to the payment of penalty, the firm would pay duty saved amount along with interest thereon @ 15% from the date of import till the date when dues are paid to the Government as undertaken unconditionally.

115

3.1 While passing Adjudication order, it was noted by the Adjudicating Authority that the petitioner had executed a Bank Guarantee / LUT with the concerned Customs Authority inter-alia with the condition that in the event of default in fulfilling the export obligation within the prescribed time period they would pay immediately an amount equal to the amount of duty saved with 15% interest per annum from the date of import of the first consignment till the date of payment. However, they failed to submit prescribed documents towards discharge of export obligation despite repeated opportunity extended to them.

4. Another Order-in-Original dated 07.06.2011 was also passed by the Foreign Trade Development Office, CLA, New Delhi being Adjudicating Authority, in exercise of the powers vested in him under section 13 of the FT (DR) Act, 1992, as amended, imposing fiscal penalty of Rs. 50,00,000/- upon the company for non-fulfillment of export obligation in respect of Advance Authorization No. 0510057575 dated 23.04.2002.

4.1 It was noted by him that one of the condition attached to the Advance Authorization No. 0510057575 dated 23.04.2002 was that they would export the items mentioned the condition sheet attached to the authorization for a FOB value of Rs. 29,44,190/- (US \$60270) within a period of 18 months from the date of issue of the authorization and would submit documents, within two months from the expiry of export obligation, towards discharge of export obligation.

4.2 They failed to produce the original export documents therefore a cautionary letter was issued to the firm on 24.12.2004 asking them to submit the export documents. As no reply was received from them, a Show Cause Notice dated 05.12.2006 was issued to them giving an opportunity of personal hearing in the matter on 26.12.2006 and the same was received back undelivered with the postal authority remarks 'Left without address'.

4.3 The firm has neither furnished the original documents nor did they appear for personal hearing. Hence the firm was declared as defaulter on 22.01.2007.

4.4 Again a Show Cause Notice was issued on 06.03.2007 on all available addresses but the same was received back with the postal authority remarks 'Left without address'. Hence the said order in original came to be issued.

5. Aggrieved by the Order-in-Original dated 02.02.2011 and 07.06.2011, the firm filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Appellate Authority, CLA, New Delhi.

5.1 It was noted by the appellate Authority that the appeals have been filed on 23.05.2016 i.e. beyond the time stipulated under Section 15 (1) of FT (DR) Act, 1992.

5.2 The Authorised Representative submitted that the operation of the appellant had been closed. The address given in the IEC was no longer in operation. The appellant got the copy of the adjudication order only in 2016. Appeal was filed immediately thereafter and within a period of 45 days.

5.2 While the office address of the appellant may have ceased to exist, the adjudication order was sent to the following address of one of the directors:

*E-166, Greater Kailash. Part II, New Delhi-110048.*

2/5

This is the same address as stated to be the correspondence address of the appellant as per the appeal memo. This means that this address continues to exist till date. Therefore, it cannot be said that the appellant did not receive the adjudication order.

5.3 The appeal memo further lists the adjudication order as an enclosure with the following narration:

*'Copy of adjudication order received on 15.07.2015 along with Recovery letter'*.

This shows that even if it were to be presumed that the appellant did not receive the Adjudication Order dispatched by the Adjudicating Authority, it was admitted in receipt of the Adjudication Order on 15.07.2015.

5.4 There being no provision to condone delay in filing appeal beyond 75 days, the appeal was held to be barred by limitation.

5.5 The appellant had also not deposited the penalty before filing of the appeal. The appellant had submitted that the condition of pre-deposit of penalty be waived since it had fulfilled its EO fully and that the pre-deposit of penalty would cause genuine hardship.

5.6 In view of the fact that the appellant had in fact fulfilled the EO, the condition of pre-deposit of penalty was waived in the interest of natural justice.

5.7 The Appellate Authority, in exercise of the powers vested in her under Section 15 of the FT (DR) Act, 1992, as amended, dismissed the appeal in limine.

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

6.1 Against the Advance Authorization No. 0510057575 dated 23.04.2002, they imported 24366.40 meters fabric for CIF value of US \$ 38801.70 and exported 13435 Pcs (15205.59 mtrs) of Ladies Night Wear for FOB value of Rs. 26,39,225.52 (US \$53181.00).

There was an excess import of 9160.81 mtrs for which they had paid Custom Duty of Rs. 4,41,734.26 vide TR Challan No. 32308 dated 10.05.2016.

6.2 They fully utilized the EPCG Authorization No. 0530132424 dated 18.12.2001. Both Specific Export Obligation as well as Average Export Obligation was fully met during the Original EO Period.

6.3 The export proceeds against both the authorizations was realized in an approved manner.

6.4 Due to the Global recession and heavy financial losses, they closed down their business in the year 2006-2007 and currently they are not operational.

6.5 Due to the closure of the business, they could not submit the prescribed export documents towards fulfillment of Export Obligation. Show Cause Notices were issued and subsequently Adjudication Orders were passed on 02.02.2011 and 07.06.2011 imposing a fiscal penalty by the Adjudicating Authority.

6.6 Since the office address was not in existence, all the correspondences were returned by the postal authorities to the issuing authority undelivered. This has been confirmed in the Adjudication Order itself.

3/5

6.7 Thereafter, the department issued notices for recovery of the government dues along with copy of Adjudication Order which was received by them on 15.07.2015.

6.8 On receipt of copy of Adjudication Order, they compiled the export documents towards fulfillment of Export Obligation and submitted to RA on 18.05.2016 and 20.5.2016 and subsequently file appeals to the Appellate Authority on 23.05.2016.

6.9 They have further stated that in view of the above the Order-in-Appeal is improper and illegal because it has been passed without delivery of the show cause notice and Adjudication Order. Hence they have requested for setting aside the impugned order.

7. The applicant was granted Personal Hearing on 18.04.2018 at 3.00 PM to be heard by the Reviewing Authority. ShriVikas Chopra, Authorized Representative appeared before the undersigned. During the personal hearing, the Applicant has submitted that:

7.1 They had obtained two EPCG Authorizations and one Advance Authorisation during 2001 and 2002.

7.2 They have fulfilled entire Export Obligation within EO period as per the conditions of the authorizations and paid Custom Duty on excess import.

7.3 Export proceeds against all the exports made have been realized in full and in approved manner within time.

7.4 Due to global recession during 2006-07 and heavy losses, they closed down the manufacturing activities and export business.

7.5 Due to non-existence of office and factory, correspondences made by the department was returned undelivered which has been confirmed the Adjudicating Authority.

7.6 Copy of the Adjudication Order was received from the recovery department (SDM office).

7.8 CIF value of both the authorizations are Rs. 19,18,340/- and Rs. 31,36,120/- whereas penalty was imposed for Rs. 3.89,89,930/- and Rs. 50,00,000/-.

7.9 On receipt of the Adjudication Order, they compiled the export documents against both the authorizations and submitted for redemptions and appeal simultaneously.

7.10 During the PH with Appellate Authority accepted the fulfillment of EO and waived off the pre-deposit of penalty condition in the interest of natural justice.

7.11 All the terms and conditions of the authorizations fully met.

7.12 The applicant has requested for condoning the delay in filing the appeal.

8. I have gone through the facts of the case and submissions made by the appellant, carefully. It is noted that the petitioner has obtained one Advance Authorisation under duty exemption scheme and two EPCG Authorisations under export promotion of capital goods scheme of EXIM Policy, 1997-2002 and 2002-2007. These Authorisations were issued with Actual User and certain terms and condition. One of the conditions was that the Authorisation holder shall fulfill stipulated export obligation within the prescribed time and would submit prescribed documents towards discharge of EO. However, they failed to do so. Now, they have submitted documents showing fulfillment of export obligation against Advance Authorisation as well as EPCG Authorisations. Prima facie it appears that the petitioner has fulfilled stipulated

4/5


export obligation against EPCG Authorisations and partial export against Advance Authorisation. However, for unutilized excess imports, they have paid duty and interest. Further, the appellate Authority has admitted in his order dated 13.12.2017 that EO has been fulfilled by the applicant.

8.1 I am of the considered view that this situation could have been avoided by the applicant if documents prescribed for discharge of EO have been submitted in time or even new address was communicated to the Regional Authority before shutting down their business. These lapses on the part of the petitioner led to wastage of precious time of the Licensing as well as Adjudicating Authorities. I, therefore, being competent Authority to review the order passed by Authorities subordinate to me, pass the following order.

**Order**


F. No. 18/45/2017-18/ECA-I/<sup>44</sup> Date of Order: 14<sup>th</sup> May, 2018  
<sub>17<sup>th</sup></sub>

1. The Review Appeal is admitted. Order-in-Original dated 02.02.2011 & 07.06.2011 and Order-in-Appeal dated 13.12.2017 are set aside.
2. The case is remanded back to the Regional Authority for de novo consideration and issue of EODC.
3. The penalty amount is reduced to Rupees Fifty Thousand.

  
Alok V. Chaturvedi  
Director General of Foreign Trade

To

1. M/s Right Channel Resources,  
C-56, 2<sup>nd</sup> Floor, Malviya Nagar,  
New Delhi-110017.
2. Addl. Director General of Foreign Trade (CLA),  
A-Wing, Indraprastha Bhawan, I.P. Estate,  
New Delhi-110002.

  
(Tika Ram Majhi)  
Dy. Director General of Foreign Trade

5/5