

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

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F.No. 18/09/2019-20/ECA-I/151

Date of Order: 21.09.2020

Date of Dispatch: 23.09.2020

Name of the Applicant:

Dulari Exports Pvt. Ltd.,  
D 14/4 Okhla Industrial Area, Phase-II,  
New Delhi-110020.

IEC No.

0588078557

Order reviewed against:

Order-in-Original No. 05/ 36/ 21/ 0020/  
AM02/EPCG.I/ CLA dated 17.09.2012  
passed by FTDO, CLA, New Delhi.

Order-in-Review passed by:

Amit Yadav, DGFT



### Order-in-Review

Dulari Exports Pvt. Ltd., New Delhi (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 22.06.2019 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against Order-in-Original (O-I-O) No. 05/36/21/0020/AM02/EPCG.I/CLA dated 17.09.2012 passed by the Adjudicating Authority, CLA, New Delhi, imposing a penalty of Rs. 20,10,000/- in addition to payment of customs duty plus interest thereon, on the Petitioner for non-fulfilment of export obligation against duty free imports of machinery made by it under Export Promotion Capital Goods (EPCG) scheme.

### Facts of the case:

2. The Petitioner obtained an import Authorisation No. 0530131836 dated 22.05.2001 under EPCG scheme from office of the Zonal Addl. DGFT, CLA, New Delhi, as per provisions of the Foreign Trade Policy (FTP) prevalent during that period, for import of capital goods for a Duty Saved Value of Rs. 1003854/- with an obligation to export products manufactured with the same/similar machinery, for an FOB value of Rs.



5019274/- (US\$ 107135) to be completed within a period of 8 years from the date of issue of the Authorization in addition to maintaining average level of its past export performance to the tune of Rs. 16,56,15,246/- every year. As per condition of the Authorization, the Petitioner was required to submit the prescribed documents showing fulfilment of obligation within a time frame as mentioned in the FTP. The export obligation period expired on 21.05.2009. The Petitioner did not furnish any document evidencing fulfilment of export obligation.

2.1 A Show Cause Notice dated 21.03.2010 was issued to the Petitioner under Section 14 for taking action under section 11(2) of the Act and Rule 7 of the Foreign Trade (Regulations) Rules, 1993, as amended. The Petitioner was also granted a personal hearing before the Adjudicating Authority. The Petitioner neither responded to the Show Cause Notice nor appeared for the personal hearing. The Adjudicating Authority passed an Order-in-Original dated 17.09.2012 imposing a fiscal penalty of Rs.20,10,000/- in addition to payment of customs duty plus interest thereon.

2.2. The petitioner did not file an appeal before the Appellate Authority against the said Order-in-Original. Instead, the Petitioner filed a Review petition dated 22.06.2019 before the undersigned claiming to have fulfilled its export obligation. The Petitioner further claimed that the average export obligation as imposed on it needed correction as it was not calculated as per the extant provisions of FTP.

3. The submissions made by the Petitioner were referred to the RA, CLA, New-Delhi, which vide its report dated 6<sup>th</sup> November 2109 informed that the Petitioner made exports of USD 1,13,520 against obligation of USD 1,07,135 but had failed to maintain its average annual export obligation as it could make export of only Rs 10,63,44,666/- per year as against an obligation of Rs. 16,56,15,246/- per year.

4. The petitioner was granted personal hearing on 09.01.2020 which was attended by its manager Sh. Praveen Kumar. The manager reiterated its written submissions and stated that the annual average export obligation has been fixed wrongly and needs correction. He further stated that its annual average export obligation comes to Rs. 11,29,22,717/- against which it has maintained an export level of Rs. 11,31,30,878/-

4.1 The matter was again referred to the RA, which vide its report dated 7<sup>th</sup> August 2020 confirmed that the average export obligation is re-





fixed as Rs. 11,29,22,717/- and the Petitioner has fulfilled its average and specific export obligation.

5. I have gone through the facts and records carefully. It is observed that office of the Zonal Addl. DGFT, vide its letter F.No. 5/36/021/020/AM02/EPCG-1/CLA dated 07.08.2020 has confirmed that the petitioner as per export documents submitted by it, has fulfilled the specific export obligation and maintained average level of exports.

6. I, therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:

### ORDER

F.No. 18/09/2019-20/ECA-I / 152

Dated: 21.09.2020

Order-in-Original No.05/36/21/0020/AM02/EPCG.I/CLA dated 17.09.2012 is set aside. The case is remanded back for de-novo consideration by the Adjudicating Authority.



*(Signature)*  
21/09/2020  
(Amit Yadav)

Director General of Foreign Trade

### Copy To:

- (1) Dulari Exports Pvt. Ltd., D 14/4 Okhla Industrial Area, Phase-II, New Delhi-110020
- (2) Additional DGFT, CLA, New Delhi-110002.
- (3) DGFT Website.

*(Signature)*  
(Dilip Kumar)

Dy. Director General of Foreign Trade