

**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. 18/48/2017-18/ECA-I / 2406

Date of Order 4<sup>th</sup> March, 2018

6<sup>th</sup> April  
Date of Dispatch..... March, 2018

Name of Appellant : Dr. S.C. Sethi, Ex-Director, M/s Dujodwala Paper Chemical Ltd.,  
Parishram, 20, Anand Park,  
Pune-411007.

Order Appealed against : Order-in-Appeal No. 03/16/144/00004/AM18/505 dated  
20.12.2017 passed by Addl. DGFT, Mumbai.

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

**Order-in-Review**

Dr. S.C. Sethi, Ex-Director, M/s Dujodwala Paper Chemical Ltd., Mumbai has filed a Review Petition vide letter dated 15.01.2018 against Order-in-Appeal No. 03/16/144/00004/AM18/505 dated 20.12.2017 passed by Addl. DGFT, Mumbai.

**Facts of the case:**

2. M/s Dujodwala Paper Chemical Ltd., Mumbai obtained an Advance Authorization No. 0310567715 dated 01.04.2010 from RA, Mumbai with an obligation to export Alkyl Phenol Resin (DAP-1006) for FOB value of Rs. 70,56,000/-. Against this authorization, the firm was allowed to import Para Tertiary Butyl Phenol for CIF value of Rs. 35,26,628/- and Para Formaldehyde (purity 91+/-1%) for CIF value of Rs. 5,26,848/-. One of the conditions of the authorization required that the firm would fulfill stipulated export obligation within 36 months from the date of issue of authorization and would submit the original documents towards discharge of the obligation within a month from the date of expiry of the export obligation period, as stipulated in the condition sheet attached to the Authorisation.

3. An Order-in-Original dated 20.03.2017 was passed by Deputy DGFT, Pune (Adjudicating Authority) imposing fiscal penalty of Rs. 1,00,000/- on M/s Dujodwala Paper Chemical Ltd., Mumbai and its Directors under Section 11 (2) and 13 of FT (DR) Act, 1992, holding the firm guilty of contravening the provisions of Rule 10, 13 and 14 of Foreign Trade (Regulation) Rules, 1993 and Section 11 (2) FT (DR) Act, 1992.

3.1 It was noted by the adjudicating Authority that number of opportunities of personal hearings were allowed to the firm and its Directors. But, no one from the company or on behalf of their Directors appeared for personal hearings nor submitted any reply to the RA.

3.2 The Adjudicating Authority had prima facie reasons to believe that the authorization had been obtained with malafide intention to misuse the duty exemption scheme. Similarly, in the absence of any evidence to the contrary, it was also concluded that the authorization had been fully utilized for the purpose of imports. The firm did not produce required documents towards fulfillment of export.

4. Aggrieved by the Order-in-Original dated 20.03.2017, the appellant filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Appellate Authority.

4.1 Personal Hearing was given on 25.07.2017 to the company and all the Directors by the Appellate Authority.

4.2 Shri Shrenik Gandhi, Chartered Accountant on behalf of the appellant Dr. S.C. Sethi, Director of the company was appeared for personal hearing on 25.07.2017. He stated that the appellant was a Director of the company and had resigned from the Directorship of the company with effect from 02.05.2007 at the age of 80 years. In support of his contention, a copy of Form-32 was enclosed with the appeal. He further stated that the appellant had received certain communications from the licensing authority and the appellant had from time to time communicated to the company to ensure that the name of Appellant be removed from all the proceeding connected thereto. It appears that the firm had not taken appropriate steps to ensure that the name of appellant was removed as Director of the company, from the records of the licensing authority.

4.3 The Appellate Authority observed that the Directors were required to seek modification in IEC profile of the firm. They have not done so till date. The appellant firm was required to fulfill the Export Obligation. It was liability on the part of the Directors.

After hearing the appellant and going through the adjudication order / written submission in appeal as well as the documents available on record, the Appellate Authority dismissed the appeal vide her Order-in-Appeal dated 20.12.2017.

5. Aggrieved by the decision of Appellate Authority, the applicant has filed the present Review Petition u/s 16 of F.T.(D&R)Act, stating inter alia that:

5.1 The appellate Authority has failed to appreciate that updation of the records relating to Import Export Code (IEC) is the responsibility of the company and not individual Directors. However, the appellate Authority has proceeded to pass the impugned Order-in-Appeal dated 20.12.2017.

5.2 The Applicant was not the Director of the company and was not concerned in any manner with the affairs of the company on the crucial dates when the subject Advance Authorization was issued. Hence, no penalty can be imposed on the applicant as per provisions of the Act.

5.3 Hence, the Applicant requested for granting him all incidental and consequential relief.

6. The applicant was granted Personal Hearing on 21.02.2018 at 4.30 PM to be heard by the Reviewing Authority. Shri Shrenik Gandhi, Chartered Accountant on behalf of the applicant Dr. S.C. Sethi appeared before the undersigned. The Applicant has submitted that:

6.1 Due to ill health and age related ailments, he (90+ years old) was unable to travel to New Delhi. Hence, he appointed Mr. Shrenik Gandhi, Chartered Accountant to represent and appear on his behalf to present the case.

6.2 After his retirement from National Chemical Laboratory, he became a consultant to various companies and in the year 1991, Dujodwala Group had approached him to set up Paper Fine Chemicals Plant at Khopoli and a Resin Intermediate Plant in Jammu.

6.3 With age related ailments, he had stopped his consultation and resigned from the position of Director from Dujodwala Paper Chemical Limited with effect from 02.05.2007.

6.4 Being a technical and a person with scientific background, he knows nothing about the financial compliance and other business related aspects of Dujodwala Paper Chemicals Ltd. and hence, when certain statutory notices started being issued to him, he had contacted Dujodwala Group quite a number of times. However, there was no response from them.

6.5 His name was dropped in RoC with effect from 02.05.2007 which is evident from the Form 32 submitted to RoC under Ministry of Corporate affairs, under the provisions of company Act, 1956. However, the reviewing Authority did not consider this aspect despite their vehement submissions.

6.6 He cannot be held responsible for any act of omission and commission done by others and he was not part of the same.

6.5 He, therefore, requested to consider his submissions and drop the charges against him.

7. I have gone through the facts of the case and submissions made by the applicant, carefully. It is observed that the Authorisation in question was obtained by the Company M/s Dujodwala Paper Chemical Ltd., on 01.04.2010 and by that time Dr. S.C. Sethi has resigned from the company. Under section 11 (2) and (3) of F.T.(D&R) Act, 1992, as amended, penal action could be initiated against any person who makes or abets or attempts to make any import and export in contravention of any provision of the Act or Rules or order or FTP OR signs or uses any declaration, statement or documents knowing or having reason to believe that such declaration, documents, statement is forged or tempered with or false in any materials, shall be

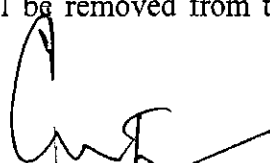
liable for penal action. However, in the instant case, Dr Sethi was not in any capacity to sign any documents related to M/s Dujodwala paper Chemicals Ltd. On 01.04.2010 when the subject Authorisation was obtained. Hence, he cannot be held responsible for any omission and commission made by M/s Dujodwala Paper Chemicals Ltd.

**Order**

F. No. 18/48/2017-18/ECA-I / 2407


6th April  
Date of Order ~~4<sup>th</sup>~~ March, 2018

The Review Appeal is admitted. Order-in-Original dated 20.03.2017 and Order-in-Appeal dated 20.12.2017 is modified to the extent that name of Dr. S. C. Sethi shall be removed from the orders dropping charges against him.

  
Alok V. Chaturvedi  
Director General of Foreign Trade

To

1. Dr. S.C. Sethi,  
Ex-Director, M/s Dujodwala Paper Chemical Ltd.,  
Parishram, 20, Anand Park,  
Pune-411007.
2. Addl. Director General of Foreign Trade,  
New CGO Building, Nishtha Bhawan,  
New Marine Lines, Churchgate,  
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Tika Ram Majhi  
Dy. Director General of Foreign Trade  
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