

**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. 18/12/2018-19/ECA-I/82

Date of Order.....September, 2018

Date of Dispatch 06<sup>th</sup>...September, 2018

Name of Appellant : M/s Malsons Polymers Pvt. Ltd.,  
'STEPHEN HOUSE', Suite No. 57ABC,  
4<sup>th</sup> Floor, 56E, Hemanta Basu Sarani,  
Kolkata -700001.

Order Appealed against : Order-in-Appeal No. 18/186/14-15/ECA/KOL/Appeal-42/  
502 dated 26.02.2018 passed by Addl. DGFT, Kolkata.

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

**Order-in-Review**

M/s Malsons Polymers Pvt. Ltd., 'STEPHEN HOUSE', Suite No. 57ABC, 4<sup>th</sup> Floor, 56E, Hemanta Basu Sarani, Kolkata - 700001 has filed a Review Petition vide letter dated 06.06.2018 against Order-in-Appeal No. 18/186/14-15/ECA/KOL/Appeal-42/502 dated 26.02.2018 passed by Addl. DGFT, Kolkata.

**Facts of the case:**

2. M/s Malsons Polymers Pvt. Ltd., 'STEPHEN HOUSE', Suite No. 57ABC, 4<sup>th</sup> Floor, 56E, Hemanta Basu Sarani, Kolkata obtained Advance Authorization No. 0210130213 dated 10.08.2009 from RA, Kolkata as per provision of Foreign Trade Policy prevalent during the period for import of following items:

ITCHS Code	Import Item Name	Qty.	CIF (Rs.)	CIF (US\$)
39611090	Linear Low Density Polyethylene (LLDPE)	54600 kgs		
28030010	Carbon Black	27300 kgs		
28365000	Filters - Calcium Carbonate / Lime Stone Powder	27300 kgs		
		Total	59,19,963.55	1,20,940.00

with an Export Obligation to export following item to be completed within a period of 24 months from the date of issue of the Authorization:

ITCHS Code	Export Item Name	Qty.	FOB / FOR (Rs.)	FOB (US\$)
32061900	63/38 - Black Master Batches containing 52500 kgs LLDPE (Linear Low Density Polyethylene), 26250 kgs Carbon Black & 26250 kgs Filters Calcium Carbonate / Limestone powder.	105000 kgs	77,70,000.00	1,58,733.41

3. One of the conditions of the Authorization was that the firm shall submit the export documents to RA office within 2 months from the date of expiry of the export obligation period as prescribed under Para 4.25 of Hand Book Vol-1, 2009-2014 as amended from time to time as evidence of fulfillment of export obligation imposed on the Authorization. Failure to fulfill the export obligation in the matter as prescribed in the Hand Book Vol-1, 2009-2014 shall attract penal proceedings under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and as per provision of Para 4.24 of Hand Book Vol-1, 2009-2014 as amended from time to time.

3.1 The export obligation period expired but the firm failed to furnish the export documents as documentary evidence towards fulfillment of export obligation.

3.2 Consequently, Show Cause Notice was issued to the firm under Section 14 of Foreign Trade (Development and Regulation) Act, 1992, as amended, calling upon the firm to show cause as to why fiscal penalty should not be imposed upon them under Section 11 of the said Act for violation of the conditions of the said Authorization issued to them.

3.3 It was observed that there was ample evidence about the willful contravention of the conditions imposed on the Authorization. This made the firm liable to penalty under Foreign Trade (Development and Regulation) Act, 1992.

3.4 Hence, in exercise of the powers vested in the Adjudicating Authority under Section 13 of Foreign Trade (Development and Regulation) Act, 1992, as amended, and also Section 11 of the said Act, the Adjudicating Authority [Joint DGFT, Kolkata] vide his Order-in-Original dated 17.10.2014 imposed a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) on the firm and also its Directors / Partners / Proprietor. In addition, the firm and its Directors / Partners / Proprietor were liable to pay to Custom Authority, the entire amount of Customs Duty saved on the Authorization and applicable interest thereon.

4. Aggrieved by the Order-in-Original dated 17.10.2014, the firm filed appeal on 31.12.2014 under Section 15 of Foreign Trade (Development and Regulation) Act, 1992, as amended, before the Addl. DGFT, Kolkata requesting to waive off pre-deposit of penalty amount and set aside the Order-in-Original dated 17.10.2014.

4.1 An opportunity of Personal Hearing was granted to the Appellant on 09.02.2015 and 16.03.2015, but none turned up, rather the Appellant vide their letter dated 25.03.2015 requested to waive off the penalty amount.

4.2 The Appellate Authority reduced the pre-deposit of penalty amount to 20% or 100% BG covering the entire amount of penalty and allowed another dated of Personal Hearing on 18.05.2015.

4.3 Shri Anil Agarwal, Director of the firm appeared before the Appellate Authority on 18.05.2015. He requested for waiver off pre-deposit of penalty amount as their financial condition was not very good.

4.4 The Appellant was advised to deposit the pre-deposit of penalty @5% of the penalty amount or 100% BG covering entire penalty amount within 15 days.

4.5 Next date of Personal Hearing was fixed for 02.11.2015. Shri Anil Agarwal, Director of the firm appeared before the Appellate Authority on 02.11.2015 and submitted evidence of payment of reduced pre-deposit penalty amount. He also stated that though they had submitted all the documents evidencing export obligation fulfillment against their Advance Authorization, but did not submit the Bill of Exports (as supplies were to SEZ) as they were not aware of the procedures and they submitted the copies of ARE-1 instead, with a request to waive off the requirement of Bill of Exports.

4.6 Final Personal Hearing was allowed on 30.01.2018. Shri Shyamlal Agarwal, Director of the firm appeared and expressed their inability to submit Bill of Exports as they were not aware of this at the time of exports.

4.7 The Appellate Authority examined the complete facts of the case including submission made by the Appellant along with the appeal. It was observed that under Rule 30 of SEZ Rules, 2006, exports to SEZ must be made against Bill of Exports if supplier wished to avail export incentives against such supplies and in terms of Para 4.13 of Foreign Trade Policy an Advance Authorization was issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowances for wastage) and in terms of Para 4.12 of Foreign Trade Policy, the authorization holder would declare the consumption of exempted materials used in the resultant products in the export documents while effecting exports. Therefore, export obligation against an Advance Authorization could not be discharged without establishing nexus of duty free imported inputs (or procured indigenously against Advance Authorization) and resultant product exported to the SEZ unit. Hence, Bill of Exports was an essential document for discharging the export obligation against Advance Authorization as ARE-1 did not have such information.

4.8 In view of the above and in exercise of the powers vested in the Appellate Authority under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, the Appellate Authority vide her Order-in-Appeal dated 26.02.2018 dismissed the Appeal and upheld the Order-in-Original dated 17.10.2014.

5. Aggrieved by the decision of Appellate Authority, the applicant has filed the present Review Petition dated 06.06.2018 stating that:

5.1 They have obtained an Advance Authorization No. 0210130213 dated 10.08.2009 for import of goods like LLDPE, Carbon Black, Filter-Calcium Carbonate / Lime Stone Powder for CIF value of 59,19,963.55 (US\$ 1,20,940.00) with an Export Obligation of FOB US\$ 1,58,733.41 (equivalent to Rs. 77,70,000/-) within a period of 36 months.

5.2 They are in the knowledge that SEZ is considered to be a deemed Foreign Territory and sale / supply to a SEZ unit or Developer by DTA unit like the applicant will be considered as physical export in terms of (m(ii) of Section 2 of SEZ Act, 2005.

5.3 They had supplied goods to its Customer, M/s Plastolene Polymers Pvt. Ltd., a unit located in Falta SEZ on the strength of the necessary Tax Invoice-cum-Excise Invoice, ARE-1 duly certified by the Customs official posted at Falta SEZ.

5.4 Thereafter, necessary payment has been made by the SEZ unit through banking channel for which necessary Appendix 22B (Bank Certificate of payments for domestic supplies) duly certified by the Banker, Punjab National Bank, Cotton Street Branch, Kolkata. From this it is clearly established that the goods were supplied to M/s Plastolene Polymers Pvt. Ltd. (a unit in Falta SEZ) and necessary payment was made by M/s Plastolene Polymers Pvt. Ltd., and the said payment was received by the applicant.

5.5 The Statement under Appendix 23 in terms of Para 4.26 and 4.30 of the HBP Vol.1, showed details of accounting of the consumption and stocks of duty free imported or domestically procured raw materials, components etc. allowed under Advance Authorization, which confirm input output ratio.

5.6 They submit that the goods produced against the imported materials under the subject Advance Authorization have not been diverted to other place than SEZ and it is fully utilized for export only.

5.7 They submit that all the documents like ANF-4F, Appendix-23 etc. have already been submitted on 23.04.2013. Since the concerned persons left the job without intimation, the required documents could not be submitted in time. It is, therefore, requested that the matter may be considered in a pragmatic view and the delay may be condoned by way of accepting the claim of fulfillment of export obligation and it should not be denied for the said unwarranted lapse in this context.

5.8 But the fact remains that since Bill of Export were not submitted, the case towards fulfillment of export obligation has not been considered by the Joint DGFT, Kolkata.

5.9 In spite of the above fact and circumstance, they are shocked and surprised to receive the Order-in-Original dated 17.10.2014 whereby the Joint DGFT, Kolkata to imposed fiscal penalty of Rs. 25,00,000/- on the firm and its Director (under Section 11(2) of the Foreign Trade (Development and Regulation) Amendment Act, 2010) and further held the firm and its Director responsible collectively and severally to deposit the said penalty amount in addition to the Customs Duty and interest as applicable.

5.10 In this context, it would not be out of place to mention that in another similar case, as evident from the Minutes of PRC Meeting No. 07/AM17 held on 24.05.2016 under the Chairmanship of Shri Anup Wadhawan, former DGFT that on a precedent occasion M/s Jupiter Solar Pvt. Ltd., on a request to DGFT, got a relaxation for requirement of Bill of Export.

5.11 They are approaching to PRC at DGFT, New Delhi for consideration of their case for exemption for submission of Bill of Export as allowed to M/s Jupiter Solar Pvt. Ltd. vide PRC Meeting No. 07/AM17 held on 24.05.2016.

5.12 The applicant has also referred to a case (of M/s of P.K. Tubes) in ELT viz. "Supply to SEZ under ARE-1 but Bill of Export not available - even if Bill of Export is not submitted, substantive benefit of rebate cannot be lost if evidence of receipt of goods in SEZ in form ARE-1 is available.

5.13 The case of the applicant does not entail any refund or extension or revalidation of any scrip nor do seek any other benefit from the authorities.

5.14 The supply was bona fide and made genuinely to SEZ unit, all the documents clearly indicate bona fide nature of the transactions highlighting that the supplies were made and the payments thereof were realized.

5.15 In view of the above, the applicant has requested to set aside the Order-in-Original dated 17.10.2014 passed by the Joint DGFT and Order-in-Appeal dated 26.02.2018 passed by the Additional DGFT, Kolkata.

6. The applicant was granted Personal Hearing on 18.07.2018 at 4.30 PM to be heard by the Reviewing Authority. Shri Anil Agarwal, Managing Director of the firm appeared before the undersigned on the given date and time.

6.1 During the personal hearing, the Applicant has not submitted written submission. However, vide their email dated 04.07.2018, they have stated that they submitted a Bank Guarantee of Rs. 6,24,360/- (Customs Duty) bearing 5563601378 dated 29.06.2018 in the office of Additional DGFT, Kolkata on 02.07.2018 to ensure that their IEC is withdrawn from suspension list but their IEC is still appearing in the suspension list.

6.2 It is observed that as per rule 30 of the SEZ rules, 2006, exports to SEZ must be made against Bill of Exports. Bill of Exports has been mentioned in ANF 4-F as a necessary document to be submitted for evidencing EO fulfillment. Appellate Authority has rightly recorded in the Appellate Order " It is observed that under Rule 30 of SEZ Rules 2006, exports to SEZ must made against Bill of Exports if supplier wishes to avail exports incentives against such supplies

and in terms of para 4.1.3 of Foreign Trade Policy, an Advance Authorization is issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowances for wastage) and in terms of para 4.12 of Foreign Trade Policy, the authorization holder shall declare the consumption of exempted materials used in the resultant products in the export documents while effecting exports. Therefore, export obligation against an Advance Authorization cannot be discharged without establishing nexus of duty free imported inputs (or procured indigenously against Advance Authorization) and resultant product exported to the SEZ Unit. Hence Bill of Exports is an essential documents for discharging the export obligation against Advance Authorisation as ARE-1 does not have such information.” Thus, it is clear that Appellate Order is in Order. I find no reason to interfere with the Appellate Order.

7. I, therefore, in exercise of powers vested in me under Section 16 of FTDR Act, 1992, as amended, pass the following order:

F.No. 18/12/2018-19/ECA-I/88

Date of Order 06<sup>th</sup> September, 2018

The Review Appeal is dismissed and the Order-in-Appeal dated 26.02.2018 is upheld.

  
Alok V. Chaturvedi

Director General of Foreign Trade

To

1. M/s Malsons Polymers Pvt. Ltd.,  
'STEPHEN HOUSE', Suite No. 57ABC,  
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2. Addl. Director General of Foreign Trade,  
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Kolkata-700069.



Tika Ram Majhi  
Deputy Director General of Foreign Trade