Directorate General of Foreign Trade
(PRC-section)

Minutes of the Policy Relaxation Committee Meeting held under the Chairmanship of DGFT Shri Alok Vardhan Chaturvedi, Director General of Foreign Trade on 03.10.2017

Meeting No. 20/AM18 held on 03.10.2017 at 10:00 AM

The following members were present in the meeting:

1.	Shri N. P. S. Monga	Addl. DGFT
2.	Shri K. C. Rout	Addl. DGFT
3.	Shri Jaikant Singh	Addl. DGFT
4.	Shri Darshan Singh	Addl. DGFT
5.	Shri J. V. Patil	Addl. DGFT
6.	Shri N. K. Srivastava	Addl. DGFT
7.	Shri Jay Karan Singh	Jt. DGFT
8.	Shri Kumar Rahul	DDG

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

Case No.1: M/s. SMC Pneumatics (India) Pvt. Ltd., Noida (PH case)
F. No. 01/60/162/249/AM15/PRC
PRC Meeting No. 20/AM18 dated 03.10.2017

Subject: Request to allow shipping bill to be counted for discharge of export obligation of Advance Authorization No. 0510290853 dated 16.05.2011. (Shipping Bill No. 4886619 dated 09.09.2014)

The applicant sought personal hearing in terms of Para 2.59 of FTP, 2015-2020, which was afforded to them on 03.10.2017. Mr. Atul Assthana, Asstt. Manager commerce from M/s SMC Pneumatics (India) Pvt. Ltd., Noida appeared before the committee and made the following submissions stating inter alia that:

I. They applied for EOP extension of above Authorization on 23.5.2014. The case was considered in PRC meeting dated 30.09.2014 wherein the extension was granted upto 31.03.2015.
II. In meantime, due to pressure of buyer, they made a shipment under shipping bill no. 4886619 dt. 09.09.2014.
III. They requested the Customs Authority to endorse the authorization number on shipping bill on the basis of policy para 4.43 of HBP which says exporter is allowed to export under authorization if the authorization holder has applied for extension of EOP to concerned RA. However, Customs Authority did not allow the same. Therefore, they exported indicating different Authorisation.
IV. In the present case, request for EOP extension was dealt in DGFT between 23.05.2014 to 30.09.2014 and shipment was made on 09.09.2014 i.e. between the period of processing of case at DGFT.

v. Hence, they requested to count shipping bill no. 4886619 dt. 09.09.2014 for discharge of export obligation of AA No. 0510290853 dt. 16.05.2011.

Decision: Committee noted that exports under S/b No 4886619 dt. 09.09.2014 was made indicating different Advance Authorisation, which has not been redeemed so far. Further, items of import and exports are different then permitted in the Authorisation in question. The committee was of the view that the applicant was allowed extension upto 31.03.2015 on 30.09.2014. Therefore, they had enough time to fulfill balance export obligation. The submissions made cannot be treated as a case of genuine hardship. 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, within a month from the date of uploading of these minutes on the Directorate website failing which action under the provisions of FT(DR)Act, 19229, as amended shall be initiated by the RA.

(Action: Applicant/RA, CLA)

Case No.2: M/s. BDH Industries Ltd., Mumbai (PH case)
F. No. 01/60/162/646/AM17/PRC
PRC Meeting No. 20/AM18 dated 03.10.2017

Subject: Request for EO extension to regularize exports done outside of EOP against advance authorization no. 0310763116 dated 23.12.2013 issued under PC-9 condition.

Aggrieved by the decision of the committee held on 13.06.2017, the applicant sought personal hearing in terms of Para 2.59 of FTP, 2015-2020, which was afforded on 03.10.2017. Mr. Tushar K. Powle, Deputy Manager Export from M/s BDH Industries Ltd., Mumbai appeared before the committee and made the following submissions stating inter alia that:

1. They have completed 100% export obligations with reference to actual import done in the licence. However, the last shipment made vide shipping Bill No.435403 dated 25.2.2017 was done outside the validity of EO period extended by the committee.

2. They have completed 100% exports and no material left unutilised. The Authorisation, however, could not be closed as per para 4.49 of HBP 2015-20 read with conditions of Policy Circular 18.
3. Hence they have requested to allow E.O. extension upto 28.02.2017 to regularize the export completed beyond extended EO period, so as to close the licences.

Decision: Committee noted that the applicant was very much aware that extension of EOP is not allowed in the cases where drugs are imported from unregistered sources. However, considering genuine hardship, the committee had allowed 6 month's further extension in continuity of 12 months from the date of import consignment, in its meeting dated 20.09.2016. Despite that the applicant could not complete its export obligation. From the submissions made by the applicant no case of genuine hardship is established. The committee, therefore, did not accede to the request.

However, it was decided to waive the requirement of PC-18 dated 30.10.2007 condition to the extent of requirement of destruction certificate, as the balance imported raw materials have been used in the resultant product exported outside the country although beyond the extended EOP.

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

(Action: Applicant/RA, Mumbai)

Case No.3: M/s. Amara Raja Batteries Ltd., Chennai (PH case)
F. No.01/60/162/1178/AM17/PRC
PRC Meeting No. 20/AM18 dated 03.10.2017

Subject: Request for Revalidation of Advance Authorization no. 0410160723 dt. 29.06.2015.

Aggrieved by the committee decision dated 04.05.2017, the applicant sought personal hearing in terms of Para 2.59 of FTP, 2015-2020, which was afforded on 03.10.2017. Mr. N. Prasad Rao, Sr. GM-supply chain from M/s. Amara Raja Batteries Ltd., Chennai appeared before the committee and made the following submissions stating inter alia that:

1. The subject AA was issued to them with an EO to export 150,000 nos. of lead Acid Storage Batteries of FOB value of USD. 6000000/-
2. Their entire production, sales and export invoices are totally integrated under SAP system. Theirs is continues production and export of same product.
3. They also get continue orders from their foreign buyers for their lead Batteries. Since the production is also on continues basis with no change in the law – materials, most of the time they exported the product form their ex-stock manufactured out of duty paid imported raw-materials. So, almost all their EO was being completed within 6-12 month's period and they were utilized the authorization for duty free import letter / during the course of their exports.
4. Due to software problem during integration of their SAP system with Exim software during the year 2015-16, the exports generated against 3 AA were missed out due to some system error. During the same period there was ICEGATE migration to Ver. 1.5 which was facing lots of problem resulting in non-availability of EO fulfilment date from them.
5. Owing to this, the export made under the above authorization was not debited to their export obligation. They created the software in order to get an alert when they achieve 90 % of the EO and also it will show them the pending EO on the advance Authorization they have taken. Hence the exports were made in excess of the actual license EO.
6. Since they have a huge volume of export and import, it's also not possible to monitor the entire export license wise.
7. They were always prompt in fulfilling all their EO and submitting their application for Redemption wise.
8. Due to above problem and the completion of EO is not known, all future export invoices were generated under the same AA and the exact export quantity was traced only at the time of preparing their EODC application after generation of eBRC from the bank.
9. During this period, the validity of AA expired and the 6 month's revalidation period by RLA is also expired
10. Hence, they have requested for considering their case.

Decision: It was noted that the Authorisation in question was issued having initial validity of 12 months to import and 18 months to fulfill export obligation. RAs are empowered to allow six month's further validity on merit. However, the applicant did not avail the facility which was available to them. The submissions made by the applicant cannot be construed to be a case of genuine hardship. The committee, therefore, did not accede to the request.

Case No.4: M/s. Amara Raja Batteries Ltd., Chennai (PH case)
F. No. 01/60/162/1177/AM17/PRC
PRC Meeting No. 20/AM18 dated 03.10.2017
Subject: Request for Revalidation of Advance Authorization no. 0410160437 dt. 24.04.2015.

Aggrieved by the committee decision dated 04.05.2017, the applicant sought personal hearing in terms of Para 2.59 of FTP, 2015-2020, which was afforded on 03.10.2017. Mr. N. Prasad Rao, Sr. GM-supply chain from M/s. Amara Raja Batteries Ltd., Chennai appeared before the committee and made the same submissions as stated in the case No 3 above.

Decision: Decision taken at case No 3 is reiterated.

Case No.5: M/s. Amara Raja Batteries Ltd., Chennai (PH case)
F. No. 01/60/162/105/AM18/PRC
PRC Meeting No. 20/AM18 dated 03.10.2017

Subject: Request for Revalidation of Advance Authorization no. 0410160731 dt. 30.06.2015.

Aggrieved by the committee decision dated 04.05.2017, the applicant sought personal hearing in terms of Para 2.59 of FTP, 2015-2020, which was afforded on 03.10.2017. Mr. N. Prasad Rao, Sr. GM-supply chain from M/s. Amara Raja Batteries Ltd., Chennai appeared before the committee and made the following submissions stating inter alia that:

1. The export of Lead Acid Storage Batteries is notified under SION 1058 of Engineering Products. For the manufacture of heavy duty lead Acid Storage Batteries for UPS and Inverter power supply, they used heavy duty Battery Separators which was being imported in Kgs. Whereas as per SION the battery Separators are on Net to Net basis and Rolls of Battery separators are allowed on Sq. Mtr. basis with 5 % wastage.
2. They applied for an advance authorization to RLA with Battery Separators in Kgs. on Net to Net basis by foregoing the wastage under the above norms. But the authorization no. 0410160345/25.03.2015 was issued with Unit of Measurement for this item as Nos. Subsequently they made a request for amendment of UOM which was refused by the RLA and advised them to apply for a separate license under no Norm's category. Copy of license issued their letter for amendment and reply received from RLA attached for ready reference.
3. On RLA's advise, they obtained the above Advance Authorization under no Norms category and also received Minutes of the ALC approving the input/output norms under ALC Meeting no. 12/81-ALC 2 / 2015.
4. After completion of their import and EO under the above Authorization (Sl. No. 3), they applied for another Authorization for the same input item under no norms on repeat basis, as per Para 4.12(v) of HBP. On 22.06.2016 RLA posted deficiency in the system stating, "*since the subject resultant product comes under SION, submit the application under Norms basis.*" They submitted their reply on 27.06.2016 explaining the details and again on 27.07.2016 another Deficiency was posted advising to apply under norms category.

5. As the ALC has already approved their earlier application and basing on the points raised by the RLA during their Meeting, they submitted a representation to NC for clarification with reference to SION. But no reply received so far from the NC.
6. As they had paid application fee of Rs. 1, 00,000/- for the license surrendered without utilization as mentioned in Sl. No.2 above and Rs. 100000/- paid on the application submitted under SL. No. 4 are wasted with no mistake on their part. When they met the RA, Chennai, they informed, "*since the ALC rectified the case as per SION C-1058, the case cannot be considered under a no norms category.*"
7. The RLA first advised them to file the application under no norms category when they filed the application under norms. Later on after getting the no norms application ratified by the ALC, when they filed the application on repeat basis under no norms, they advised them to file under Norms. Totally they were under confusion.
8. In the meantime, as they can't afford to lose the export orders for the sake of this problem, they utilized duty paid imported goods and exported additional quantity under the existing subject license in anticipation of getting clarification from the ALC and getting their No norms application (as per S. No.4 above) and to club both the authorization letter after completion of the EO.
9. Till now they had not received any clarification from the Norms committee on their request and their no norms application is also not disposed. Since the EOP of 18 months for the Authorization is completed and the next authorization is not issued within the 18 month's period, they lost clubbing option.
10. Hence, they have requested for revalidation of above Advance Authorization.

Decision: The case was discussed at length. It was noted that due to wrong interpretation by RA, no Authorisation was issued from File No 04/24/40/048/AM17 dated 10.06.2016 to the applicant on repeat basis. The applicant continued to export against Authorisation No 0410160731 dt. 30.06.2015. In this case, NC has ratified norms and allowed wastage as per SION 1058 for engineering product, the committee decided the following:

i. The RA shall issue Advance Authorisation under File No 04/24/40/048/AM17 dated 10.06.2016.
ii. Exports made after 10.06.2016 indicating Authorisation No 0410160731 dt. 30.06.2015 on shipping bills shall be accounted under File No 04/24/40/048/AM17.
iii. RA shall ensure that such shipping bills, which are accounted under File No 04/24/40/048/AM17, have not utilized / shall not be counted towards discharge of export obligation against Authorisation No 0410160731 dt. 30.06.2015 or under any other Authorisation.
iv. RA shall also ensure that application fee, as prescribed, has been paid against the File No 04/24/40/048/AM17 and no refund or adjustment of that fee has been made against any other file.

(Action: Applicant/RA, Chennai)

Case No.6: M/s. Navin Fluorine International Ltd., Mumbai (PH case)
F. No. 01/60/162/170/AM16/PRC
PRC Meeting No. 20/AM18 dated 03.10.2017

Subject: Request for condonation the procedural lapse in obtaining the Bill of Export of Advance Authorization no. 0310612992 dt. 28.01.2011.

Aggrieved by the committee decision dated 29.08.2016, the applicant sought personal hearing in terms of Para 2.59 of FTP, 2015-2020, which was afforded on 03.10.2017. They were communicated vide e-mail dated 27.09.2017. However, neither the applicant appeared before the committee nor submitted any request for postponement of hearing. Taking into consideration the facts that the applicant has been given proper opportunity, it was decided to dispose of the case on the basis of facts and records available before the committee.

The applicant has submitted in their representation stating inter alia that:

1. They obtained the above Advance Authorization from RA, Mumbai. They had fulfilled the E.O. as undertaken against this AA by effecting deemed export dispatches to SEZ unit namely Divis Laboratory Ltd. SEZ Unit Vishakhapatnam. They have copies of 50% Bill of Export availbale with them. However, balance Bill of Exports not available. The issue herein is only restricted to the extent of non-availability of the copies of Bill of Exports against partial quantity dispatched to SEZ unit.
2. They have gone through the contents of the above mentioned PRC minutes dated 29.08.2016, their request was overruled by the PRC Committee by insisting to furnish the copies of Bill of Export against each and every dispatch effected to SEZ unit, under the provisions of Rule 30 of SEZ Rules, 2006.
3. Their application for review of the above decision and also submit their request for a personal hearing before the learned Committee. They request to reconsider their case to relax the requirement to copies of Bill of Exports which are not traceable even after repeated efforts.
4. In addition to the earlier submissions made in support of the above mentioned application, they submit the following merits for consideration.
5. They submit that Para 4.12 of HBP 2009-14 necessitates "endorsement of Shipping/supply documents with file no. / Authorisation No. to establish co-relation of exports/supplies with Authorisation issued". Therefore, it can be inferred that basic purpose of "endorsement of Shipping/supply documents with file no./Authorisation No. is to correlate Advance Authorisation and export obligation. Thereby it can be construed that Bill of Export filed during supply of SEZ with necessary details derived from the ARE-1 with authorization details, give a clear correlation between the Advance Authorization and Export Obligation. In fact, it is beyond doubt that the entire quantity dispatched to SEZ Unit was received by the SEZ Unit which is evident from the following documents being corroborative evidences as necessitate by Para 4.12 of HBP:
    (a) Copy of ARE-1 with relevant Advance Licence/File No. duly signed and stamped by the customs authority at SEZ area at Chippada, Vishakapatnam.
    (b) Copy of the Bank Realization Certificate duly signed by the Bankers towards release of payment by the SEZ unit.
    (c) Copy of the Tax/Excise Invoice having Advance Licence/File No. for supply of goods to SEZ unit.
6. In the present case the link can be easily established between the Advance Authorization and export obligation with the above documents.
7. Even after having these above said various documents evidencing proof of exports, the additional proof in the form of Bill of Export may be relaxed for few cases being a genuine hardship in acquiring the same. The legitimate benefit of export may not be disallowed on the basis stringent application of the procedural requirement of one of the documents viz. Bill of Export. It would be an unbearable blow to the genuine exporters like them who are passing through adverse global business environment, and depressed Chemical sector.

8. Earlier similar cases wherein such lapse had been condoned by the learned Committee. They quote similar cases perceived earlier by the learned committee and granted relaxation for the lapse in generation bill of export for supply to SEZ unit.

PRC Meeting No. & date	Case No.	Exporter Name
13/AM14 dt. 09.07.13	01	Prime Energy Pvt. Ltd., New Delhi.
30/AM14 dt. 26.11.13	13	Saint Gobain Glass India Ltd., Tamil Nadu.
37/AM14 dt. 18.02.14	29	Sabic Innovative Products India P. Ltd.
40/AM14 dt. 11.03.14	16-19	Elins Switch Boards Pvt. Ltd., Bangalore.
04/AM15 dt. 08.07.14	22	Radial India Pvt. Ltd., Bangalore.
12/AM15 dt. 18.11.14	40	Motherson Authomotive Elastomers Technology, Delhi.

9. In these cases, the learned Committee had accepted the corroborative evidences in the form of ARE1/Excise Attested Invoice which bears details of Advance Authorisation/File NO. under which goods were removed for discharge of E.O. as proof of export to SEZ unit and the requirement of specific document viz. Bill of Export was dispensed with.
10. Hence, they have requested for condonation of non-filing of Bill of Exports to closure purpose.

Decision: The case was discussed at length once again. It was noted that as per Para 4.1.3 of FTP 2009-14 , an Advance Authorisation is issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowance for wastage). And, in terms of Para 4.12 of FTP 2009-14, exporter is required to indicate consumption of inputs in the export documents. And, an application for redemption of Advance Authorisation is required to be submitted on ANF-4F. In the ANF-4F under Para (a) (ii) of guidelines for application (HBP, 2009-2014 Vol-I), it is categorically mentioned that exporter shall submit 'Bill of Export' along with other prescribed documents. Further, for getting incentive on supply of goods to SEZ, "Bill of Export" is a prescribed document under Rule 30 of SEZ, Rule, 2006. In view of these provisions, it is imperative that Export obligation against an Advance Authorisation cannot be discharged without establishing nexus of duty free imported inputs [or procured indigenously against advance authorization] and resultant product exported to the SEZ Unit. Since ARE-1 does not have such information, the committee was of the view that requirement of 'Bill of Export' cannot be dispensed with. Further, no valuation of ARE-1 is being carried out by the Customs/Excise Authority at time of receiving the goods; such supplies are considered free shipment meaning thereby that the exporter/supplier do not intend to take any benefit against the goods supplied.

The Committee, therefore, did not accede to the request.

However, it was noted that the applicant has stated to have fulfilled 339.71% export obligation against the Authorisation and imported only 84.17%. And, 50% exports were made by filing Bill of Exports. Therefore, the applicant can use these Bills of exports for getting the regularisation of their case from RA where Authorisation number is indicated in the Bill of Export. Shortfall, if any, can be regularized in terms of Para 4.49 of HBP, 2015-2020.

(Action: Applicant/ RA, Bangalore) if the applicant fails to get the case regularized within a month from the date of uploading of these minutes on the Directorate website, RA shall initiate action as per the provisions of F.T. (DR) Act, 1992, as amended.

Case No.7: M/s. K.P. Packaging Ltd., Mumbai (PH case)
F. No. 01/60/162/356/AM17/PRC
PRC Meeting No. **20**/AM18 dated **03.10**.2017

Subject: Request for Clubbing of three Advance Authorization nos. 0310468379 dt. 15.04.2008, 0310653795 dt. 15.09.2011 and 0310692803 dt. 30.04.2012.

Aggrieved by the decision of the committee dated 19.04.2017, the applicant sought personal hearing in terms of Para 2.59 of FTP, 2015-2020, which was afforded to them on 03.10.2017. Mr. Ketan Vira, Managing Director of the company appeared before the committee and made the following submissions stating inter alia that:

1. They have made excess exports against first Authorization which is more than required export obligation due to oversight.
2. However, no exports were made against remaining two authorizations hence, requested for clubbing of the above 3 authorizations.
3. They had been going through difficult times as they have been cheated by a couple of people and company had to bear loss of crores of rupees.
4. In one event, a dealer bought goods from the firm worth 7.98 crores by using false Letter of Credit. The matter was reported to Police and letter on transferred to EOW who froze the 48 bank accounts of the accused. A red alert has also been flagged for the accused and his family. (copy of FIR enclosed).
5. In other case, a dealer took 1.72 crores for supply of raw material but did not supply the same. The matter was also reported to Police and FIR was lodged. Two arrests have been made in this connection.
6. Hence they requested PRC to take the issue sympathetically and allow clubbing of three authorizations.

Decision: The case was discussed again at length. The committee noted that applicant had faced serious hardships on account of the misdeed by some of their buyers as well as suppliers to them. However, it was observed that surplus exports under Authorisation No 0310468379 dt.15.04.2008 were completed by 27.10.2009 whereas subsequent Authorisations were issued thereafter. It is also clear in terms of Para 4.27(a) of HBP, 2015-2020, that exports made prior to issue of Authorisation/File Number cannot be taken into account towards discharge of export obligation. Further, the Authorisation dated 15.04.2008 was valid till 30.10.2010 only. Therefore, imports made without exports under subsequent Authorisation would amount to allowing indirect revalidation if such Authorisations are clubbed. The committee, therefore, did not accede to the request.

The applicant is hereby directed to get the two Authorisations in which shortfall in fulfilment of EO regularised in terms of Para 4.49 of HBP, 2015-2020, within a month from the date of uploading of these minutes on the Directorate website failing which action under the provisions of FT (DR)Act, 1992, as amended shall be initiated by the RA.

The applicant, if so wish, can get DEEC shipping bills of surplus exports converted into DBK Shipping bills for availing drawback, in terms of Para 2.88 of HBP, 2015-2020. For that purpose, the applicant has to approach the Customs Authority after getting EODC against Authorisation dated 15.04.2008.

(Action: Applicant/RA, Mumbai)

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

****