

Government of India
Ministry of Commerce & Industry
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi -110011

F.No. 18/52/2018-19/ECA-I /175

Date of Order: 07 .08.2019

Date of Dispatch: 09 .08.2019

Name of the Appellant:

Alpha Pharma Daman Pvt. Ltd., 515, 5th floor, Luxuria
Business Hub, Dumas Road, Surat- 395 008

IEC No.

5203004803

Order reviewed against:

Order-in-Appeal No. 03/16/144/00082/AM18/803 dated
30.08.2018 passed by the Addl. DGFT, Mumbai.

Order-in-Review passed by:

Shri Alok Vardhan Chaturvedi, DGFT

Order-in-Review

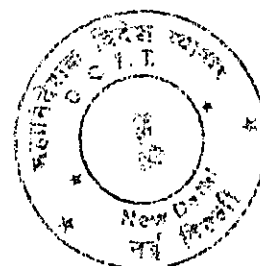
Alpha Pharma Daman Pvt. Ltd., Surat (earlier Alpha Pet, Surat), filed a Review Petition dated 04.10.2018 under section 16 of the Foreign Trade (Development & Regulation) Act, 1992 against Order-in-Appeal No. 03/16/144/00082/AM18/803 dated 30.08.2018 passed by the Addl. DGFT, Mumbai dismissing the appeal and upholding the Order-in-Original dated 01.01.2018. The Adjudication Authority imposed the penalty of Rs.10,00,000/-.

Brief facts of the case

2.1 The petitioner obtained an Advance Authorisation No. 0310434926 dated 04.07.2007 from RA, Mumbai as per the provisions of the Foreign Trade Policy prevalent during the period for a CIF value of Rs. 19,21,500/- (US\$ 47,500/-) with an export obligation of Rs. 30,78,000/- (US\$. 78,000/-) to be completed within a period of 24 months from the date of issue of the Authorisation. As per the conditions of the authorisation, the petitioner was required to submit export documents towards fulfilment of export obligation within the time frame as mentioned in the relevant FTP.

2.2 The Export Obligation (EO) period expired. The petitioner did not submit any export document towards fulfilment of export obligation despite several reminders. A show cause notice dated 18.08.2012 was issued under section 14 of FT(D&R) Act, 1992 for violation of Rules 10,13 and 14 of Foreign Trade (Regulations) Rules 1993 and imposition of fiscal penalty under section 11(2) of the Act. The Adjudicating Authority passed Order-in-Original dated 01.01.2018 imposing a fiscal penalty of Rs.10,00,000/-. The petitioner was also placed under DEL.

2.3 The petitioner filed an appeal on 01.03.2018 before the Appellate Authority against Order-in-Original dated 01.01.2018. The Appellate Authority observed that the petitioner neither submitted any documentary evidence to prove that the authorisation had not been utilized nor submitted any export documents even after 10 years. Therefore the Appellate Authority, vide the Order-in-Appeal dated 30.08.2018 rejected the appeal.



3.0 The petitioner submitted a review petition dated 04.10.2018 before DGFT requesting to set aside Order-in-Appeal dated 30.08.2018. The petitioner has, inter-alia, submitted the following:

- (i) It has not violated any condition of Foreign Trade Policy and Procedures as it has not made any import under the subject advance authorization.
- (ii) Original Advance Authorization was lost during shifting of its office from Surat to Daman and the person handling export matters resigned from the job. Therefore, it could not follow up the issue.
- (iii) The Appellate Authority did not ask it to submit a Non-Utilization Certificate.
- (iv) All other documents such as affidavit, indemnity bond etc., for loss of original authorisation have been submitted to the RA, Mumbai.

4.0 The petitioner was afforded an opportunity of personal hearing. I have gone through the facts and records carefully. It is observed that the petitioner was asked to submit non-utilization certificated from customs. RA Mumbai was also asked to confirm if the petitioner has submitted a valid non utilisation certificate. RA Mumbai has confirmed that the petitioner submitted a non utilisation certificate and the matter can be closed.

5.0 I, therefore, in exercise of the powers vested in me under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended) pass the following order:

Order

F.No. 18/52/2018-19/ECA-I

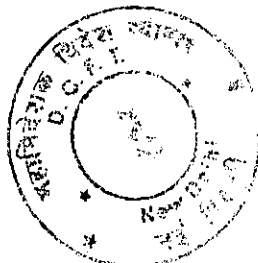
Dated: .08. 2019


Order-in-Appeal dated 19.07.2018 and Order-in-original dated 22.05.2017 are set aside. The matter is remanded back to RA Mumbai for de-novo examination in view of the submissions made by the petitioner.


(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- ✓ (1) Alpha Pharma Daman Pvt. Ltd., 515, 5th floor, Luxuria Business Hub, Dumas Road, Surat-396 210.
- (2) Additional DGFT, Nishta Bhavan, (New C.G.O. Building), New Marine Lines, Churchgate, Mumbai - 400020
- (3) DGFT website.




(Dilip Kumar)
Dy. Director General of Foreign Trade