

**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. 18/13/2017-18/ECA-I/2404**

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

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

Name of Appellant : M/s Indrayani Biotech Ltd.,  
1133/5 F C Road, Opp. Police Ground,  
Pune-411016.

Order Appealed against : Order-in-Appeal No. 03/16/144/00098/AM15/20 dated  
29.03.2017 passed by Addl. DGFT, Mumbai.

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

**Order-in-Review**

M/s Indrayani Biotech Ltd., Pune has filed a Review Petition u/s 16 of F.T.(DR)Act, vide letter dated 19.05.2017 with request to review Order-in-Appeal No. 03/16/144/00098/AM15/20 dated 29.03.2017 passed by Addl. DGFT, Mumbai confirming the Order-in-Original dated 19.05.2006 passed by Adjudicating Authority.

**Facts of the case:**

2. M/s Indrayani Biotech Ltd., Pune obtained an EPCG Authorization No. P/CG/2128655 dated 07.09.1994 from RA, Pune for a CIF value of Rs. 16,39,483/- to import "One unit of Cold Storage and Refrigeration Plant for Storage of Cut Flowers for Export" and "38 Rolls of Polyethylene Plastic Film : Roof Cover of Green Houses" with a condition to export Cut Flowers and Tissue Culture Plants for FOB Value of US\$ 209719 i.e. 4 times the CIF value of capital goods to be imported within a period of 5 years from the date of issue of authorization. The applicant was required to maintain its average of the past 3 years Export Performance of the product for a period of 5 years in addition to fulfil the stipulated export obligation. The Annual Average of past Export Performance however was NIL being new unit.

3. An Order-in-Original dated 19.05.2006 was passed by Deputy DGFT, Pune (Adjudicating Authority) imposing fiscal penalty of Rs. 81,98,000/- under Section 13 of FT (D&R) Act, 1992, holding the firm guilty of contravening the provisions of Section 11(2) of FT (D&R) Act, 1992 read with Rule 13 and Rule 14(1) & (2) of FT (Regulations) Rules, 1993.

4. It was noted by the Adjudicating Authority that the export obligation period, which was 5 years from the date of issue of Authorization, expired on 06.09.1999 but the firm failed to submit prescribed documents evidencing fulfillment of export obligation against this Authorization or show any proof that imported goods were lying with them, in spite of several reminders and opportunities given to them.

5. Aggrieved by the Order-in-Original dated 19.05.2006, the appellant filed appeal under Section 15 of FT (DR) Act, 1992, as amended, before the Appellate Authority in the office of DGFT, New Delhi, who in turn forwarded the same to the Appellate Authority in Mumbai being competent Authority to heard the appeal.

6. Accordingly, they were given Personal Hearing on 06.12.2016 by the Appellate Authority. However, nobody turned up for personal hearing. Second opportunity of personal hearing was given on 27.12.2016, when Shri Sudesh Saboo appeared before the Appellate Authority.

However, the Appellant Authority dismissed the appeal vide Order-in-Appeal dated 29.03.2017, on the ground that the appellant failed and neglected to submit any evidence of having fulfilment of exports obligation against the said EPCG Authorization.

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

7.1 The Appellate Authority, Mumbai has passed the impugned Order without appreciating the correct factual position in the instant case. The Appellate Authority, Mumbai has ignored that an Order-in-Appeal has already been passed in the very same case by the Appellate Authority, New Delhi on 12.03.2007.

7.2 The earlier Order-in-Appeal passed on 12.03.2007 was challenged by the Applicant by way of a Writ Petition before the Hon'ble Bombay High Court. The Writ Petition was admitted by the Bombay High Court, vide its order dated 18.07.2007 and is pending before the court for final hearing.

7.3 In view of the same, the Impugned Order passed by the Appellate Authority, Mumbai amounts to duplication of proceedings and the same is liable to be set aside or recalled or withdrawn.

8. The applicant was granted Personal Hearing on 03.10.2017 at 4.30 PM by the undersigned. Shri Vivek Malpani, Representative of M/s Indrayani Biotech Ltd., Pune appeared before me and made the same submissions as per review petition. However, a report was called for from RA, Mumbai seeking their views as to why order is passed twice against the same Authorisation.

8.1 RA, Mumbai, vide its letter dated 23.08.2017 has informed that M/s. Indirayani Biotech Ltd, Pune had obtained an EPCG Authorization No. P/CG/2128655 dated 07.09.1994 from office of the Jt. DGFT, Pune, who adjudicated the case imposing a fiscal penalty of Rs. 81,98,000/- on account of non-fulfillment of export obligation.

M/s. Indirayani Biotech Ltd, Pune preferred an appeal before the Addl. DDGFT, New Delhi. The then Appellate Authority, Smt. Maya D. Kem, dismissed the appeal. The Appellate Authority issued Order-in-Appeal No. 11/98/2006-07/ECA-I/4567 dated 12<sup>th</sup> March, 2007. The firm challenged the said Order-in-Appeal before the Hon'ble Bombay High Court under Writ Petition No. 4507/2007. Copies of Court Orders dated 18<sup>th</sup> July 2007 and 27<sup>th</sup> March, 2008 were sent to office of the Jt. DGFT, Pune for further necessary action. As per the Court' orders the firm might have furnished Bank Guarantee to office of the Jt. DGFT, Pune.

There are two appeals were filed against one Adjudication Order dated 19.05.2006:

Sl No	Name of appellant	Hqrs' appeal file No	Name of Appellate Authority	Status	Remarks
1	M/s Indrayani Biotech Ltd Pune	No.11/98/2006-07/RCA-I	Maya D. Kem, Addl DGFT, Hqrs	Appeal dismissed	Relating to WP No.4507 of 2007 of Bombay High Court
2	Shri Damodar P.R. Saboo, one of the Directors of M/s Indrayani Biotech	No.11/125/06-07/ECA-I	Dr. Sonia Sethi, Addl DGFT Mumbai	Appeal dismissed.	No mention of any court case in appeal application of the appellant.

The Order-in-Appeal No.03/16/144/00098/AM-15 dated 29.03.2017 has been issued by Mumbai Office against the appeal filed by one of the Directors, Shri Damodar P.R. Saboo as at Sl No.2 above and not for the firm. The appeal under DGFT File No. 11/125/2006-07/ECA-I was received in this office from Hqrs. The Order-in-Appeal issued by Appellate Authority at Hqrs was challenged before the Court. The said order-in-Appeal bears File No. 11/98/2006-07/ECA-I/4563 and Order-in-Appeal was issued by this office pertains to Hqrs different File No. 11/125/2006-07/ECA-I.

Furthermore, the appeal filed by Shri Damodar P.R. Saboo has not referred to the court case in the appeal application nor in the Hqrs appeal file, received in this office, has any reference of the Writ Petition.

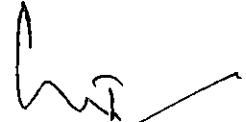
9. I have gone through the facts of the case, carefully. It is observed that two order-in-appeals have been passed by two different Authorities against one order-in-original. In fact appeals filed by M/s Indrayani Biotech Ltd, Pune and Shri Damodar P.R. Saboo, one of the Directors of M/s Indrayani Biotech should have been heard together by the then appellate Authority at H.Q. However, appeal filed by the company was decided by the then Addl.DGFT and appeal filed by Shri Damodar P. R. Saboo was transferred to RA, Mumbai later on for deciding the same as per revised OM, which delegates power to Zonal Addl.DGFT to hear appeal against order passed by his subordinates. Since, the order-in-appeal dated 12.03.2007 passed by Add. DGFT Smt. Maya D. Kem has been challenged and pending before the hon'ble Mumbai High Court, the order-in-appeal passed by Dr. Sonia sethi, Addl. DGFT dismissing appeal against the same order-in-original dated 19.05.2006 becomes infructuous. Therefore, the following order is passed.

**Order**

F. No. 18/13/2017-18/ECA-I/2405

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

The Review Appeal of Shri Damodar P.R. Saboo is admitted. Order-in-Appeal dated 29.03.2017 passed by Dr. Sonia Sethi, Addl. DGFT, Mumbai against the same order-in-original dated 19.05.2006 is made void.



Alok V. Chaturvedi

Director General of Foreign Trade

To

1. Shri Damodar P.R. Saboo  
Director of M/s Indrayani Biotech Ltd.,  
1133/5 F C Road, Opp. Police Grounds,  
Pune - 411016.
2. Addl. Director General of Foreign Trade,  
CGO Complex, Nishtha Bhawan,  
New Marine Lines, Churchgate,  
Mumbai-400020.



Tika Ram Majhi

Dy. Director General of Foreign Trade