

**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. 18/49/2017-18/ECA-I/85

Date of Order 1<sup>st</sup> June, 2018

Date of Dispatch.....May, 2018  
06.06.2018

Name of Appellant : M/s Khosla Profil Pvt. Ltd.,  
2, Laxmi Towers, 6<sup>th</sup> Floor, 'A' Wing,  
Bandra Kurla Complex, Bandra (E),  
Mumbai-400051.

Order Appealed against : 5 Orders-in-Appeal passed by the Addl. DGFT, Mumbai:

(i) No. 03/16/144/00050/AM 15/06 dated 27.03.2017  
(ii) No. 03/16/144/00051/AM 15/06 dated 27.03.2017  
(iii) No. 03/16/144/00052/AM 15/06 dated 27.03.2017  
(iv) No. 03/16/144/00053/AM 15/06 dated 27.03.2017  
(v) No. 03/16/144/00054/AM 15/06 dated 27.03.2017

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

**Order-in-Review**

M/s Khosla Profil Pvt. Ltd., 2, Laxmi Towers, 6<sup>th</sup> Floor, 'A' Wing, Bandra Kurla Complex, Bandra (E), Mumbai-400051 has filed Review Petitions u/s 16 of F.T.(D&R)Act, against following Orders-in-Appeal passed by Addl. DGFT, Mumbai:

- (i) No. 03/16/144/00050/AM 15/06 dated 27.03.2017  
(ii) No. 03/16/144/00051/AM 15/06 dated 27.03.2017  
(iii) No. 03/16/144/00052/AM 15/06 dated 27.03.2017  
(iv) No. 03/16/144/00053/AM 15/06 dated 27.03.2017  
(v) No. 03/16/144/00054/AM 15/06 dated 27.03.2017

**Facts of the case:**

2. M/s Khosla Profil Pvt. Ltd., Mumbai obtained following EPCG Authorizations from RA, Mumbai with Export Obligation of 8 time of the duty saved amount of imported capital goods on FOB basis to be fulfilled within a period of 8 years from the date of issue of the authorizations and also to maintain past years Average Export Performance by exporting Cotton / Natural / Blended/ Synthetic Fabrics:

Sl. No.	EPCG Authorization No. & Date	Duty Saved Amount in Rs.	Export Obligation in US\$	Average Export Performance required to be maintained
1.	0330017818 Dated 18.10.2007	Rs. 14,52,830.00	US\$ 290203.24	Rs. 18,13 crores
2.	0330019220 Dated 26.02.2008	Rs. 3,44,253.00	US\$ 69370.88	Rs. 18,13 crores
3.	0330019355 Dated 07.03.2008	Rs. 1,90,378.00	US\$ 38363.32	Rs. 18,13 crores
4.	0330021641 Dated 17.10.2008	Rs. 1,92,209.63	US\$ 35146.90	Rs. 23.87 crores
5.	0330021784 Dated 10.11.2008	Rs. 28,78,813.00	US\$ 456954.51	Rs. 23.88 crores

3. On failure to fulfillment of stipulated export obligation, following Orders-in-Original were passed by the Joint Director General of Foreign Trade (Adjudicating Authority), Mumbai imposing penalties on the firm as mentioned below holding the firm guilty of contravening the provisions of Rule 14(1) of Foreign Trade (Regulations) Rules, 1993:

Sl. No.	EPCG Authorization No. & Date	Order-in-Original No. & Date	Amount of penalty imposed
1.	0330017818 Dated 18.10.2007	03/002/001/00011/AM-14/647 Dated 18.07.2014	Rs. 30,000/-
2.	0330019220 Dated 26.02.2008	03/002/001/00056/AM-14/647 Dated 18.07.2014	Rs. 30,000/-
3.	0330019355 Dated 07.03.2008	03/002/001/00068/AM-14/647 Dated 17.07.2014	Rs. 30,000/-
4.	0330021641 Dated 17.10.2008	03/002/001/00070/AM-14/647 Dated 17.07.2014	Rs. 30,000/-
5.	0330021784 Dated 10.11.2008	03/002/001/00065/AM-14/647 Dated 17.07.2014	Rs. 30,000/-

3.1 It was noted by the Authority that the firm had submitted documents for redemption of Authorizations as mentioned above. On scrutiny of the said documents submitted for redemption, it was revealed that the shipments considered for fulfillment of specific Export Obligation against Authorization Nos. 0330017818, 0330019220 & 0330019355 were also considered in the statement of exports submitted for maintaining Average Export Performance for AM-09.

They had submitted statements of specific EO fulfilled against various Authorizations for the period of AM-08, AM-09 & AM-10. The shipping bills shown in the statements were also considered for Average Export Performance for the period of AM-08, AM-09 and AM-10.

3.2 Under the Authorization No. 0330021641 dated 17.10.2008, the shipments considered for fulfillment of specific Export Obligation vide shipping bill No. 3608582 were also considered in the statement of exports submitted for maintaining Average Export Performance for AM-12.

The firm had submitted statements of specific EO fulfilled against various Authorizations for the period of AM-08 to AM-12. The shipping bills shown in this statement were also considered for Average Export Performance for the period of AM-08 to AM-12.

3.3 Under the Authorization No. 0330021784 dated 10.11.2008, the shipments considered for fulfillment of specific Export Obligation were also considered in the statement of exports submitted for maintaining Average Export Performance for AM-11. The firm had submitted statements of Specific EO fulfilled against various authorizations for the period of AM-09, AM-10 & AM-11. The shipping bills shown in this statement were also considered for Average Export Performance for the period of AM-09, AM-10 & AM-11.

3.4 It was, therefore, concluded that the firm had tried to defraud the government by giving false declaration.

4. Aggrieved by the Orders-in-Original as mentioned in Para 3 above, the applicant filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Additional Director General of Foreign Trade (Appellate Authority), Mumbai.

4.1 A Personal Hearing was given on 20.09.2016 by the Appellate Authority. Shri Mohan Desai, Manager of the firm was appeared for personal hearing on the given date. He handed over a written submission. The Appellant contended that they had no intention of providing false data or misrepresenting the facts.

4.2 He further stated that while preparing the application for redemption, through oversight the shipping bills had been included in both Specific Export Obligation and Average Export Performance. He accepted that it was a mistake on their part by mentioning the shipping bill number in the statement which was just a human error and happened unintentionally.

4.3 He further stated that though the same shipping bills had been incorporated in the statement of exports considering fulfillment of Average Export Performance, the value of the shipping bills was shown as 'Nil'.

4.4 He further contended that even if the shipping bills were excluded from the statement of Average Export Performance, the Average Export Performance would still be maintained and same would be higher than the required Average Export Performance.

4.5 The Appellate Authority observed that even though the applicant had fulfilled the Specific Export Obligation and had also maintained Average Export Performance as required under EPCG Scheme, it was incumbent on the party to give correct declaration. Any mis-declaration attracts the provisions of Rule 14 of the Foreign Trade (Regulations) Rules, 1993. The applicant had furnished a mis-declaration which shows negligence on the part of the applicant. It also vitiates the whole purpose of the requiring such declaration.

4.6 The Appellant Authority further observed that the applicant had shown the same exports doubly towards fulfillment of Specific Export Obligation and also towards fulfillment of Average Export Performance.

4.7 The Appellant Authority also found that the penalty imposed by the adjudicating authority was justified and the same is not excessive.

4.8 In view of the above findings, the Appellant Authority dismissed the appeals.

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

5.1 In AEP Statements, the Shipping Bills were repeated, which has been mentioned in Specific Export Obligation. This is due to their system generate statements and they have clarified that they have not claimed the amount nor the same was calculated for maintaining AEP statement.

5.2 During the personal hearing with the Appellate Authority, they had accepted their system error which has been happened unintentionally. They have no intention behind this and there is no revenue loss to the government as they have not shown any amount therein. They have not claimed any amount in AEP Statement.

5.3 They have requested for the waiver of the fiscal penalty.

6. The applicant was granted Personal Hearing on 16.05.2018 at 3.45 PM. Shri R. Nagasundram, DGM (Finance & Accounts) appeared before the undersigned on the given date on behalf of the applicant. During the course of personal hearing he reiterated the same facts adding that:

6.1 The Average Export Obligations as well as Specific Export Obligations against the EPCG Authorizations were completed within the prescribed time limit as per records submitted.

6.2 Though the same shipping bills were also incorporated in the statements of exports considered for fulfillment of AEP, the value of this shipping bills were shown as 'Nil' in the statements. It is human error occurred from their person for not having conversion knowledge about FTP and the shipping bills were typed in the statements. However, the export is not counted towards fulfillment of AEP.

6.3 Since, AEP is to be fulfilled in terms of value only, showing the shipping bill numbers does not mean consideration of shipping bills towards fulfillment of AEP, as value shown in the statements as 'NIL'.

7. I have gone through the submissions made by the applicant and the documents presented before me, carefully. It is observed that though the same shipping bills number were indicated in the statement for AEP as well as for specific export obligation but value of that shipping bills were shown as NIL in the AEP statement. Therefore, merely indicating Shipping Bill Nos, without taking into consideration FOB value does not pass any benefit to exporter. Therefore, no malafide intention appears to be there to avail any additional benefit. However, it could have been avoided. Further, it is more failure on the part of Chartered Accountant who has counter

signed the said statement. Therefore, responsibility goes on him rather the applicant. However, since no monetary benefits are availed by merely indicating Shipping Bill Nos in the statement for annual average export performance, I do not see any logic to impose physical penalty for such unintentional mistake. The appellate Authority should have taken a judicious view. Therefore, the following order is passed.

**Order**

**F. No. 18/49/2017-18/ECA-I / 86**

**Date of Order 1<sup>st</sup> June, 2018**  
5<sup>th</sup>

- i. The Review Appeal is admitted.
- ii. Orders-in-Original dated 17.07.2014 & 18.07.2014 and Orders-in-Appeal dated 27.03.2017 are set aside.
- iii. RA, Mumbai is hereby directed to review the cases and issue EODC after calling for revised statements for specific and AEP.

  
**Alok V. Chaturvedi**

**Director General of Foreign Trade**

To

1. M/s Khosla Profil Pvt. Ltd.,  
2, Laxmi Towers, 6<sup>th</sup> Floor, 'A' Wing,  
Bandra Kurla Complex, Bandra (E),  
Mumbai-400051.
2. The Addl. Director General of Foreign Trade,  
CGO Complex, Nishtha Bhawan,  
New Marine Lines, Churchgate,  
Mumbai-400020.



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