

**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. 18/14/2018-19/ECA-I / 241

Date of Order November, 2018

Date of Dispatch 14<sup>th</sup> November, 2018

Name of Appellant : M/s Midas Care Pharmaceuticals Pvt. Ltd.,  
Lotus Corp Park, B Wing, 3<sup>rd</sup> Floor,  
Jay Coach, Graham Firth Compound,  
W E Highway, Goregaon (East),  
Mumbai-400063.

Order Appealed against : Order-in-Appeal No. 03/16/144/00031/AM.18/0071 dated  
26.03.2018 passed by the Addl. DGFT, Mumbai.

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

**Order-in-Review**

M/s Midas Care Pharmaceuticals Pvt. Ltd., Lotus Corp Park, B Wing, 3<sup>rd</sup> Floor, Jay Coach, Graham Firth Compound, W E Highway, Goregaon (East), Mumbai-400063 has filed Review Petition against the Order-in-Appeal No. 03/16/144/00031/AM.18/0071 dated 26.03.2018 passed by Additional Director General of Foreign Trade, Mumbai.

**Facts of the case:**

2. M/s Midas Care Pharmaceuticals Pvt. Ltd., Mumbai obtained an Advance Authorization No. 0310573521 dated 10.05.2010 from RA, Mumbai to import (i) 500000 Nos. of Tin Cans and (ii) 500000 Nos. of Aerosol Valves and Actuators for CIF value of Rs. 74,25,000/- subject to fulfillment of export obligation to export 5,00,000 Nos. of Perfumed Shaving Foam for FOB value of Rs. 1,59,80,000/- within a period of 36 months from the date of issue of the authorization.

2.1 The firm, vide letter dated 11.04.2014, submitted original documents for redemption against the authorization.

2.2 RA office, vide their letter dated 15.05.2014, informed the firm that as per Public Notice No. 8 dated 06.07.2012, e-BRCs were mandatory from 17.08.2012. The BRCs against Shipping Bills submitted by the firm were after 17.08.2012.

2.3 The firm was asked (i) to submit BRCs against Shipping Bill Nos. 9489740, 5630293, 5298908, 5762920 and 9922138. The BRCs against Shipping Bill Nos. 3976152, 4058315 and 5299667 submitted by the firm were after 17.08.2012. (ii) In the BRCs against Shipping Bill Nos. 9922138, 5299667 and 5762920, realized value of EPCG authorization was also given. Hence, the firm was also asked to give bifurcation value of advance authorization and EPCG authorizations. (iii) The firm was directed to submit custom/excise attested invoices with the content of inputs for all the shipping bills as the export item mentioned in the shipping bill did not show the content of Tin Cans with Aerosol Valves and Actuator. They were also directed to submit CENVAT declaration. Regarding import details, the item Aerosol Valves and Actuator was not given in the Bill of Entry, or in the authorization.

2.4 As the firm failed to furnish the complete documents evidencing the fulfillment of export obligation against the authorization, a Demand Notice asking the firm to submit prescribed documents was issued on 03.04.2014 and the firm was placed under DEL vide letter dated 06.08.2014 for refusal of further authorizations.

2.5 Last and final opportunity for submission of export documents was also offered to the firm vide letter dated 13.09.2017. In spite of repeated opportunities extended to the firm, they failed to submit proof showing fulfillment of export obligation. Hence, the Adjudicating Authority had no option but to decide the case on merit on the basis of facts and records available with RA office.

2.6 On going through the facts and records of the case, the Adjudicating Authority observed that the firm had obtained the Advance Authorization for import of raw material as per the list attached with the authorization with obligation to export resultant product manufactured out the imported goods within a period 36 months from the date of issue of the authorization. In terms of Para 4.24 of the Hand Book of Procedures, the authorization holder was required to submit documents having fulfillment of export obligation as prescribed under Para 4.25 of the said procedure within 2 months from the date of expiry of the said obligation period. However, the firm failed to comply with the requirement.

2.7 Hence, the Adjudicating Authority held the firm guilty of violation of Para 2.10 of FTP and Rule 13 and 14 of Foreign Trade (Regulation) Rules, 1993.

2.8 In view of the above observations, the Adjudicating Authority, in exercise of powers conferred upon him under Section 13 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, passed Order-in-Original No. 03/01/002/00543/AM17 dated 27.10.2017 imposing fiscal penalty of Rs. 10,00,000/- on the firm and its directors.

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

3.1 Personal Hearing was given on 23.01.2018 by the Appellate Authority. Ms. Supriya Adake, Chief Export Executive of the firm appeared for personal hearing on the given date.

3.2 She informed that they had fulfilled 100% Export Obligation and all the required export documents were submitted vide letter dated 26.10.2017 with reply / clarification. She also handed over copies of acknowledgement showing submission of documents for redemption, copy of Authorization, copy of Order-in-Original and statement of export and import. The appellant vide letter dated 26.02.2018 submitted copy of shipping bills and e-bank realization certificates and statement of exports and imports.

3.3 After going through the adjudication order as well as the documents available on record, the Appellate Authority found that import was allowed on net to net basis. The appellant imported 347858 Nos. against exported quantity 110016 Nos. resulting excess quantity 237842 Nos. for which the appellant was required to pay Customs Duty, dues etc.

3.4 The appellant failed to pay Customs Duty and submit requisite original challan. The Appellate Authority did not find any justification to interfere with the Order-in-Original passed by the Adjudicating Authority.

3.5 In view of the above findings, the Appellate Authority, in exercise of the powers vested in her under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, dismissed the appeal vide Order-in-Appeal No. 03/16/144/00031/AM.18/0071 dated 26.03.2018.

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

4.1 In this Authorization, they were supposed to export 500000 Nos. of Perfumed Shaving Foam 400 ml of Supermax (packed in Tin Cans with Aerosol valves and actuator) within 36 months from the date of issue of Advance Authorization.

4.2 The redemption application was delayed because RA, Mumbai issued them deficiency letter asking for the e-BRC against the exports made as they had already submitted the manual BRCs. They asked the bank to issue them the e-BRC for these exports but the bank did not agree for the same. After regular follow up they provided them with a bank certificate stating that they could not generate the e-BRC and have received the complete payment against the shipping bills with the bifurcation. This process took them a long time to get it done. Then RA office asked them for the clarification that if the firm did not import item Sl. No. 2 Actuators and Valves, then how the firm made the exports of the final product without it. For this, the firm clarified that they have procured the same locally and the same is being used for the export purpose. The firm had submitted this reply on 26.10.2017 and Order-in-Original was issued on 27.10.2017 it means the reply was in transit and meanwhile the order was issued without taking into account the reply.

4.3 In this Advance Authorization, the firm has made imports of Tin Cans 400 ml Supermax shave foam of 347858 Nos. The norms were fixed on net to net basis but they have finally made exports of 110016 Nos. So, there are excess imports of 237842 Nos. of Tin Cans for which the firm has already submitted the calculation sheet along with the redemption application to RA, Mumbai and asked them for issuance of an intimation letter for quantity of excess import so that they can make payment of duty and interest amount in the Customs.

4.4 In the personal hearing on 23.01.2018 granted by Mrs. Sonia Sethi, Additional DGFT, Mumbai for their appeal against Order-in-Original which was passed for not attending the Demand Notice and Show Cause Notices issued prior to the issue of order, they explained her that their office premises had changed from Andheri to Goregaon and they had made the necessary amendment in their IEC. However, all the correspondence was dispatched to their old address which they now use as godown and for record purpose. As the notices were dispatched on old address they could not attend the same. When the Order-in-Original was delivered to Director's residence, they came to know about it.

4.5 They had, therefore, requested the Appellate Authority to condone the penalty of Rs. 10,00,000/- and remand back the case to the concerned Section for De Novo consideration. But the Appellate Authority scrutinized the case and dismissed the appeal stating that:

“After going through the adjudicating order as well as the documents available on record, I found that import was allowed on net to net basis. The appellant imported 3,47,858 Nos. against exported quantity 1,10,016 Nos. resulting excess quantity 2,37,842 Nos. for which the appellant was required to pay Customs Duty, dues etc. The appellant failed to pay Customs Duty and to submit requisite original challan.”

4.6 They are ready for the payment of duty and interest. RA, Mumbai has to issue them the intimation letter for the same as the Customs Authority do not accept any payment without the intimation from the DGFT department stating the excess import quantity.

4.7 They have further stated that the Appellate Authority has not mentioned anything about the facts that they were unable to reply the Demand Notice and Show Cause Notice due to change of address for which the penalty of Rs. 10,00,000/- was imposed.

4.8 They have now requested to review the appeal and condone the delay for non attending the Demand Notice and Show Cause Notice on the ground that they did not get the same in time due to change of address. They have also requested to consider their request and review the dismissal of appeal, and to instruct Appellate Authority to accept their appeal and grant them chance to remand back the case for De Novo consideration to the concerned Section without imposing any penalty as they are ready to pay the duty and interest amount and their reply is crossed with Order issued. They have enclosed copies of following documents:

- (a) Photocopy of Advance Authorization with debit Sheet, condition sheet, import and export list and amendment sheet.
- (b) Statement of Import and Export.
- (c) Photocopy of Bill of Entry.

5. The applicant was granted Personal Hearing on 25.07.2018 at 3.00 PM to be heard by the Reviewing Authority. Mrs. Jahnvi Jain, Mrs. Supriya Adake and Shri M.M. Gupta appeared before the undersigned on the given date on behalf of the applicant and explained their case.

5.1 The firm had obtained Advance Authorisation for import of Tin-cans and aerosol valves for export of perfume shaving foam. The said imports items are allowed on net to net basis and the firm should account for the same in export product. The appellant's contention is that there is excess import of 2,37,842 Nos. of Tin Cans for which they have already submitted calculation sheet along with redemption application to RA, Mumbai and asked them for issuance of an intimation letter for quantity of excess import so that they can make payment of duty and interest amount to the Customs. It is also observed that the redemption application was delayed because RA, Mumbai issued them deficiency letter asking for the e-BRC against the exports made. They had already submitted the manual BRCs. The bank took too much time in settling the issue and this delayed the matter. Further, the Appellant want to get their case regularized on payment of duty plus interest and they have also stated that they could not get an opportunity to present their case before the Adjudicating Authority because they could not receive show cause notice due to change in address. In my opinion the firm needs to be given one more opportunity to present their case as they have already requested to issue a formal intimation letter for quantity of excess import enabling them to make payment of duty and interest to the Customs.

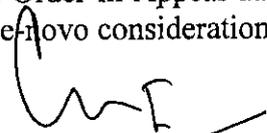
6. I, therefore, in exercise of powers vested in me under Section 16 of FTDR Act, 1992, as amended, pass the following order:

**Order**

F. No. 18/16/2018-19/ECA-I / 242

Date of Order <sup>14<sup>th</sup></sup> November, 2018

The Review Appeal is admitted. Order-in-Original dated 27.10.2017 and Order-in-Appeal dated 26.03.2018 are set aside. The case is remanded back to RA, Mumbai for de-novo consideration.



**Alok V. Chaturvedi**  
**Director General of Foreign Trade**

To

1. M/s Midas Care Pharmaceuticals Pvt. Ltd.,  
Lotus Corp Park, B Wing, 3<sup>rd</sup> Floor,  
Jay Coach, Graham Firth Compound,  
W E Highway, Goregaon (East),  
Mumbai-400063.
  
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