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

F. No. 01/92/171/10/AM-18/PC-VI/13, 14

Date of Order: 19.04.2018

Name of the Appellant:

M/s. Ankur Chemfood Pvt. Ltd.  
Plot No. 355, Ward no- 12B,  
Post Box No. 9, Tagore Road,  
Gandhidham, Kutch, Gujarat-  
370201.

Order appealed against:

Order-in-Original No.  
24/21/021/00115/AM07,  
dated 24.07.2017, passed by  
DC, Kandla, SEZ.

Order-in-appeal passed by:

Shri Alok Chaturvedi, DGFT  
Shri J.V. Patil, Addl. DGFT

**ORDER-IN -APPEAL**

M/s. Ankur Chemfood Pvt. Ltd. has filed this appeal under Section 15 of the Foreign Trade (Development & Regulation) Act 1992, as amended from time to time, against Order-in-Original No. 24/21/021/00115/AM07 dated 24.07.2017, passed by DC, Kandla, SEZ, imposing a penalty of Rs. 50, 000 (Rupees fifty thousand only) on the Appellant Company.

2. Vide Notification No.101/(RE 2013)/2009-2014 dated 5th December 2014, the Central Government has authorised the Director General of Foreign Trade aided by one Addl. Director General of Foreign Trade to function as Appellate Authority against orders passed by the Development Commissioners as Adjudicating Authority. Hence, the appeal is before us.

3. The appeal should be filed within a period of 45 days from date of receipt of the order as stipulated in under section 15 (1) (b) of the Foreign Trade (Development & Regulation) Act, 1992 (amended in 2010). Further, second proviso to section 15 (1) (b) of the Act stipulates that in the case of an appeal against a decision or order imposing a penalty or redemption charges, no such appeal shall be entertained unless the amount of the penalty or redemption charges has been deposited. Further, it has also been provided that where the Appellate Authority is of the opinion that the deposit to be made will cause undue hardship to the appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose. The unit has filed the appeal within the period as prescribed under section 15 (1) (b) of the Foreign Trade (Development & Regulation) Act, 1992 (amended in 2010).

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4.0 Brief facts of the case are as under:

4.1 M/s. Ankur Chemfood Pvt Ltd. Plot No. 355, Ward No- 12B, Post Box No. 9, Tagore Road, Gandhidham, Kutch, Gujarat- 370201 obtained EPCG Authorization No. 2430000662 dated 27.09.2006 for Duty Saved amount of Rs. 4, 37, 800/-. The company was required to fulfil export obligation by export of common salt for eight times the value of duty saved.

4.2 As the firm did not submit export documents for redemption despite letters from the DC office, a Show Cause Notice dated 29.06.2016 under section 14 of FTDR Act, 1992 was issued as to why action should not be taken against it under section- 11(2) and (7) of the FTDR Act, 1992, as amended and under Rule- 7.1 (k) of the Foreign Trade rules 1993.

4.3 In reply the noticee firm submitted to DC that the Export Obligation was completed in time, however, they could not submit documents earlier. They submitted requisite documents during Personal Hearing on 09.08.2016. The DC office issued letter on 26.12.2016 and reminder letter on 06.07.2017. They had not rectified the deficiencies as was called in these letters.

4.4 On examination of the reply to the Show Cause Notice submitted by the unit, the DC concluded that the firm/company has willfully defaulted for non-fulfilment of Export Obligation under the EPCG license.

4.5 On conclusion of the adjudication proceedings, the Development Commissioner, Kandla SEZ, in exercise of power vested under section 11(2) read with section 13 of the FTDR Act, 1992, passed the following order vide Order-in-original No. 24/21/021/00115/AM07 dated 24.07.2017:

*There is a demand for to pay the custom duty + interest to the Custom Authority of Rs. 437800/- + interest on the firm/company taking all factors such as interest etc, I impose a penalty of Rs. 50,000/-(Rupees fifty thousand only) on the noticee firm/company amount is to be deposited under the Head of Account '0037' Customs other receipts, fines and penalties etc. within a period of 45 days from the date of this order failing which necessary order for recovery will be issued to the Customs Department to recover from your pending/future claims/the concerned State Government (where the factory/offices of the noticee are physically located) to recover as land revenue arrears without any further reference to the noticee firm.*

5. Aggrieved by the adjudication order dated 24.07.2017, the Unit has filed the present appeal stating that they paid an amount of Rs. 50,000/- to Customs Account as per their submission. Personal hearing was afforded to the unit on 21.02.2018 in which Shri Ramesh Chandra Verma appeared before the Appellate authority on behalf of the

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company. He contended that they have fulfilled the Export Obligation and produced statements of Export enclosing a photocopy of related documents. In their written submission in appeal the appellant firm stated that:

- i. The appellant has already discharged the entire export obligation cast upon them in terms of the license under consideration and hence, there is no justification in imposing penalty upon them under the provisions of FTDR Act, 1992 as amended.
- ii. The Development Commissioner has erred in ignoring the documents submitted by appellant under their letter dated 01.08.2016 as well as submissions made during personal hearing held on 09.08.2016, which very clearly establish that the appellant has fulfilled the export obligation cast upon them in terms of the license.
- iii. The appellant has not received any demand notice under the provisions of Customs Act, 1962 issued by competent Customs authority in connection with import duty of Rs. 4, 37, 800/- and /or interest payable thereon, in connection with import of goods covered by the license. Hence, imposition of penalty on this ground is not tenable on the eyes of law.
- iv. No penalty is imposable by citing procedural lapse(s), if any. Therefore, inasmuch as the documentary evidence submitted by appellant before the Development Commissioner is sufficient to establish that export obligation is fully discharged, no penalty could have been lawfully imposed on appellant.

6. Comments from the office of the Development Commissioner, KASEZ have also been obtained on the appeal filed by the Unit. Comments furnished by office of the Development Commissioner, KASEZ vide their letter dated 03.01.2018 are as follows :

- I. The firm has not shown due diligence in submission of documents in proof of EO fulfilment even two years after the expiry of EO period.
- II. The documents produced by the firm were examined. Some deficiencies were pointed out to the firm vide letter dated 26.12.2016 followed by reminder dated 06.07.2017. However, the letter was neither replied to nor complied with by the firm.
- III. The office had no other alternative but to finalise the SCN and hence the said Order-in-Original was issued imposing penalty on the firm.

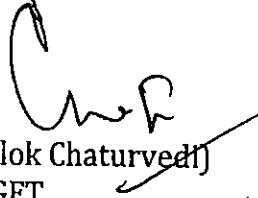
7. We have considered the adjudication order dated 24.07.2017 passed by DC, KASEZ, appeal preferred by the Unit and oral submissions made by its representatives, comments of office of the DC, KASEZ and all other aspects relevant to the case. To summarize, the firm was required to export eight times of duty saved (duty saved Rs. 4, 37, 800/-). The statement submitted during the hearing shows prima-facie an export of Rs. 71, 68, 972/-. As per DC, the firm had submitted the requisite documents at PH but the deficiencies pointed out to the firm vide letter dated 26.12.2016 were not replied.

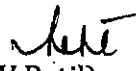
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However, the appellant firm has stated that they have submitted all the documents vide letter dated 01.08.2016 to DC. Installation Certificate was already submitted vide letter dated 05.06.2009. During the course of Personal Hearing, the appellant was not informed about the deficiencies, if any. Hence, the contentions of the firm need to be examined a fresh by the DC after verification of the requisite documents as per the EPCG Scheme.

### ORDER

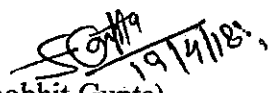
In view of the submissions of the Appellant, the order (the DC order No 24/21/21/0115/AM17 dated 24.07.2017) is remanded to the DC KASEZ who shall de-novo examine the case and pass fresh order after giving the Appellant an opportunity of personal hearing. The Appellant shall also submit to the DC all the required documents if any not submitted.

  
(Alok Chaturvedi)  
DGFT

  
(J V Patil)  
Addl. DGFT

To,  
M/s. Ankur Chemfood Pvt. Ltd.  
Plot No. 355, Ward no- 12B,  
Post Box No. 9, Tagore Road,  
Gandhidham, Kutch, Gujarat- 370201.

Copy to: - Development Commissioner, Kandla, SEZ

  
(Shobhit Gupta)  
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