

Government of India  
Ministry of Commerce & Industry  
Directorate General of Foreign Trade  
Udyog Bhawan, New Delhi -110011  
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F.No. 18/60/2019-20/ECA.I/

Date of Order: 14 .12.2021

Date of Dispatch: .12.2021

Name of the Applicant:

Yajur Bast Fibres Ltd. (formerly Usha Corporation Ltd.), Phuleshwar, Uluberia, Howrah - 711316

IEC No.

0206020996

Order reviewed against:

Order-in-Appeal No. 18/09/18-19/ECA/ KOL/Appeal-250/392 dated 31.10.2019 passed by Additional DGFT, Kolkata

Order-in-Review passed by:

Amit Yadav, DGFT

**Order-in-Review**

Yajur Bast Fibres Ltd., Howrah (here-in-after referred to as 'Petitioner') filed a Review Petition dated 04.02.2020 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against Order-in-Appeal (OIA) No. 18/09/18-19/ECA/KOL/Appeal-250/392 dated 31.10.2019 passed by Additional DGFT, Kolkata upholding the Order-in-Original (OIO) dated 11.04.2018 passed by the Adjudicating Authority imposing a penalty of Rs. 8,00,000/- in addition to payment of customs duty plus interest, on the Petitioner and its Directors for non-fulfilment of Export Obligation (EO) against duty free imports of machinery under Export Promotion Capital Goods (EPCG) scheme.

**Brief facts of the case:**

2.1 The Petitioner obtained an EPCG Authorization No. 0230002085 dated 15.01.2007 under EPCG scheme from the office of the Addl. DGFT, Kolkata, 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.70,07,984/- with an obligation to export products, for an FOB value of US\$ 12,54,225.32 to be completed within a period of eight years from the date of issue of the Authorization. As per condition of the Authorization, the Petitioner was required to submit the prescribed documents showing fulfilment of export obligation within time frame as mentioned in the FTP. The export obligation period expired on 14.01.2015. The Petitioner did not furnish complete documents evidencing fulfilment of export obligation.



2.2 A Show Cause Notice (SCN) was issued to the Petitioner on 16.09.2015 under Sections 9 & 11 of the Act and Rule 7(1)(k) of Foreign Trade(Regulation) Rules, 1993, as amended and personal hearing was also granted. The Petitioner neither responded to the SCN nor appeared for personal hearing. IEC of the Petitioner was placed in Denied Entity List (DEL) on 31.12.2015. The Adjudicating Authority passed an OIO No.02/21/021/00642/AM07/197-201 dated 11.04.2018 imposing a fiscal penalty of Rs.8,00,000/- in addition to payment of customs duty saved plus interest thereon, on the Petitioner and its Directors.

2.3. The Petitioner filed an appeal on 28.06.2019 before the Appellate Authority against the OIO. The Appellate Authority dismissed the Appeal as time barred vide OIA dated 31.10.2019.

3.1 The Petitioner submitted a Review Petition dated 04.02.2020 to the undersigned. The Petitioner has stated :

- (i) that on completion of first block of 6 years on 14.01.2013, it applied for extension of EO period for one year for the 1<sup>st</sup> block year on 28.01.2013 by enhancing the total EO as per para 5.11 of Handbook of Procedures 2004-2009,
- (ii) that it could not complete the proportionate amount of export during the first block due to labour trouble and the factory remained closed from 07.09.2008 to 10.02.2010,
- (iii) that RA, Kolkata ignored the application for extension of EO and issued Show Cause Notice dated 16.09.2015 and the IEC was placed under DEL on 31.12.2015 without granting personal hearing,
- (iv) that it requested for extension of EO period for 2<sup>nd</sup> Block year for one year on 12.10.2015 and reminded the RA, Kolkata on 22.07.2016,
- (v) that it requested for extension of EO period for two years from the date of endorsement enhancing EO figure as required and waive the block year criteria to fulfil the complete balance export obligation in extended period vide the letter dated 17.07.2017,
- (vi) that it submitted proof of some exports to RA showing fulfilment of partial export obligation.
- (vii) that its case was adjudicated arbitrarily without taking into consideration the requests for extension of EO period and without granting personal hearing,
- (viii) that the OIA dated 31.10.2019 does not cover it requests about extension of EO period and waiver of completion of block year wise export obligation,

*My*



3.2 The Petitioner has requested that:

- (a) the OIO dated 11.04.2018, OIA dated 31.10.2019 and IEC suspension order dated 11.11.2019 be set aside,
- (b) export obligation period be extended for two years and waiver of the block year wise fulfilment of export obligation.

4. The Petitioner was granted personal hearing on 30.07.2021 which was attended by its counsel Shri Aritra Basu. The counsel informed that it submitted an application on 28.01.2013 for extension of export obligation period. He was directed to submit office receipt as proof of submission of his application dated 28.01.2013. The counsel questioned the OIO dated 11.04.2018 and OIA dated 31.10.2019 and sought time to file written submissions. RA, Kolkata was also asked to confirm as to whether the Petitioner submitted an application dated 28.01.2013.

5. The Petitioner submitted written submissions vide its email dated 05.08.2021 and letter dated 13.08.2021. RA, Kolkata furnished comments vide the letters dated 30.08.2021 and 20.09.2021. They have informed that the documents submitted by the Petitioner did not contain office receipt showing the proof of submission of the letter dated 28.01.2013. However, they received the letter dated 12.10.2015 and 22.07.2016 requesting of EO period extension for one year with enhancement of export obligation to the tune of 10%. Since the licence expired on 14.01.2015 and the Petitioner did not apply for block-wise condonation and no composition fee was paid, the same were not considered. The Petitioner vide the letter dated 22.07.2016 submitted 15 shipping bills out of which 5 shipping bills do not bear endorsement of EPCG Authorization number. Further, ANF-B, Chartered Accountant certificate, BRCs were not produced and no application in terms of policy circular No.7 dated 11.07.2002 was produced. Based on the FOB value of the shipping bills it was found that only 27% of EO was completed in the first block of export obligation period. The Petitioner had utilised the authorization for import of goods saved amount and the duty saved amount was 109% of the EPCG authorisation for which balance application fee towards excess duty saved availed was not paid. Customs duty and interest on balance export obligation was also not paid. The IEC was placed in DEL on 31.12.2015 as the Petitioner did not attend personal hearing on 27.11.2015.

6. The Petitioner was requested to furnish the proof of submission (in original) of its letter dated 28.01.2013 requesting EO period extension as its counsel informed during personal hearing vide the letter dated 11.11.2021. It submitted original letter dated 20.01.2013 apparently acknowledged by Shri Utpal Kr. Acharya, (now JDG in RA, Kolkata). A confirmation vide email dated 02.12.2021 was sought from Shri Acharya as to whether the Petitioner's letter dated 28.01.2013 was acknowledged by him. He confirmed the acknowledgement vide his email dated 08.12.21.



7. I have gone through the records carefully. It is observed that the Petitioner could not complete the proportionate amount of export during the first block due to labour trouble and the factory remained closed from 07.09.2008 to 10.02.2010. On completion of first block of 6 years on 14.01.2013, the Petitioner applied for extension of EO period for one year for the 1<sup>st</sup> block year on 28.01.2013 by enhancing the total EO as per para 5.11 of Handbook of Procedures 2004-2009. RA, Kolkata did not take any action on the letter dated 28.01.2013. This material fact was not taken into cognizance by the Adjudicating and the Appellate Authority while passing the OIO and OIA respectively.

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

### ORDER

F.No. 18/60/2019-20/ECA-I /380

Dated: 14.12.2021

The Review Petition dated 04.02.2020 is upheld. Order-in-Appeal No. 18/09/18-19/ECA/KOL/Appeal-250/392 dated 31.10.2019 and Orders-in-Original 02/21/021/00642/AM07/197-201 dated 11.04.2018 are dismissed. The case is remanded to RA, Kolkata for de novo consideration with directions to take action on the letter dated 28.01.2013 of the Petitioner requesting extension of EO period for one year, within 30 days of issue of this Order.



*(Signature)*  
(Amit Yadav)

Director General of Foreign Trade

Copy To:

- (1) Yajur Bast Fibres Ltd. (formerly Usha Corporation Ltd.), Phuleshwar, Uluberia, Howrah - 711316.
- (2) Addl. Director General of Foreign Trade, 4, Esplanade East, Kolkata-700069.
- (3) CEIB, 8<sup>th</sup> Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi -110001
- ✓ (4) DGFT Website.

*(Signature)*  
(Dilip Kumar)

Dy. Director General of Foreign Trade