Directorate General of Foreign Trade
(PRC-section)

Minutes of the Policy Relaxation Committee Meeting held under the Chairmanship of DGFT Shri A.K. Bhalla, Director General of Foreign Trade on 19.04.2017

Meeting No. 02/AM18 held on 19.04.2017 at 03:15 PM

The following members were present in the meeting:

1.	Shri K.C. Rout	Addl. DGFT
2.	Shri Jaikant Singh	Addl. DGFT
3.	Shri J.V. Patil	Addl. DGFT
4.	Shri S.B.S Reddy	Addl. DGFT
5.	Shri N. K. Srivastava	Addl. DGFT
6.	Shri Jay Karan Singh	Jt. DGFT
7.	Shri AkashTaneja	Jt. DGFT
8.	Shri Lokesh H.D	Jt. DGFT
9.	Shri S.K. Mohapatra	Dy. DGFT

Following cases were discussed. The decision taken on the individual cases are as under: -

Case No.1: M/s. Welspun India Ltd., Mumbai. (P.H. Case)
F.No. 01/92/180/86/AM-15/PC-VI/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Rejection of TED refund by RA, Mumbai for supply against invalidation letter of Advance Authorization – Request for relaxation in Para 8.3 & 8.4 of FTP, 2009-14 for refund of TED.

In terms of Para 2.59 of FTP, 2015-2020, the applicant had sought personal hearing which was afforded on 19.04.2017. Mr. Parasmal Jain, President and Mr. Rakesh Prashad, General Manager from M/s. Welspun India Ltd., Mumbai appeared before the committee and made the following submissions:

1. They had obtained Advance Authorisation No 0310703624 dated 31.07.2012 for import of duty free goods. However, the said Authorisation was Invalidated to procure the duty free goods from domestic sources i.e. from M/s Indorama Synthetic Ltd. Nagpur.
2. The FTP allows procurement of raw materials from domestic sources without payment of applicable excise duty. However, the Excise Notification No 44/2001 dated 26.06.2001 allows removal of intermediate goods without payment of excise duty provided resultant products are exported from designated ports listed therein.
3. They are manufacturer of Non-Woven Articles in the form of Tap Rolls (Blend of Polyester & Viscose Fibre) and their plant is situated at Anjar, Gujarat which is approximately 45 Km away from Mundra Port. However, Mundra port was not designated port, as per the said Notification.
4. All their export products could be exported only in Containerized form. The nearest containerized Port from their plant was Mundra Port.
5. Kandla Port was the only nearest designated port but it does not handle containerize vessel hence, containerized cargo cannot be shipped from the said port. Kandla Port handles only break bulk vessel/tanks vessel only.

6. Other port was JNPT, which is around 1000km away but transportation cost was in multi fold than Mundra port.
7. Due to that reason, they have been exporting their products through Mundra Port only. Since Mundra Port was not included in the Notification No.44/2001 CE dated 26.06.2001, they were not eligible for excise duty exemption under the said notification. Therefore, they were forced to pay duty while procuring goods from M/s Indorama Synthetic.
8. Now, the Mundra port has also been included in the said notification w.e.f. 26th May, 2015 vide Notification No.16/2015 CE on their request dated 01.02.2014. This confirms their contention that the exemption from payment of duty prior 26th May 2015 was not available.
9. Their request for refund of TED has been rejected by RA, Mumbai on the ground that supply against an Invalidation letter is exempted from payment of duty hence, refund is not allowed.
10. PRC in its meeting dated 13.08.2015 has also rejected their request on the ground that Kandla was nearest port than Mundra port therefore exports must had been made from Kandla port to avail duty exemption.
11. However, the facts stated above was forced us to export from Mundra port. And, committee rejected my case without considering the complete facts.

They therefore requested to reconsider the case and allow refund of duty, as they have exported goods using duty paid goods in the resultant product.

Decision:

Having heard to Mr. Jain and Mr. Prasad and taking into consideration the submissions made by the applicant, the case was discussed at length. It was noted that though the FTP allows exemption from payment of all applicable duties on importation of goods as well on domestically sourcing of goods against Advance Authorisation, the corresponding Excise Notification No 44/2001 issued by CBEC allows exemption from payment of duty provided finished goods are exported from the designated customs port only. Mundra port was not the designated port before 26.05.2015. Therefore, the applicant had no option but to pay duty while procuring goods from domestic sources. However, the government policy is that the tax and duties should not be exported along with the goods. In, the case under consideration, the applicant has exported goods using duty paid inputs. Taking into consideration the genuine hardship, the committee decided the following:

i. Refund of TED paid on locally sourced goods be allowed.
ii. RA shall, however, ensure that no CENVAT credit was availed by the recipient of goods that is the applicant and no refund of excise duty was availed by supplier of goods from his excise Authority. To this effect, certificate from both the jurisdictional Excise Authorities shall be furnished by the applicant.
iii. The applicant shall also submit an affidavit on stamp paper duly Notarized and affirming therein that in case of any loss/demurrage to the exchequer is noticed in future, they shall pay immediately the amount so claimed along with applicable interest to the RA without any protest.

(Action: Applicant/RA, Mumbai)

Case No.2: M/s. Jindal Aluminium Ltd., Bengaluru.
F.No. 01/60/162/499/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017

Subject: Request for revalidation of Advance Authorization No.0710103218 dt. 26.03.2014.

Decision: The Committee observed that the Authorisation was issued having initial validity of 12 months. The RA, on request of the applicant, has allowed further revalidation for 6 months. Despite that they could not utilize the Authorisation fully. It was noted that out of 16 inputs permitted in the Authorisation, they have imported almost full quantity under 10 items. No valid reason is given by the applicant for not importing balance quantity under remaining 6 items within initial as well as extended validity. The applicant was very well aware that no revalidation beyond 18 months is allowed as per the policy. Therefore, imports must have been completed within the validity of the Authorisation. From the submissions made by the applicant, no case of genuine hardship is established. Hence, the Committee did not accede to the request.

(No Action)

Case No.3: M/s. Alstom India Ltd., Mumbai.
F.No. 01/60/162/926/AM16/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for 2nd revalidation of Advance Authorization No.0310786768 dt. 14.07.2014.

Decision: On perusal of a report provided by the RA, Mumbai, it was noted that the applicant did not submit any request to RA for seeking further revalidation. The Authorisation was obtained by the applicant being sub-contractor for supply of goods to a turnkey project against the Project Authority Certificate No. COCONST/0014t/nntpp/nta1sg/2012 DT. 15.05.2014 issued by Neyveli Lignite Corporation Ltd., Tamil Nadu who is the main contractor. In terms of Para 4.17 and 4.22 of HBP, 2015-2020, validity and export obligation period of the Authorisation shall be co-terminus with the contractual duration of the project. The committee, therefore, was of the opinion that no policy relaxation is required in such cases. The applicant, if he so wishes, should approach the RA, concerned with a valid contract copy issued by the project Authority indicating therein the last date of completion of the project.

(Action: Applicant/RA, Mumbai)

Case No.4: M/s. Thinq Pharma – CRO Ltd., Mumbai.
F.No. 01/60/162/678/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request to delete the condition of Policy Circular No.9 in respect of Advance Authorization No.0310740446 dt. 05.07.2013.

Decision: The Committee noted that the above Advance Authorisation was issued under PC-9 conditions. However, it was observed that the import item 4-Hydroxyphyneyl – Ethanolamine Hydrochloride is chemical and not a Drug. The committee was of the views that RA should have not imposed the condition of PC-9 while issuing the Authorisation. If it was imposed by mistake, then it should have been deleted subsequently on the request of the applicant. The Committee, therefore, decided to delete the PC-9 condition from the above mentioned Advance

Authorization. Consequent upon deletion of PC-9 condition, export obligation period would be restored to 18 months from the date of issue.

(Action : Applicant/RA, Mumbai)

Case No.5: M/s. UPL Ltd., Mumbai.
F.No. 01/60/162/902/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for (i) extension of EOP in the license for 1st six months upto 19.03.2015 and (ii) consideration of 7 S/Bills in Advance Authorization No.0310728821 dt. 20.03.2013 from Licence No.0310793481 dt. 02.02.2015 towards completion of EO and for redemption.

Decision: The committee noted that the Authorisation No.0310728821 dated 20.03.2013 was issued having initial obligation period of 18 months. However, the applicant has claimed to have completed 92% export obligation against Advance Authorization No.0310728821 and 101.47% export obligation against Advance Authorization No.0310793481. The committee, therefore decided the following:

i. Export obligation period under Advance Authorisation No 0310728821 dated 20.03.2013 be extended from 18 months to 24 months i.e. upto **31.03.2015**.
ii. This will, however, be subject to payment of composition fee @ 0.5% of unfulfilled FOB value for the period 18th month to 24th month.
iii. Shipments made through shipping Bill No 6488961 dated 06.12.2014, 6539353 dated 09.12.2014, 6587435 dated 11.12.2014, 6577917 dated 11.12.2014, 6601937 dated 12.12.2014, 6607536 dated 12.12.2014 and 6686629 dated 17.12.2014 indicating File No 653/AM15 shall be taken into account in the Authorisation dated 20.03.2013.
iv. This will, however, be subject to the condition that excess export of equal quantity was made under Authorisation dated 02.02.2015,
v. The resultant product exported under these shipping bills are same, as per the condition of the Authorisation dated 20.03.2013,
vi. A composition fee of Rs. 200/- per shipping bill shall be paid,
vii. RA shall ensure that these shipping bills were not taken into account under Advance Authorisation No. 0310793481 dt. 02.02.2015 for discharge of export obligation,
viii. The applicant shall also submit an affidavit on stamp paper duly Notarized and affirming therein that these shipping bills have not been taken into account/shall not be taken into account towards discharge of EO against Authorisation dated 02.02.2015 and, in case of any loss/demurrage to the exchequer is noticed in future, they shall pay immediately an equal amount along with applicable interest to the RA without any protest.

(Action : Applicant/RA, Mumbai)

Case No.6: M/s. SKC Chemie Pvt. Ltd., Mumbai.
F.No. 01/60/162/1012/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for revalidation of Advance Authorization No.0310735971 dt. 29.05.2013 due to delay in issue of EODC.

Decision: The Committee observed that the Authorisation was issued having initial validity of 12 months. The RA, on the request of the applicant, has allowed revalidation for further 6 months. Despite that they could not utilize the Authorisation. The request for enhancement was made on 22.07.2014 and RA allowed the same on 04.08.2014. Hence, no delay appears on the part of RA. The Authorisation was valid till 30.11.2014. Therefore, the applicant was enough time to make imports. The request for EODC was submitted after the validity of the Authorisation was expired i.e. on 18.11.2015. From the submissions made by the applicant, no case of genuine hardship is established. Hence, the Committee did not accede to the request.

(Action: Applicant / RA, Mumbai)

Case No.7: M/s. K.P. Packaging Ltd., Mumbai.
F.No. 01/60/162/356/AM16/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for clubbing of 3 Advance Authorizations No.(i) 0310468379 dt. 15.04.2008; (ii) 0310653795 dt. 15.09.2011 & (iii) 0310692803 dt. 30.04.2012.

Decision: The committee noted that the applicant obtained three Authorizations No.(i) 0310468379 dt. 15.04.2008; (ii) 0310653795 dt. 15.09.2011 & (iii) 0310692803 dt. 30.04.2012. They have effected 164.83% exports against Advance Authorisation No.0310468379 dt. 15.04.2008 by 27.10.2009. The applicant has not affected any export against Advance Authorizations No.0310653795 dt. 15.09.2011 and 0310692803 dt. 30.04.2012 but made imports. Clubbing of such Authorisation is not allowed. Exports made before issue of File number or Authorisation is not allowed to be accounted for discharge of EO. And, that is the case here. The committee, therefore, did not accede to the request.

The applicant hereby is directed to get two Authorisations regularized in terms of Para 4.49 of HBP, 2015-2020.

(Action: RA, Mumbai; if the applicant fails to get the case regularized within a month from the date of uploading of these minutes on the Directorate website, action under the provision of FT(DR) Act, shall be initiated.)

Case No.8: M/s. Upper India Smelting & Refinery Works, Gurgaon.
F.No. 01/60/162/191(i)/AM15/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for exemption from non-compliance of stipulated procedure – relaxation of Para 4.15 of HBP against Advance Authorization No.0510257884 dt. 05.02.2010.

Decision: The committee noted that in terms of Para 4.15 of HBP, 2009-2014, domestic sourcing of goods under Advance Authorisation is allowed provided back to back inland letter of credit is opened and endorsement to that effect is made by the Bank in the Authorisation. Alternatively, the Authorisation holder has option to get Invalidation letter/ARO from RA in the favour of supplier. Supplies made without indicating Advance Authorisation details are not allowed to be accounted for discharge of export obligation. However, supplies made by Intermediate Advance Authorisation holder to ultimate Advance Authorisation holder indication details of his Advance Authorisation in supply Invoices and within the validity of the recipients' Advance Authorisation then export obligation can be discharged. However, these facts are not clear from the submissions. Hence, the Committee did not accede to the request.

(Action: Applicant / RA, CLA, New Delhi).

Case No.9: M/s. Upper India Smelting & Refinery Works, Gurgaon.
F.No. 01/60/162/191(ii)/AM15/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for exemption from non-compliance of stipulated procedure – relaxation of Para 4.15 of HBP against Advance Authorization No.0510267704 dt. 07.07.2010.

Decision: The committee noted that in terms of Para 4.15 of HBP, 2009-2014, domestic sourcing of goods under Advance Authorisation is allowed provided back to back inland letter of credit is opened and endorsement to that effect is made by the Bank in the Authorisation. Alternatively, the Authorisation holder has option to get Invalidation letter/ARO from RA in the favour of supplier. Supplies made without indicating Advance Authorisation details are not allowed to be accounted for discharge of export obligation. However, supplies made by Intermediate Advance Authorisation holder to ultimate Advance Authorisation holder indication details of his Advance Authorisation in supply Invoices and within the validity of the recipients' Advance Authorisation then export obligation can be discharged. However, these facts are not clear from the submissions. Hence, the Committee did not accede to the request.

(Action: Applicant / RA, CLA, New Delhi).

Case No.10: M/s. Ashish Life Science Pvt. Ltd., Mumbai.
F.No. 01/60/162/1039/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for waiver from submission of documents as per PC-18 (Destruction Certificate) for shipment under S/Bill No.6263253 dt. 25.11.2014 in Advance Authorization No.0310787948 dt. 12.08.2014.

Decision: The committee noted that the Authorisation was issued with pre-import condition having export obligation period of 12 months from import of each consignment. The applicant has imported duty free drugs from unregistered sources on 16.09.2014 and 03.04.2015 and completed 100% export obligation within stipulated time. The applicant has stated that due to oversight goods under S/Bill No.6263253 dt. 25.11.2014 was shipped under Duty Drawback Scheme instead of Advance Authorization. However, the committee did not accede to the request on the ground that no drawback could be availed on duty free raw materials used in the resultant product. It tantamount to violation of drawback rules. Secondly, the quantity and description indicated in the DBK shipping bill does not match.

The applicant is hereby directed to get the shortfall regularized in terms of Para 4.49 of HBP, 2015-2020 following the condition of PC-18 dated 30.10.2007.

(Action: Applicant/RA, Mumbai: If the applicant fails to get the case regularised by submitting documents prescribed in terms of Para 4.49 of HBP read with PC-18 dated 30.10.2007 within a month from the date of uploading of these minutes on the Directorate website, penal action as per provisions of FT(DR)Act, 1992 as amended shall be initiated.)

(Action: Applicant / RA, Mumbai)

Case No.11: M/s. Loyal Textile Mills Ltd., Madurai
F.No. 01/60/162/1059/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for clubbing of 4 Advance Authorizations No.(i) 3510038573 dt. 15.06.2012; (ii) 3510039250 dt. 12.09.2012; (iii) 3510040463 dt. 14.03.2013 & (iv) 3510040981 dt. 13.05.2013.

Decision: The Committee noted that all 4 above referred Advance Authorisations were issued within 18 months of first Authorisation. The Committee, therefore, decided the following:

I. Clubbing of the 4 Advance Authorizations, as referred above be allowed.
II. Exports effected under subsequent Authorisations but within initial/extended export obligation period of first Authorisation shall only be taken into account.
III. Clubbing will be subject to the condition that all Authorisations were issued under same Customs Notification.
IV. RA shall examine the case in terms of Para 4.09 of FTP (2015-2020) and ensure value addition of minimum 15%. The 15% value addition for evaluating entitlement shall be applied on the clubbed FOB and CIF of the Authorizations.
V. RA shall ensure proper accounting of the duty free inputs with reference to the export product. Unaccounted inputs shall be regularized on payment of Customs Duty and applicable Interest in terms of Para 4.49 of HBP, 2015-2020.

(Action: Applicant / RA, Madurai)

Case No.12: M/s. UPL Ltd., Mumbai.
F.No. 01/60/162/1128/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for consideration of 4 S/Bills against Advance Authorization No.0310715360 dt. 21.11.2012 instead of Advance Authorization No.0310793481 dt. 02.02.2015 towards completion of EO for redemption.

Decision: The committee noted that the Authorisation No.0310715360 dated 21.11.2012 was issued having initial obligation period of 18 months, which was extended to 24 months by RA. The applicant has claimed to have completed 100% export obligation against Advance Authorization No. **0310715360 dt. 21.11.2012**. But, due to reduction in norms from 1.193 Kgs. to 1.095 Kgs. by the Norms Committee, export obligation quantity increased to 817124 Kgs. out of which they have already exported 768300 Kgs and additional exports to be made of 48424 Kgs. They have obtained another Advance Authorisation **No.0310793481 dt. 02.02.2015** under file No 653/AM15 and have made surplus exports thereunder. The committee, therefore decided the following:

(i) Export shipments effected indicating Authorisation No.0310793481 dated 02.02.2015 in the shipping bill No 6080644 dated 15.11.2014, 6156435 dated 20.11.2014, 6164790 dated 20.11.2014 and 6185765 dated 21.101.2014 shall be taken into account against Advance Authorisation No. **0310715360 dt. 21.11.2012**.

(ii) This will, however, be subject to the condition that excess export of equal quantity was made under Authorisation dated 02.02.2015,

(iii) The resultant product exported under these shipping bills are same, as per the condition of the Authorisation dated 21.11.2012,

(iv) A composition fee of Rs. 200/- per shipping bill shall be paid,

(v) RA shall ensure that the same shipping bills were not taken into account under Advance Authorisation No. 0310793481 dt. 02.02.2015 for discharge of export obligation, and

(vi) The applicant shall also submit an affidavit on stamp paper duly Notarized and affirming therein that these shipping bills have not been taken into account/shall not be taken into account towards discharge of EO against Authorisation dated 02.02.2015 and, in case of any loss/demurrage to the exchequer is noticed in future, they shall pay immediately an equal amount along with applicable interest to the RA without any protest.

(Action : Applicant/RA, Mumbai)

Case No.13: M/s. Indogulf Cropsciences Ltd., Delhi.
F.No. 01/60/162/1054/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request of condonation of E.O. against Advance Authorization No.0510391892 dt. 07.11.2014.

Decision: The committee noted the submissions of the applicant that they could not fulfill balance 20% export obligation because remaining raw materials were destroyed due to fire accident in their factory. However, the committee, was of the view that duty and interest liability cannot be condoned/waived on that ground because PRC has no power to waive duty, as the same is levied under Customs Act. Secondly, the applicant was eligible for insurance claim for demurrage/loss. Hence, the request cannot be acceded to.

(Action : Applicant/RA, CLA, New Delhi)

Case No.14: M/s. J.B. Chemicals & Pharmaceuticals Ltd., Mumbai.
F.No. 01/60/162/1127/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for EOP extension of Advance Authorization No.0310799926 dt. 02.11.2015 issued under PC-9 conditions.

Decision: The Committee noted that the Authorization was issued with conditions stipulated under PC-9 dated 30.06.2003 read with Appendix-4J of HBP 2015-20, which allows 12 months' period for EO fulfillment from import of each consignment. The applicant has imported goods on 19.11.2015 & 27.11.2015. Accordingly, initial obligation period was upto 18.11.2016 & 26.11.2016, respectively. The applicant has stated to have completed more than 50% of its stipulated export obligation during the initial export obligation period. Taking into consideration all these facts, the Committee decided the following:

I. Export obligation period be extended from 12 months to 18 months against each import consignments i.e. upto **31.05.2017**.
II. This will, however, be subject to payment of a composition fee @ 0.5% per month of FOB value of exports made after initial obligation period.
III. RA shall check that minimum 50% exports, even on pro-rata basis, are made against each consignment, within its initial obligation period. If not, composition fee will be charged @ 1% per month of unfulfilled FOB value.
IV. The minimum value addition of 15% as prescribed under Para 4.09 of FTP (2015-2020) shall be maintained.

(Action : Applicant/RA, Mumbai)

Case No.15: M/s. Lyka BDR International Ltd., Mumbai.
F.No. 01/60/162/1049/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request to allow amendment for extension and then regularize the case in Advance Authorization No.0310786657 dt. 10.07.2014.

Decision: The Committee noted that the Authorization was issued with conditions stipulated under PC-9 dated 30.06.2003 read with Appendix-30A of HBP 2009-14, which allows 12 months' period for EO fulfillment from import of each consignment. The applicant has imported goods on 12.07.2014. Accordingly, initial obligation period was upto 31.07.2015. The applicant has stated to have completed 97.57% export obligation within initial period and remaining thereafter. Taking into consideration all these facts, the Committee decided the following:

I. Export obligation period be extended from 12 months to 18 months i.e. upto **31.01.2016** for regularization purpose of exports already effected.
II. This will, however, be subject to payment of a composition fee @ 0.5% per month of FOB value of exports made after initial obligation period.
III. RA shall check that minimum 50% exports, even on pro-rata basis, are made against each consignment, within its initial obligation period. If not, composition fee will be charged @ 1% per month of unfulfilled FOB value.
IV. The minimum value addition of 15% as prescribed under Para 4.09 of FTP (2015-2020) shall be maintained.

(Action : Applicant/RA, Mumbai)

Case No.16: M/s. Lyka BDR International Ltd., Mumbai.
F.No. 01/60/162/1052/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request to extension of E.O. period by 6 months against Advance Authorization No.0310792931 dt. 15.01.2015 issued under PC-9 condition.

Decision: The Committee noted that the Authorization was issued with conditions stipulated under PC-9 dated 30.06.2003 read with Appendix-30A of HBP 2009-14, which allows 12 months' period for EO fulfillment from import of each consignment. The applicant has imported goods on 23.03.2015 & 26.05.2015. Accordingly, initial obligation period was upto 22.03.2016 & 25.05.2016, respectively. The applicant has stated to have completed more than 50% of its stipulated export obligation during the initial export obligation period. Taking into consideration all these facts, the Committee decided the following:

I. Export obligation period be extended from 12 months to 18 months against each import consignment i.e. upto **30.09.2016 & 30.11.2016**.
II. This will, however, be subject to payment of a composition fee @ 0.5% per month of FOB value of exports made after initial obligation period.
III. RA shall check that minimum 50% exports, even on pro-rata basis, are made against each consignment, within its initial obligation period. If not, composition fee will be charged @ 1% per month of unfulfilled FOB value.
IV. The minimum value addition of 15% as prescribed under Para 4.09 of FTP (2015-2020) shall be maintained.

(Action : Applicant/RA, Mumbai)

Case No.17: M/s. Torrent Pharmaceuticals Ltd., Ahmedabad.
F.No. 01/60/162/1053/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for EOP extension against Advance Authorization No.0810134923 dt. 25.03.2015 under Para 4.42 (b) of HBP 2015-20 issued under PC-9 condition.

Decision: The Committee noted that the Authorization was issued with conditions stipulated under PC-9 dated 30.06.2003 read with Appendix-30A of HBP 2009-14, which allows 12 months' period for EO fulfillment from import of each consignment. The applicant has imported goods on 11.08.2015. Accordingly, initial obligation period was upto 31.08.2016. The applicant has stated to have completed less than 50% of its stipulated export obligation during the initial export obligation period. Taking into consideration all these facts, the Committee decided the following:

I. Export obligation period be extended from 12 months to 18 months against import consignment i.e. upto **28.02.2017** for regularization of exports already effected.
II. This will, however, be subject to payment of a composition fee @ 1% per month of FOB value of exports made after initial obligation period.
III. The minimum value addition of 15% as prescribed under Para 4.09 of FTP (2015-2020) shall be maintained.

(Action : Applicant/RA, Ahmedabad)

Case No.18: M/s. The Supreme Industries Ltd., Mumbai.
F.No. 01/60/162/1140/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for revalidation of Advance Authorization No.0310792783 dt. 09.01.2015 for a period of 3 months.

Decision: The Committee noted that In terms of Para 2.21.1 of HBP, 2009-2014, the Authorisation was valid till last date of month and goods so imported are allowed to be cleared provided Bill of Lading is issued before expiry of the Authorisation. In this case Authorisation was issued on 09.01.2015 having 12 months validity. RA has allowed revalidation for further six months i.e. upto 08.07.2016. The Authorisation was deemed to be valid till 31.07.2016. The applicant attempted to clear the goods shipped on 19.07.2016. But, RA, did not extend validity till last date of the month. Subsequently, the issue was clarified by the H.Q. Meanwhile, goods imported was cleared on payment of duty. However, the committee felt that though the applicant was deprived from his bonafide dues but they imported goods at fag end of expiry of the Authorisation. The committee, therefore, decided to allow revalidation for 23 days only, for which Authorisation was deemed to be valid, from the date of endorsement. The applicant is hereby directed to submit the Authorisation to RA for necessary endorsement within a month from the date of uploading of these minutes on the Directorate website.

(Action: Applicant/RA, Mumbai)

Case No.19: M/s. Lubi Industries LLP, Ahmedabad.
F.No. 01/60/162/086/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for Automatic extension of EOP under Para 4.42(e) until the authorization is amended under Rule 8 of FT(R) Rules, 1993 and make it available in customs EDI with new IEC No.08102023862 against Advance Authorization No.0810090670 dt. 21.07.2010.

Decision: The committee noted that the Authorisation was obtained on 21.07.2010 by M/s Lubi Submersible, which was amalgamated with M/s Arvind Iron Pvt Ltd with assets and liabilities on 05.12.2012. M/s Arvind Iron Pvt Ltd changed its name as M/s Lubi Industries Ltd and obtained new IEC. Duty free import were made against the Authorisation but no export obligation has been discharged either by original Authorisation holder or by the company who has acquired the assets and liabilities.

The committee was of the view that M/s Arvind Iron was fully aware with the assets and liability of M/s Lubi Submersible. They were also aware with the facts that name, address and other details can be changed in the Authorisation but IEC code cannot be changed. IEC code is permanent number. Further, the Authorisation was issued having initial export obligation period of 36 months and no extension was allowed as per the prevalent policy. Therefore, they had option to pay duty plus interest immediately after the assets and liability were acquired or alternatively export obligation should have been discharged by 31.07.2013.

The provisions of Para 4.42(e) of HBP quoted by the applicant is applicable where the government imposes a ban on export of a particular item. The export item permitted in the Authorisation was never put under the ban list. The committee, therefore, did not accede to the request.

The applicant is hereby directed to get the case regularized in terms of Para 4.49 of HBP, 2015-2020.

(Action: Applicant/RA, Ahmedabad: If the applicant fails to get the case regularised within a month from the date of uploading of these minutes on the Directorate website, penal action as per provisions of FT(DR)Act, 1992 as amended shall be initiated.)

Case No.20: M/s. Talampally Rubbers P. Ltd., Bidar (Karnataka).
F.No. 01/60/162/1135/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for policy relaxation and grant 2nd revalidation of restricted import Licence No.0750000833 dt. 05.12.2014.

Decision: The Committee observed that the Import Authorisation was issued having initial validity of 18 months. RA has allowed revalidation for further 6 months, as per request of the applicant. Despite that they could not utilized the Import Authorisation. From the submissions made by the applicant, no case of genuine hardship is established. Item permitted in the Authorisation is restricted for import. Hence, the Committee did not accede to the request. The applicant can apply a fresh for new Authorisation.

(Action: Applicant / RA, Bengaluru)

Case No.21: M/s. Sukaso Ceracolors Pvt. Ltd., Hyderabad.
F.No. 01/60/162/967/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for condone the technical error and regularize the Advance Authorization No.0910039072 dt. 27.08.2009.

Decision: The committee noted that as per ITC(HS) Code 25059000 export item Sand and soil are subject to export Licence. The item exported by the applicant is neither sand nor soil but it is manufactured out of Sand. However, CBEC vide Circular No 556/2000 dated 31.10.2000 classified the item under HS code 25059000, which falls under category of restricted items and hence Export Licence was required before making shipment. The applicant has, therefore, applied for export Licence.

The committee noted that the export item permitted in the Advance Authorisation is neither soil nor sand but the same is manufactured out of soil and sand. Therefore, the Committee after deliberation in detail decided to regularise the Advance Authorisation without insisting for separate Export Licence.

(Action: Applicant/RA, Hyderabad)

Case No.22: M/s. Sukaso Ceracolors Pvt. Ltd., Hyderabad.
F.No. 01/60/162/968/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for condone the technical error and regularize the Advance Authorization No.0910041758 dt. 22.04.2010.

Decision: The committee noted that as per ITC(HS) Code 25059000 export item Sand and soil are subject to export Licence. The item exported by the applicant is neither sand nor soil but it is manufactured out of Sand. However, CBEC vide Circular No

556/2000 dated 31.10.2000 classified the item under HS code 25059000, which falls under category of restricted items and hence Export Licence was required before making shipment. The applicant has, therefore, applied for export Licence.

The committee noted that the export item permitted in the Advance Authorisation is neither soil nor sand but the same is manufactured out of soil and sand. Therefore, the Committee after deliberation in detail decided to regularise the Advance Authorisation without insisting for separate Export Licence.

(Action: Applicant/RA, Hyderabad)

Case No.23: M/s. Sukaso Ceracolors Pvt. Ltd., Hyderabad.
F.No. 01/60/162/962/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for condone the technical error and regularize the Advance Authorization No.0910043873 dt. 11.10.2010.

Decision: The committee noted that as per ITC(HS) Code 25059000 export item Sand and soil are subject to export Licence. The item exported by the applicant is neither sand nor soil but it is manufactured out of Sand. However, CBEC vide Circular No 556/2000 dated 31.10.2000 classified the item under HS code 25059000, which falls under category of restricted items and hence Export Licence was required before making shipment. The applicant has, therefore, applied for export Licence.

The committee noted that the export item permitted in the Advance Authorisation is neither soil nor sand but the same is manufactured out of soil and sand. Therefore, the Committee after deliberation in detail decided to regularise the Advance Authorisation without insisting for separate Export Licence.

(Action: Applicant/RA, Hyderabad)

Case No.24: M/s. Sukaso Ceracolors Pvt. Ltd., Hyderabad.
F.No. 01/60/162/966/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for condone the technical error and regularize the Advance Authorization No.0910049785 dt. 18.11.2011

Decision: The committee noted that as per ITC(HS) Code 25059000 export item Sand and soil are subject to export Licence. The item exported by the applicant is neither sand nor soil but it is manufactured out of Sand. However, CBEC vide Circular No 556/2000 dated 31.10.2000 classified the item under HS code 25059000, which falls under category of restricted items and hence Export Licence was required before making shipment. The applicant has, therefore, applied for export Licence.

The committee noted that the export item permitted in the Advance Authorisation is neither soil nor sand but the same is manufactured out of soil and sand. Therefore, the Committee after deliberation in detail decided to regularise the Advance Authorisation without insisting for separate Export Licence.

(Action: Applicant/RA, Hyderabad)

Case No.25: M/s. Sukaso Ceracolors Pvt. Ltd., Hyderabad.
F.No. 01/60/162/965/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for condone the technical error and regularize the Advance Authorization No.0910048701 dt. 09.09.2011.

Decision: The committee noted that as per ITC(HS) Code 25059000 export item Sand and soil are subject to export Licence. The item exported by the applicant is neither sand nor soil but it is manufactured out of Sand. However, CBEC vide Circular No 556/2000 dated 31.10.2000 classified the item under HS code 25059000, which falls under category of restricted items and hence Export Licence was required before making shipment. The applicant has, therefore, applied for export Licence.

The committee noted that the export item permitted in the Advance Authorisation is neither soil nor sand but the same is manufactured out of soil and sand. Therefore, the Committee after deliberation in detail decided to regularise the Advance Authorisation without insisting for separate Export Licence.

(Action: Applicant/RA, Hyderabad)

Case No.26: M/s. Prabhu Polycolor Ltd., Chennai.
F.No. 01/60/162/803/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for EOP extension of Advance Authorization No.0410130643 dt. 21.11.2011.

Decision: The committee noted that the Authorisation in question was issued to allow duty free import of raw materials and having export obligation period of 36 months. The applicant has imported 94.091MTs duty free raw materials and out of which only 18.54MTs were utilised towards discharge of stipulated export obligation. The applicant was very well aware that no extension in export obligation period was allowed as per the prevalent policy. However, PRC in its meeting dated 29.11.2016 has considered request for six months extension. Despite that they could fulfil only 18% export obligation. The committee allows extension provided minimum 50% export obligation is fulfilled within initial export obligation period. The plea that due to sudden demise of their Managing Director they had lost many export orders and he was one who was looking after entire manufacturing process, was not acceptable to the committee being a public limited company. Demise of one person cannot effect entire functioning of a limited company for three years. If there was any genuine problem, they should had approached to the PRC immediately after expiry of EO period. The committee, therefore, did not accede to the request.

The applicant is hereby directed to get the case regularised in terms of Para 4.49 of HBP, 2015-2020.

(Action: Applicant/RA, Chennai; if the applicant fails to get the case regularised within a month from uploading of these minutes on the Directorate website, action under the provisions of FT(DR)Act,1992 as amended shall be initiated)

Case No.27: M/s. BDR Pharmaceuticals P. Ltd., Mumbai.
F.No. 01/60/162/1166/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for EOP extension & waiver of PC-18 condition of Advance Authorization No.0310782569 dt. 22.05.2014 issued under PC-9 condition.

Decision: The Committee noted that the Authorization No. 0310782569 dt. 22.05.2014 was issued with conditions stipulated under PC-9 dated 30.06.2003 read with Appendix-30A, which allows 12 months period for EO fulfillment from import of each consignment. The imports were made on 30.08.2014 & 28.03.2015. Accordingly, initial obligation period was upto 31.08.2015 & 31.03.2016. The applicant has stated to have fulfilled 48% export obligation during the initial export obligation period and remaining thereafter. Taking all these facts into account, the Committee decided the following:

I. Export obligation period be extended from 12 months to 18 months against import of each consignments i.e. upto **28.02.2016 & 30.09.2016, respectively.**
II. This is only for accounting and regularization of exports already effected.
III. This is subject to a payment of composition fee @ 1% on FOB value of export made after initial obligation period.
IV. The minimum value addition of 15% as prescribed under Para 4.09 of FTP(2015-2020) shall be maintained.
V. PC-18 condition be waived on exports made after 30.09.2016.
VI. However, the shortfall shall be regularised in terms of Para 4.49 of HBP, 2015-20.

(Action: Applicant/RA, Mumbai)

Case No.28: M/s. Kikani International Pvt. Ltd., Mumbai.
F.No. 01/60/162/1251/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for revalidation of SHIS Licence No.0310746993 dt. 27.08.2013 issued under Chapter-3 of FTP 2009-2014 expired in the custody or RA, Mumbai and as per Order-in-Appeal passed by them.

Decision: The committee noted that the Applicant had obtained SHIS from RA, Mumbai on 27.08.2013. During the same period his branch office at Coimbatore had obtained two EPCG Authorisations under Zero duty scheme contravening the Para 5.1(F) of FTP, 2009-2014. However, on realising the mistake, they surrendered one Authorisation unutilised and another one partially utilised and paid duty and interest for utilised portion. Meanwhile, RA Mumbai issued SCN for obtaining EPCG Authorisations incorrectly. The applicant accordingly surrendered the SHIS scrip on 10.02.2015 as a security deposit. And, the scrip was valid till 26.02.2015. However, the scrip was retuned by RA on next day but the applicant again surrendered the same on 25.02.2015.
There was inconsistency in the Para 5.1(f) of FTP and Para 3.10.3(b) of HBP. Therefore, vide Public Notice No 30/2015 dated 08.09.2016 it has been clarified that export can surrender either of benefit.

Addl. DGFT, Mumbai vide order-in appeal dated 01.01.2017 has set aside the order of Adjudicating Authority for de novo consideration and also directed to revalidate Scrip in terms of Para 2.13.1 of HBP. The RA vide letter dated 21.02.2017 has informed that Authorisation can be revalidated only for a day in terms of Para 2.13.1 and 2.13.2 of HBP. The applicant therefore approached to the PRC for getting revalidation.

Taking in to consideration the above facts, the committee was of the opinion that since the applicant has surrendered EPCG Authorisations unutilised, the applicant was eligible for SHIS scrip. As the applicant could not utilise the SHIS due to uncertainty, the committee decided to revalidate the Scrip for three months from the date of endorsement.

The applicant is directed to submit the scrip to RA for necessary endorsement within a month from the date of uploading of these minutes on the Directorate website.

(Action: Applicant/RA, Mumbai)

Case No.29: M/s. Cadila Healthcare Ltd., Ahmedabad.
F.No. 01/60/162/1202/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for EOP extension of Advance Authorization No.0810096408 dt. 18.02.2011 issued under PC-9 condition.

Decision: The Committee noted that the Authorization No.0810096408 dt. 18.02.2011 was issued with conditions stipulated under PC-9 dated 30.06.2003 read with Appendix-30A, which allows 12 months period for EO fulfillment from import of each consignment. The imports were made on 24.02.2011. Accordingly, initial obligation period was upto 28.02.2012. The applicant has stated to have fulfilled 93.33% export obligation during the initial export obligation period and remaining 6.67% thereafter. Taking all these facts into account, the Committee decided the following:

I. Export obligation period be extended from 12 months to 18 months i.e. upto **31.08.2012.**
II. This is only for accounting and regularization of exports already effected.
III. This is subject to a payment of composition fee @ 0.5% per month on FOB value of export made after initial obligation period.
IV. RA shall check that minimum 50% exports were completed within initial obligation period. If not, composition fee will be charged @ 1% per month of unfulfilled FOB value.
V. The minimum value addition of 15% as prescribed under Para 4.09 of FTP(2015-2020) shall be maintained.

(Action: application/R.A., Ahmedabad)

Case No.30: M/s. Colour Roof (I) Ltd., Mumbai.
F.No. 01/60/162/1208/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017

Subject:- Request for EOP extension of Advance Authorization No.0310468793 dt. 17.04.2008.

Decision: The committee noted that the Authorisation was issued having initial export obligation period of 24 months, which was extended to 36 months vide PN 151 dated 26.02.2009 read with Policy Circular No 80 dated 13.04.2009. No further extension was allowed in such Authorisation. Accordingly, the export obligation period under this Authorisation had expired on 30.04.2011. The applicant has approached the PRC after five years from expiry of the export obligation period. The committee, did not find any merit in the case hence, rejected the request.

The committee further noted that no action has been initiated by RA against the applicant whereas export obligation period has expired in 2012. The committee viewed it very seriously considering total monitoring failure on the part of RA. The committee, therefore, directed the RA, Mumbai to submit step wise action taken report within a month from the date of uploading of these minutes on the Directorate website.

(Action: Applicant/RA, Mumbai)

Case No.31: M/s. Colour Roof (I) Ltd., Mumbai.
F.No. 01/60/162/1207/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for EOP extension of Advance Authorization No.0310466693 dt. 28.03.2008.

Decision: The committee noted that the Authorisation was issued having initial export obligation period of 24 months, which was extended to 36 months vide PN 151 dated 26.02.2009 read with Policy Circular No 80 dated 13.04.2009. No further extension was allowed in such Authorisation. Accordingly, the export obligation period under this Authorisation had expired on 31.03.2011. The applicant has approached the PRC after five years from expiry of the export obligation period. The committee, did not find any merit in the case hence, rejected the request.

The committee further noted that no action has been initiated by RA against the applicant whereas export obligation period has expired in 2012. The committee viewed it very seriously considering total monitoring failure on the part of RA. The committee, therefore, directed the RA, Mumbai to submit step wise action taken report within month from the date of uploading of these minutes on the Directorate website.

(Action: Applicant/RA, Mumbai)

Case No.32: M/s. Colour Roof (I) Ltd., Mumbai.
F.No. 01/60/162/1194/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for EOP extension of Advance Authorization No.0310575439 dt. 21.05.2010.

Decision: The committee noted that the Authorisation was issued having initial export obligation period of 24 months, which was extended to 36 months vide PN 151 dated

26.02.2009 read with Policy Circular No 80 dated 13.04.2009. No further extension was allowed in such Authorisation. Accordingly, the export obligation period under this Authorisation had expired on 31.05.2013. The applicant has approached the PRC after four years from expiry of export obligation period. The committee, did not find any merit in the case hence, rejected the request.

The committee further noted that no action has been initiated by RA against the applicant whereas export obligation period has expired in 2012. The committee viewed it very seriously considering total monitoring failure on the part of RA. The committee, therefore, directed the RA, Mumbai to submit step wise action taken report within month from the date of uploading of these minutes on the Directorate website.

(Action: Applicant/RA, Mumbai)

Case No.33: M/s. Colour Roof (I) Ltd., Mumbai.
F.No. 01/60/162/1206/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for EOP extension of Advance Authorization No.0310429740 dt. 17.05.2007.

Decision: The committee noted that the Authorisation was issued having initial export obligation period of 24 months, which was extended to 36 months vide PN 151 dated 26.02.2009 read with Policy Circular No 80 dated 13.04.2009. No further extension was allowed in such Authorisation. Accordingly, the export obligation period under this Authorisation had expired on 31.05.2010. The applicant has approached the PRC after seven years from expiry of export obligation period. The committee, did not find any merit in the case hence, rejected the request.

The committee further noted that no action has been initiated by RA against the applicant whereas export obligation period has expired in 2012. The committee viewed it very seriously considering total monitoring failure on the part of RA. The committee, therefore, directed the RA, Mumbai to submit step wise action taken report within month from the date of uploading of these minutes on the Directorate website.

(Action: Applicant/RA, Mumbai)

Case No.34: M/s. Cotmac Electronics (Surat) Pvt. Ltd., Surat.
F.No. 01/60/162/1223/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for waiver of Bill of Export for redemption of Advance Authorization No.3110036071 dt. 14.11.2008.

Decision: The Committee noted that in terms of Para 4.12 of FTP, 2015-20, exporter is required to mention consumption of duty free inputs in the shipping bill (in case of export by ship)/ bill of export (in case export by land customs) towards discharge of export obligation against Advance Authorization. In the instant case, exports were made to SEZ unit without generating Bill of Export. ARE-1 does not bear such information and valuation of ARE-1 is not being done by the Customs Authority. Further, in terms of Rule 30 of SEZ Rules, 2006, Bill of Export is a mandatory document for claiming incentives on such export. Hence, requirement of Bill of Export cannot be dispensed with for discharge of export obligation against Advance Authorisation. The committee, therefore, did not accede to the request. The applicant is here by directed to get the case regularized in terms of Para 4.49 of HBP, 2015-20.

(Action: Applicant/RA, Pune)

Case No.35: M/s. Versa Designs, New Delhi.
F.No. 01/60/162/1119/AM17/PRC
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject: Request for condonation of mentioning wrong SION in the S/Bill under Advance Authorization No.0510392670 dt. 02.01.2015.

Decision: The committee noted that the Authorisation in question was issued under SION Sl No 71/275. Whereas, some shipments were made indicating SION 71/196. However, description of resultant product was mentioned correctly, as per the condition in the Authorisation. The committee, therefore, decided to allow accounting of such shipping bills for discharge of export obligation provided other conditions are met.

(Action: Applicant/ R.A., CLA, New Delhi)

Case No.36: M/s. Mahindra & Mahindra Ltd: Mumbai.
F.No. 01/89/180/14/AM-10/PC-2[A]/Part.1
PRC Meeting No. 02/AM18 dated 19.04.2017
Subject:- Request for grant of relaxation of Para 2 (II) (a) (iv) for import of a brand new SUV from Australia for R&D Purpose which was manufactured in USA.

Decision: The committee decided to relax the condition of Para 2(ii)(a)(iv) of Chapter 87 of import policy for import of one SUV from Australia with following conditions:

I. Import should be made through the designated ports only.
II. Vehicles shall not ply on public roads except at the time of mobilization and de-mobilization and that the equipment would be used only at the project site.
III. The vehicle will be re-exported after completion of project.

(Action: PC-2(A) Section)

CaseNo-37: M/s Pushkar Impex Pvt Ltd, Kolkata in WP no-1284/2014 and CC N0-215/2015
F.No 01/60/162/30/AM18/
PRC Meetingno-02/AM18dated19.4.2017.
This case was earlier discussed in Policy Relaxation Commitee meeting headed by DGFT on 11.4.2017. As directed by PRC, regional office Kolkata has issued a letter

dated 12.4.2017 to M/s Pushkar Impex Pvt Ltd, Kolkata to attend personal hearing before PRC on 19.4.2017. However, a letter dated 17.4.2017 was received from M/s Khaitan & co, Advocates saying that they are not liable to attend Personal hearing before DGFT, as in their opinion, the personal hearing before the Director General of Foreign trade on 19th April 2017 is not in terms of the order dated 17.2.2017 of the Hon'ble High Court.

In this matter committee has gone into order dated 11.2.2015 passed by Hon'ble High Court. It is stated in the order that:

> *"I was shown the Foreign Trade [Regulation] Rules, 1993. Rule 7 deals with the grounds for refusal or renewal of a licence. It does not appear from an examination of rule 7 that pendency of an investigation is a ground for not renewing the licence issued by the Foreign Trade Development Authorities. It is submitted on behalf of the petitioners that investigation has not even commenced whereas it is the respondents' contention that a full-fledged investigation is on.*
>
> *In those circumstances, the impugned letters dated 1st August, 2014 and 8th August, 2014 are set aside. The Joint Director General of Foreign Trade or his delegate is directed to consider renewal of the petitioners' licence, afresh by hearing the petitioners and by a reasoned order to be made within eight weeks of communication of this order. The DRI will also be permitted to participate in the hearing, if so allowed by the Foreign Trade Development Officer."*

Consequent upon this order, Joint Director General of Foreign Trade, has revalidated the DFIAs in question for a period of six months from the date of expiry. It is observed by the committee that the Joint Director General of Foreign Trade has the power to revalidate the licence only for six months and that too from the date of expiry. It is further observed by the committee that Joint Director General of Foreign Trade has no power beyond, as stated above, to grant of one revalidation. However, in this case Hon'ble High Court directed the Joint Director General of Foreign Trade to pass order to decide revalidation. In effect, the order of hon'ble High Court directs an officer to decide a matter which is beyond his powers. Therefore, on a reference from the Joint Director General of Foreign Trade, Kolkata, it was decided to takeup the matter in Policy Relaxation Committee meeting headed by DGFT.

Further committee observed that the petitioner's Counsel has misled the Hon'ble High Court stating that investigations have not even commenced. This was recorded in Hon'ble High court's order dated 11.2.2015. However, the statement made by the petitioners found to be false because Show cause notice dated 31.3.2016 issued by DRI, it is noticed that before the date of court order active investigation was conducted. The details are as under:

i. Various suspected premises were raided on 02.01.2013 and Rs.17,22,72,185/- was seized, which DRI has reasons to believe that money recovered were part of the sale proceeds of the goods which were imported duty free by the petitioner under export incentive scheme and diverted in the domestic market violating the conditions of the said export incentive scheme.

ii. On 16.01.2013 DRI visited firm's declared address located at '3 Shaheed Nityanand Sarani, Kolkata -700001 and found that firm was not existing in that place.
iii. On 6.2.2013 search in residential premises of a director Shri Radhe shyam Agarwal was conducted.
iv. Search in residential premises of another Director Shri Ashis Sen was conducted on 06.02.2013
v. On 11.02.2013 and 12.02.2013 Shri Ashis sen appeared before DRI and his statement was recorded u/s 108 of the Customs act.
vi. On 4.4.2013 Shri Ashis Sen appeared before DRI and his statement was recorded u/s 108 of the Customs act.
vii. On 23.05.2013 the petitioners were specifically asked to submit a copy of all documents they submitted to DGFT for discharge of export obligation.
viii. On 3.6.2013 the petitioners submitted and missed vital documents and the list of missing documents were mentioned in page 7 of SCN issued by DRI.
ix. On 24.6.2013 and 22.7.2013 Shri Ashis Sen failed to appear even after summons issued.
x. Summons were issued to a director by name Shri Prasad Banerjee on 26.3.2013, 29.10.2013 and on 04.11.2013 to appear. He failed to appear.
xi. 02.01.2013 Search operations were conducted on factory premises of the supporting manufacturer who supplied the material and statements of employees were recorded.
xii. Search was conducted on 17.01.2013 on the office premises of CHA and statement of the director and operation manage were recorded.
xiii. Statement was recorded on 30.1.2013 and on 06.12.2013 of proprietor of a transporter firm.
xiv. Statement of Authorized signatory of supporting manufacturer was recorded on 4.4.2013
xv. Statement of manager export/import of supplier was recorded on 03.04.2013
xvi. Statement of CFO of supplier company was recorded on 2.1.2013 and 1.4.2013.
xvii. Statement of accounts manager of supplier company was recorded on 4.6.2013 and 6.6.2013
xviii. CMD of supporting manufacturer repeatedly avoided summons and failed to appear.
xix. Statement of Director of company who received goods Shri Tara Chand Jain was recorded on 4.2.2013 and 4.4.2013

So it is very clear that enough evidences are available to prove that investigations were going on before petitioner's counsel made misleading statement before hon'ble High Court.

On 17.2.2017 Hon'ble high court passed an order which says that:

The alleged contemnor tried to theoretically comply with this order and made a decision dated 7th June, 2016. Due procedure was observed, in my opinion.

The alleged contemnor tried to revalidate the original authorisation following paragraph 4.23 of the Handbook of Procedures 2009-14 volume I. Paragraph 4.23 is inserted below. "4.23. RA may consider a request of original Authorisation holder and grant one revalidation for six months from expiry date. Request[s] for revalidation of Authorisation shall be made in ANF 4E.

Ms. Ghosh submits that only one revalidation for six months from the expiry date of the authorisation is permitted. That is what the alleged contemnor has allowed in his order dated 7th June, 2016. Hence, there was no contempt, she submitted.

On the other hand, Mr. Sengupta for the petitioners submits that the alleged contemnor has deliberately taken a very pedantic view of the rules so as to make the case of the petitioners infructuous. For example, if the original authorisation expired on 30th June, 2012, and if the respondent authorities have granted its extension upto 31st December, 2012 on the date of consideration, say, 7th June, 2016, it served no purpose at all. He said that the court did not intend to pass a useless order.

Ms. Ghosh submits that government officials could not be expected to break the law and the alleged contemnor has done as he has done to comply with the order of this court in accordance with law.

It is common ground that the applications for renewal were made on 28th March, 2014 within the validity period of the authorisation which expired on 31st March, 2014. They were rejected on 1st August, 2014 and 8th August, 2014. Now, these rejection orders were challenged in court in the subject writ application [WP no.1284 of 2014] where the order dated 11th February, 2015 was made. Pursuant to the order dated 11th February, 2015 the alleged contemnor made a fresh consideration of the matter on 7th June, 2016. According to the Handbook the validity period of the subject authorisation could only be extended till 31st December, 2014. When the order dated 11th February, 2015 was passed, 31st December, 2014 was long gone.

Any legislation or subordinate legislation is not intended to create a state of affairs which is impossible to achieve or which is unjust and inequitable. An interpretation has to be given even to a piece of subordinate legislation so that it produces a just result. Perhaps, the alleged contemnor was not be in a position to make this interpretation.

I am of the opinion that right from the date of petitioners' application i.e. 28th March, 2014 till the decision in terms of the order dated 11th February, 2015

was made by the alleged contemnor, the petitioners' authorisation should have been treated as having remained in suspended animation and treated as inoperative after 31st March, 2014. The decision of the alleged contemnor dated 7th June, 2016 had the effect of rendering the order dated 11th February, 2015, a paper order only.

In those circumstances, an opportunity is given to the alleged contemnor/respondent to purge himself of this alleged contempt by recalling the above decision and passing a decision in terms of the observations made above within two months of communication of this decision and communicate the same to the writ petitioners. Whether he wants to avail of the opportunity is entirely upto him. I make this application returnable on 28th April, 2017. The petitioner will file a supplementary affidavit bringing on record the decision to be made by the alleged contemnor.

I make it clear that I express no opinion on the merits of the matter save and except what is stated hereinabove."

This issue was brought to the notice of Chairman PRC i.e., DGFT on 5.4.2017. The committee discussed the case and decided to grant personal hearing to the petitioner before the committee, which is empowered to relax policy provisions. The decision of the committee was communicated to applicant vide letter dated 12.4.2017 fixing date for personal hearing for 19.4.2017.

However, vide their letter dated 17.4.2017, the Advocates M/S Khaitan & Co, Kolkata has written a letter to the Joint Director General of Foreign Trade, Kolkata and stated that personal hearing before Director General of Foreign Trade, on 19th April 2017 as communicated by the Joint Director General of Foreign Trade, Kolkata is not in terms of the order of hon'ble High Court dated 17.2.2017 and therefore they are not liable to attend any such hearing which is beyond the scope of the order of the Hon'ble High court.

The case was discussed at length in PRC meeting. Committee has gone through the SCN issued by DRI and observed that in para 22.5 (ii) of SCN it was mentioned that,

"From the office copies of the certificates made available by the Range office of Central Excise, Range-1 and Joka division, it was noticed that there was no mention of the "Details of export" but from the copies made available to DRI by DGFT Kolkata which were subsequently forwarded to the Range-1 for verification, it was found that there was incorporation of "Details of export" including the licence number etc. This mismatch indicate that the incorporation was made after receipt of this certificates having nil details of export, from the range officer, and authorisation details were incorporated subsequently later on to fulfil EODC of concerned authorisations."

Committee thereafter perused both sets of documents as mentioned in the above para. It was noticed that the copies of the statement of supplies which were made available by Range office of central excise do not contain DFIA licence details whereas the copies of said statement of invoices submitted to Regional Office, Kolkata for grant of Export Obligation Discharge Certificate (EODC) have details of licences. On in depth examination of the documents submitted to regional office, the derails of licences appears to be added subsequently, and even line alignment is not same as that of original print, which shows possibility of subsequent tampering of documents. The documents were signed by Directors of M/s Tara Holdings Pvt Ltd (100% EOU) and Pushkar Impex Pvt Ltd.

Committee, felt that tampering of documents a serious crime, and it attracts initiation of action under the following provisions of Foreign Trade (Development and Regulation) Act, 1992, as amended in 2010 against the above two companies as may be applicable.

Suspension and cancellation of Importer-exporter Code Number.

8. "(1) Where –

(a) any person has contravened any of the provisions of this Act or any rules or orders made thereunder or the foreign trade policy or any other law for the time being in force relating to Central excise or customs or foreign exchange or has committed any other economic offence under any other law for the time being in force as may be specified by the Central Government by notification in the Official Gazette, or (b) the Director General or any other officer authorized by him has reason to believe that any person has made an export or import in a manner prejudicial to the trade relations of India with any foreign country or to the interests of other persons engaged in imports or exports or has brought disrepute to the credit or the goods of, or services or technology provided from the country, or (c) any person who imports or exports specified goods or services or technology, in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy, the Director General or any other officer authorized by him may call for the record or any other information from that person and may, after giving to that person a notice in writing informing him of the grounds on which it is proposed to suspend or cancel the Importer-exporter Code Number and after giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice and, if that person so desires, of being heard, suspend for aperiod, as may be specified in the order, or cancel the Importerexporter Code Number granted to that person";

(2) where any Importer-exporter Code Number granted to a person has been suspended or cancelled under sub-section (1), that person shall not be entitled to import or export any goods or services or technology except under a special licence, granted, in such manner and subject to such conditions as may be prescribed, by the Director General to that person.

Issue, suspension and cancellation of licence.

9. (1) The Central Government may levy fees, subject to such exceptions, in respect of such person or class of persons making an application for a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits or in respect of any licence granted or renewed in such manner as may be prescribed.
(2) The Director General or an officer authorised by him may, on an application and after making such inquiry as he may think fit, grant or renew or refuse to grant or renew a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits to import or export such class or classes of goods as may be prescribed, after recording in writing his reasons for such refusal.
(3) A licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted or renewed under this section shall –

(a) be in such form as may be prescribed;

(b) be valid for such period as may be specified therein;

and
(c) be subject to such terms, conditions and restrictions as may be prescribed or as specified in the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits with reference to the terms, conditions and restrictions so prescribed.

(4) The Director General or the officer authorised under sub-section (2) may, subject to such conditions as may be prescribed for good and sufficient reasons, to be recorded in writing suspend or cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted under this Act:

Provided that no such suspension or cancellation shall be made except after giving the holder of the licence a reasonable opportunity of being heard.

(5) An appeal against an order refusing to grant, or renew or suspending or cancelling, a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits shall lie in like manner as an appeal against an order would lie under section 15.

Penalty:
Section: 11(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made there under or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

***Section 12:** No penalty imposed or confiscation made under this Act shall prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force.*

Rule 10 of the Foreign Trade (Regulation) Rules, 1993.

***Cancellation of a licence-**The Director General or the licensing authority may by an order in writing cancel any licence granted under these rules*

(a) the licence has been obtained by fraud, suppression of facts or misrepresentation; or
(b) the licensee has committed a breach of any of the conditions of the licence; or
(c) the licensee has tampered with the licence in any manner; or
(d) the licensee has contravened any law relating to customs or foreign exchange or the rules and regulations relating thereto.

Rule 14. of the Foreign Trade (Regulation) Rules, 1993.

Prohibition regarding making, signing of any declaration, statement or Document.

(1) No person shall make, sign or use or cause to be made signed or used any declaration, statement or document for the purposes of obtaining a licence or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

Therefore, Committee is of the opinion that the allegations against the petitioner are of serious nature and the export obligation discharge certificate obtained against the authorisation in question appears to be non-issuable. However, taking into consideration the observations of the Hon'ble High Court in its order dated 17.2.2017, the committee decided the following:

i. The Authorisation covered under the petition shall be revalidated for six months from date of endorsement.

ii. The RA shall make an endorsement in the Authorisation that Customs Authority shall check the genuineness of export/supply documents before clearance of import consignment in terms of para 4.47 (c) of HBP
iii. The applicant shall execute BG equivalent to the duty saved amount to RA valid for two years.
iv. RA shall examine the supply/export documents in detail. Action under FTDR Act and rules made there under shall be initiated if found to be false/tampered.

(Action: RA, Kolkata)

The meeting ended with a vote of thanks to the Chair.

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