

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

F.No. 18/16/2016-17/ECA-I/234

Date of Order: 26 .09.2019

Date of Dispatch: 26 .09.2019

Name of the Appellant:

Shamrock Chemie Pvt. Ltd., 201, University Plaza, Vijay
Cross Road, Navrang pura, Ahmedabad-380 009

IEC No.

0807002259

Order reviewed against:

Order-in-Original No. 08/F-3/2/AM16/ECA dated
11.02.2016 passed by the Jt. DGFT, Ahmedabad.

Order-in-Review passed by:

Shri Alok Vardhan Chaturvedi, DGFT

Order-in-Review

Shamrock Chemie Pvt. Ltd., Ahmedabad (here-in-after called "the respondent") was issued a show cause notice dated 10-08-2015 by Joint Director General of Foreign Trade, Ahmedabad, the Adjudicating Authority, for:

- (i) Suspension/cancellation of IEC No. 0807002259 under Section 8(1) of the Foreign Trade (Development and Regulation) Act, 1992 (here-in-after called 'the act'), as amended.
- (ii) Refusal to issue further licences/benefits/authorizations under Rule 7 of the Foreign Trade (Regulation) Rules, 1993. (here-in-after called 'the rules')
- (iii) Cancellation of the 12 Advance Authorizations under section 9(2) of the act.
- (iv) Recovery of all such benefits obtained/availed by it which are ineligible under DEPB Scheme.
- (v) Imposition of fiscal penalty under Section 11(2) of the act.
- (vi) Any other action as deemed fit.

Concluding that the allegations contained in the above said show cause notice are not proven, the Adjudicating Authority, vide its Order-in-Original (OIO) No. 08/F-3/2/AM16/ECA dated 11.02.2016, dropped proceedings initiated under the said Show Cause Notice. Aggrieved by the said decision of the Adjudicating Authority, the Ahmedabad Zonal Unit of the Directorate of Revenue Intelligence (DRI), filed a Review Petition dated 04.08.2016 under section 16 of the act.



Brief facts of the case:

2.1 For manufacturing products for exports, eligible exporter can import raw materials and consumables etc. free of import duties, under an Advance Authorization (AA) issued by Regional Authority (RA) of the Directorate General of Foreign Trade (DGFT), as per duty exemption scheme contained in chapter 4 of the Foreign Trade Policy (FTP) read with chapter 4 of the Hand Book of Procedures (HBP). Product specific import entitlements, both in terms of description and quantity of item of import(s), against a particular export product, are published in Standard Input Output Norms (SION) Book. Exporter, while applying for obtaining an AA, mentions in its application, serial number of the SION as contained in the book, on the basis of which import entitlement against that export product is calculated and allowed. In case entitlement of a particular export product is not published in the SION book, norms for such products are fixed by Norms Committee (NC) in the office of DGFT, New Delhi. NC is an inter-ministerial committee containing technical experts. In such cases, an exporter files an application for obtaining AA categorizing the application as under "No Norms". On the basis of such application, the applicant obtains AA, from the RA, for import and export of items and quantities provisionally on self declaration basis, undertaking to make imports and exports under that authorization on its own risk and to pay to the govt. applicable duties along with interest in case there is any change in its entitlement as decided by the NC. After issuance of such AA, the relevant application is examined by NC for fixation of entitlement and adhoc norms specifying description and quantity of imports and exports are fixed.

2.2 On basis of its applications filed on different dates with the RA Ahmedabad, the respondent obtained thirteen AAs. All these applications were filed mentioning serial number A1250 of the SION Book. Accordingly the respondent was eligible for obtaining AA for the exact description of imports and exports along with the quantitative entitlement as mentioned in serial number A1250 of the SION book.

2.3 Entry at S.No. A1250 of SION Book mentions the following:

Sl. No.	Export Item	Quantity	Import Item	Qty. Allowed
A1250	Linear Alkyl Benzene Sulphonic Acid	1 kg	Linear Alkyl Benzene	0.720 Kg.

2.4 However the respondent applied and obtained thirteen AAs with the following description:

S.No.	A.A No.	Date	Description of Export Product as per application and Authorization	Quantity (M.T.)
1.	0810128566	31.01.2014	Linear Alkyl Benzene Sulphonic Acid, Sodium Salt Powder Form, Industrial Surfactant	100
2.	0810128565	31.01.2014	Linear Alkyl Benzene Sulphonic Acid, Sodium Salt Powder Form, Industrial	482

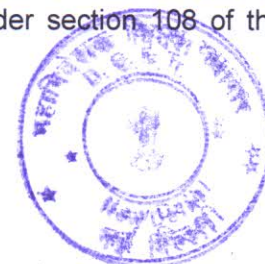


			Surfactant	
3.	0810128640	04.02.2014	Linear Alkyl Benzene Sulphonic Acid, Sodium Salt Powder Form, Industrial Surfactant	40*
4.	0810124641	04.02.2014	Linear Alkyl Benzene Sulphonic Acid, Sodium Salt Powder Form, Industrial Surfactant	40*
5.	0810128706	05.02.2014	Linear Alkyl Benzene Sulphonic Acid, Sodium Salt Powder Form, (Industrial Surfactant)	132
6.	0810128564.	31.01.2014	Linear Alkyl Benzene Sulphonic Acid, Sodium Salt Powder Form, (Industrial Surfactant)	132
7.	0810128563	31.01.2014	Linear Alkyl Benzene Sulphonic Acid, Sodium Salt Powder Form, (Industrial Surfactant)	40
8.	0810129199	26.02.2014	Linear Alkyl Benzene Sulphonic Acid	352
9.	0810130768	22.04.2014	Linear Alkyl Benzene Sulphonic Acid	220
10.	0810130769	22.04.2014	Linear Alkyl Benzene Sulphonic Acid	220
11.	0810130732	21.04.2014	Linear Alkyl Benzene Sulphonic Acid	396
12.	0810133356	17.09.2014	Linear Alkyl Benzene Sulphonic Acid	396
13.	0810133720	03.11.2014	Linear Alkyl Benzene Sulphonic Acid	1012

* These two AAs have been got redeemed by the respondent.

From the above it is observed that the respondent wrongly applied and obtained seven AAs as mentioned in the serial no. 1 to 7 in the table above with description of export item different from that mentioned in serial no. A1250 of the SION Book.

2.5 The respondent filed four shipping bills i.e. 6142638 dated 19/11/14, 6158159 dated 20/11/14, 6179746 dated 21/11/2014 and 6201415 dated 22/11/2014 for export of 484 MT goods in 22 containers having a declared value of Rs. 5,24,05,622/- at customs port, Pipavav. These four consignments were declared as "Linear Alkyl Benzene Sulfonic Acid Sodium Salt (Powder Form) (Industrial Surfactant)" to be exported against AA no. 0810133720 dated 03.11.2014 (appearing at S.No. 13 of the table above). DRI, Gandhidham examined these export shipments on 26.11.2014 and drew samples. Analysis of these samples done at Custom House Laboratory, Kandla revealed that the goods were mainly composed of flavoured Sodium Chloride (89.4% to 95.6%) and there were only traces of active matter, alkalinity, moisture, calcium, magnesium, iron, etc. Finding that the goods being exported were misdeclared in terms of description and were grossly overvalued, the DRI seized the goods. In view of DRI obtaining samples of its exports goods, the respondent surrendered Advance Authorisation No. 0810133720 dated 03.11.2014 to RA, Ahmedabad. During the investigation, DRI found that the various such consignments exported by the respondent in the past under 12 Advance Authorisatons (at S.No. 1-12 above) were also of similar nature. Sh. Paresh D Patel Director of the respondent, in his voluntary statement dated 16.12.2014, given under section 108 of the



customs act 1962 admitted this fact. Hence, DRI had reasons to believe that the goods exported in the past by the respondent were also not in conformity with the SION norms.

2.6 In view of the above findings, the RA, Ahmedabad issued a Show Cause Notice dated 10.08.2015 to the respondent as per details given in the opening para of this order. The Adjudicating Authority also afforded an opportunity of personal hearing to the respondent on 26.08.2015. After concluding that the charges are not proven, the adjudicating authority passed OIO dated 11.02.2016 dropping the Show Cause Notice dated 10.08.2015. Feeling aggrieved, the DRI, Ahmedabad filed this review petition before the undersigned vide submissions dated 04.08.2016. The matter was examined in consultation with RA, Ahmedabad and DRI. DRI was asked to appear before the reviewing authority on 07.03.2017. Sh. Manoj Kumar Ojha, Senior intelligence Officer from DRI Gandhidham appeared. After a detailed discussions the case was found fit for initiating review under section 16 of the act.

2.7 Accordingly, review proceedings were initiated on 01.06.2017 granting personal hearing to the respondent on 13.06.2017, 08.08.2017 and 13.09.2017. The respondent through its advocate Sh. H.O. Arora appeared before the undersigned on 13.09.2017 with written submissions. The respondent made the following main points:

(i) LABSA is a primary product which may have differing physical and chemical properties according to the alkyl chain length resulting in formulations for various applications. LABSA Sodium Salt is a customized product of LABSA only which may have active matter contents ranging from 20% to nearly 90%.

(ii) Under the Foreign Trade Policy a primary product is allowed to be described by its customized product name and the same can also be mentioned in the Advance Authorization issued to an Applicant.

(iii) When the 'Condition Sheets' attached to the Advance Authorizations issued to the exporter Company themselves specified the export item to be "Liner Alkyl Benzene Sulfonic Acid Sodium Salt (Powder form) (Industrial Surfactant)", the exporter Company cannot be faulted for having declared the description of the goods exported in the past as "Liner Alkyl Benzene Sulfonic Acid Sodium Salt (Powder form) (Industrial Surfactant)".

(iv) DRI has failed to discharge the onus of producing requisite tangible, material and concrete evidence to substantiate and sustain the allegation. DRI has taken recourse to assumptions and presumptions by attempting to retrospectively apply the Test Report results in respect of current export consignments to all the past exports made under the said 12 AAs.

(v) DRI relied upon the statement of Shri Paresh D. Patel, Director of the Company. The said statement was obtained under intimidating circumstances by the officers of DRI who compelled him to make statement against his wishes. DRI ignored the statement of Shri Shashikant G. Pandey, Vice President and overall in-charge of supervising the production plant



of the Company who stated that as per LTRs (Laboratory Test Requisitions) their past export consignments of LABSA Sodium Salt were having more than 80% active matter.

2.8 On the submissions made by the respondents, comments were sought from DRI which were received vide DRI letter dated 06.06.2018. For having technical inputs, the matter regarding export product was also referred to NC which in its meeting dated 30.05.2019 decided as follows:

"The committee considered the case and observed that goods exported by the firm should have been as per SION A-1250. As stated by RA, Ahmedabad, the exported item is 'Linear Alkyl Benzene Sulphonic Acid (Sodium Salt) and not LABSA. The Committee is of the view that the two export items are different and the exported item is (Sodium Salt) form which is not as per SION, hence the company has not exported as per SION."

2.9 RA Ahmedabad, vide its various e-mails, the last being on 05.09.2019, informed that the respondent applied for obtaining AAs under serial number A1250 but mentioned wrong description of the export product in its applications which was not as per the SION at serial number A1250. The respondent already got the matter closed in case of two AAs i.e. AA no. 0810128640 and no. 0810128641 on the basis of export made by it of "Linear Alkyl Benzene Sulphonic Acid, Sodium salt powder form, Industrial surfactant".

3.0 I have carefully gone through review petition dated 04.08.2016 submitted by DRI, submissions of the respondent, comments of DRI on submissions of the respondent, submissions of RA, Ahmedabad, comments of Norms Committee, description given in the applications of the respondents, details on the AAs & Shipping Bills and SION and other technical inputs. It is observed that:

- i) The item exported is Linear Alkyl Benzene Sulphonic Acid, Sodium Salt Powder Form, Industrial Surfactant (LABSASS) which is different from Linear Alkyl Benzene Sulphonic Acid (LABSA) as mentioned in SION A-1250. As per the technical material available, LABSA is a slurry type product, brown in colour, having active matter of about 96% whereas LABSASS exported is sodium salt in powder form having a minuscule active content.
- ii) Inputs as listed in serial no. A-1250 of SION book are meant for LABSA only. LABSASS and LABSA being different products, the inputs applied for and obtained by the respondent in the AAs indicated at S.No. 1 to 7 in the table mentioned in para 2.4 supra, were not meant for LABSASS i.e. the product actually exported by the respondent. The respondent obtained these AAs fraudulently by mentioning in its various applications wrong description of the export product. Hence these seven AAs did not serve the purpose for which these have been obtained.
- iii) In respect of Advance Authorisations indicated at S.No. 8 to 13 in para 2.4, the export item applied for and obtained in the AAs is LABSA, as per SION A-1250. However the respondent's director, in his statement has admitted to have exported only LABSASS. This is corroborated with the fact that the goods being exported against the AA at serial no. 13 of the table in para 2.4 supra as seized by the DRI were LABSASS. Moreover, the vice president & overall in-charge of supervising the



- production plant of the respondent have also admitted in his voluntary statement to have exported the same type of goods under all such authorisations.
- iv) As against its obligation to make export of LABSA, the respondent was caught red handed making export of LABSASS under the AA as mentioned at Serial No. 13 of the table at para 2.4 supra. The respondent immediately surrendered this AA in order to avoid action against it. I am convinced that the respondent would have used this AA also but for the action of DRI. Surrendering this AA does not absolve the respondent of its attempt to cheat the exchequer.

4.0 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. 18/16/16-17/ECA-I

Dated: 26.09.2019

- i) Order-in-Original dated 11.02.2016 is set aside.
- ii) The export obligation discharge given earlier in any of the subject AAs is withdrawn and cancelled.
- iii) Seven Advance Authorisations, as appearing at S.No. 1 to 7 of the table given in para 2.4 supra, are cancelled. The respondents to pay, within 30 days from the date of this order, duties and applicable interest on the import/procurement made against these authorisations.
- iv) In the remaining five Advance Authorisations, as appearing at S.No. 8 to 12 of the said table, RA to exercise proper care and caution to ensure that the goods exported are strictly as per A1250 of the SION Book. Material given by DRI may be properly examined while giving discharge. Appropriate action may be taken without further delay as the export obligation period has expired long back.
- v) De-novo proceedings be initiated against the respondent for imposition of penalty and other appropriate action for a) fraudulently obtaining seven AAs with wrong export description, b) making export which is not as per SION, if any, in the five AAs having correct description, c) obtaining thirteenth AA, which has been surrendered, with the objective of defrauding the exchequer.




(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- ✓(1) Shamrock Chemie Pvt. Ltd., 201, University Plaza, Vijay Cross Road, Navrang pura, Ahmedabad-380009.
- (2) Additional DGFT, 'A' Block, 11th Floor, Govt. Multistoreyed Building, Lal Darwaja, Ahmedabad – 380001.
- (3) DRI, Zonal unit: Ahmedabad, Rupen Bungalow, Jain Merchant Society, Paldi, Ahmedabad-380007 with an advice to take appropriate action like cancellation of shipping bills etc. in case of export shipments which are not as per the description given in the AAs/export documents.
- (4) DGFT website.



Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade