

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

F.No. 18/04/2022-23/ECA.I

Date of Order: 28.06.2022

Date of Dispatch: 29.06.2022

Name of the Applicant:

Ruchi Soya Industries Limited, Aastha Bhawan, 601,
Part B-2, Metro Tower, 6th Floor, Vijay Nagar, AB
Road, Indore – 452010

IEC No. :

0388133252

Order reviewed against:

RA, Bhopal's Order dated 18.10.2021 rejecting the
request to remove its IEC from DEL

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

Order-in-Review

Ruchi Soya Industries Limited, Noida (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 02.06.2022 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against order of RA, Bhopal dated 18.10.2021 rejecting its request to remove its IEC from Denied Entity List (DEL).

2. The office of Commissioner of Customs, Indore vide their letter dated 17.01.2019 informed RA, Indore that Petitioner had availed undue benefits under VKGUY scheme for Rs.6,87,66,144/- by misclassifying their export products and requested to ab-initio cancel the scrips granted to the Petitioner under VKGUY scheme against the export of goods effected during the period 01.01.2013 to 31.03.2015. RA, Indore issued a letter dated 20.03.2019 to the Petitioner as to why action under the Act should not be taken. The Petitioner requested RA, Bhopal to keep the matter pending vide its letters dated 01.04.2019 and 09.12.2019. Since the Petitioner did not give proper explanation with reference to letter dated 20.03.2019 regarding misclassification of the export product as alleged by the customs, and the matter remained unsettled with Customs authority, RA, Indore placed the Petitioner's under DEL in February 2021.



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3. The Petitioner made several representations to RA, Indore to remove its IEC from DEL. RA, Indore granted personal hearing to the Petitioner on 08.09.2021. The Petitioner also submitted written submissions on 09.09.2021. RA, Indore passed a detailed order dated 18.10.2021 rejecting the Petitioner's request to remove its IEC from DEL. RA, Indore observed that:

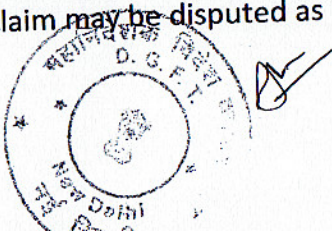
(i) Different Customs Houses issued show cause notices to the Petitioner for wrong availment of duty credit scrips under VKGUY scheme by misclassification of export goods and forwarded to RA, Bhopal with request to take action for cancellation of relevant VKGUY scrips. On receipt of these show cause notices, RA, Indore placed the Petitioner's IEC in DEL.

(iii) Preliminary details of past claims of licence, certificate, scrip or any instrument bestowing financial or fiscal benefits which the Petitioner may attempt to claim under the Foreign Trade (Development & Regulation) Act, 1992 or Rules and orders made there under, are as under:

- i. MEIS : Exact claim amount not available
 - ii. Target Plus Scrip : Rs. 41.41 crore approx.
- There could be other such pending benefits also.

(iv) It appears from the documents made available by the Petitioner that a complete disclosure in this regard was not made by it during the NCLT proceedings, and in such case of non-disclosure, the Order of Hon'ble NCLT may not necessarily be construed in such a manner that while on the one hand its past liabilities may be written off, yet on the other hand past fiscal benefits so as unpaid and undisclosed during the proceedings may be provided to the new management. Non-disclosure in the context of such claims may also amount to misleading statement. Therefore, its entitlement to these past claims may be disputed. The Petitioner may consider filing an undertaking that it shall not make any attempt to pursue the applications filed for any past benefits nor claim any such benefit. As and when a decision is taken on the issue of removal from DEL, the said undertaking shall be taken into consideration. In the event the Petitioner does not furnish the same, the issue may have to be contested before higher authorities. However, in case the Petitioner had properly declared before NCLT about all its pending claims and various incentives due to it from government departments in respect of the exports made before conclusion of NCLT proceedings, it is called upon to submit documentary evidence thereof.

(v) Removal from DEL may enable the Petitioner to claim the incentives for which its claim may be disputed as stated above. Till such time as this matter is resolved on the basis



of submissions required to be made by the Petitioner, it may not be possible to remove the IEC from DEL, in terms of Rule 7(j),(k) and (n) of the Foreign Trade (Regulation) Rules, 1993.

(vi) It is observed that the Petitioner has obtained a number of EPCG authorizations from RA, Bhopal for import of capital goods but the said authorizations have not been closed and current status of those capital goods has not been made known to RA, Bhopal.

(vii) Even though the liabilities are claimed by the Petitioner to have been extinguished through NCLT decision, the requisite information regarding export obligation status and current utilization of the said capital goods has to be provided, as transfer of the same has not been permitted.

(viii) Till such requisite information are not furnished by the Petitioner, it may not be possible to remove its IEC from DEL, in terms of Rule 7(1)(k) of the Foreign Trade (Regulation) Rules, 1993.

(ix) The Petitioner may take further action as deemed fit in the manner, either by way of response to above points to RA, Bhopal, or by way of representation before higher authority.

4.1 The Petitioner submitted a review petition dated 02.06.2022 against the order dated 18.10.2021. It has submitted the following:

(i) It is a recognized 4 Star Export House. It went into insolvency under IBC 2016 in 2017 due to some financial issues. NCLT vide its two orders dated 24.07.2019 and 04.09.2019 approved the Resolution Plan of Ruchi Soya Industries Limited and it was taken over by Patanjali Group w.e.f. 18.12.2019.

(ii) Keeping in view the NCLT's order and Sections 32A and 31 of IBC 2016 all proceedings or customs demands which have arisen during or prior to CIRP period have become infructuous and consequently stands abated. All liabilities of the Petitioner prior to CIRP stands extinguished permanently.

(iii) It availed VKGUY scheme benefits against export of products – Food grade Defatted Soya Flakes, Defatted Soya Flour & TVP Granules/Flour by classifying them under Chapter 1208. However, Customs Houses issued it SCNs alleging that these products should have been classified under Chapter 2304 instead of 1208 and why VKGUY issued to the Petitioner may not be cancelled. Out of five SCNs, four are pending and one has been adjudicated against which it has filed appeal and pending with CESTAT. It also filed appeal before NCLAT, Delhi which stayed the demand vide its order dated 24.01.2022.



(iv) The Petitioner under the previous management obtained several EPCG authorizations. However, some of these authorizations are still pending and it has been redeeming all pending EPCG Authorizations even though it is not obligatory on the new management.

(v) There is no transfer of Assets and Capital Goods imported under EPCG Authorizations and they are very much installed in the factories for which they were imported. It's only the transfer of Management of the Petitioner as a going concern as envisaged under the IBC 2016.

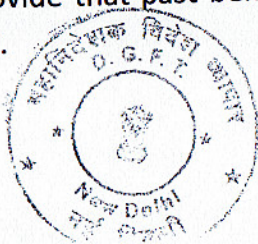
(vi) Export products Edible (Food) grade Defatted Soya Flates, Defatted Soya Flour and TVP Granules/Flour were correctly classified by it under Chapter 1208 and there was no misclassification by it. These products contained more than 51% protein.

(vii) The IRP and the Resolution Plan submitted by the Successful bidder have made complete disclosures before the Hon'ble NCLT. There is no provision under IBC 2016 which prohibits claim of past benefits/due even though past liabilities are extinguished if no claims are filed by any stakeholder.

4.2 The Petitioner requested to remove its IEC from DEL or at least put in abeyance till customs Authorities adjudicate the SCNs issued to it.

5. RA, Bhopal have furnished brief of the case and para-wise comments on the review petition vide their email dated 09.06.2022.

6.1 The Petitioner was granted personal hearing on 15.06.2022 which was attended by Shri Vijay Kumar Jain, Vice President of the Petitioner. He informed that the Petitioner was admitted to CIRP in 2017 and was acquired by Patanjali Group in 2019. Customs authority issued five SCNs to it relating to alleged misuse of VKGUY for the period 2013 to 2015. Four out of five SCNs are pending and one SCN has been adjudicated against which it has filed appeal in CESTAT which is pending. These SCNs were relating to the period prior to initiation of CIRP proceedings. Further, there are 132 EPCG Authorizations during the period of old management and out of these 104 have been redeemed by new management and 28 are pending. Out of remaining 28 authorizations, 08 were not utilized and export obligation in respect of 20 have been completed but have not been redeemed as it has to submit some documents raised in the deficiency letters. One Advance Authorization is pending for redemption for mismatch in specification though it has completed export obligation. The past liabilities before initiation of CIRP in 2017 are extinguished as per IBC 2016. IBC 2016 does not provide that past benefits viz. scrips MEIS scrips, TPS, etc. to be claimed will be extinguished.



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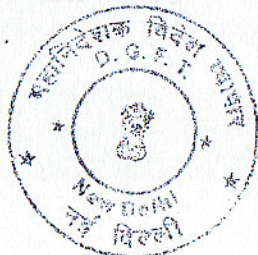
6.2 Dr. S.K. Bansal, Additional DG, Indore was also present during the proceedings. He informed that the Petitioner has been issued VKGUY scrips of Rs. 6,87,66,144/- which are liable to be cancelled and has pending claims for issuance of Target Plus scrips and MEIS scrips. The exact value is not known as all related documents are with new management who is yet to intimate RA. If the Petitioner wants its IEC to be removed from DEL, it has to submit a declaration that till the SCNs issued by Customs authority relating to VKGUY are settled, it will not submit any past claims including MEIS and TPS. The Petitioner did not furnish the statement of assets and liability before the Resolution Professional to RA, and stated that it is not liable to furnish the same. Customs have requested RA, Indore to cancel the VKGUY scrips as they were wrongly availed and thereafter they will be able to adjudicate the cases. RA, Indore have to examine the alleged wrong availment of VKGUY only when the Petitioner will participate in proceedings to examine the alleged wrong availment of scrips and reply to SCNs to be issued. But the Petitioner is not ready to participate in proceedings asking to keep the matter pending till finalization of adjudication by Customs.

6.3 The Reviewing Authority directed the Petitioner to submit the following documents to RA, Indore and scanned copies be emailed to DGFT:

- (i) An undertaking that no claims of previous dues which may be due to Ruchi Soya Industries Ltd will be claimed by the new Management until the disposal of the Customs Adjudication in VKGUY case.
- (ii) The new Management has to furnish a CA Certificate endorsing the balance sheet which was filed before the Resolution Professional during the Insolvency Proceeding.
- (iii) The copy of the NCLT Ruling at the time of take over.
- (iv) An undertaking that the Ruchi Soya Industries Ltd will respond to the show cause notices issued/to be issued by RA, Indore with regard to the VKGUY case.
- (v) A copy of Resolution Plan certified by Chartered Accountant.

RA, Indore were requested to send a report on receipt of requested documents.

6.4 RA, Indore have also furnished status report vide their email dated 24.06.2022. The Petitioner submitted undertakings indicated at para 6.3 (i) and (iv). As regards para 6.3(iii), it submitted NCLT's orders dated 24.07.2019 and 04.09.2019 alongwith the review petition dated 02.06.2022. As regards para 6.3(v), it submitted a copy of Resolution Plan. However, it did not submit the document indicated at para 6.3 (ii). The Petitioner has also submitted an undertaking that it has export receivable of Rs.19,11,61,661/- (MEIS- Rs.18,17,36,175 and RoDTEP – Rs.94,25,489/-)



7. I have gone through the facts and records carefully. The Petitioner has given undertakings that (i) it will not claim any past incentives accumulated to it prior to initiation of CIRP till finalization of issues of SCNs issued by various Customs Houses and will abide by final orders of the Adjudicating Authority/Appellate Authority/Courts; and (ii) it will participate and appropriately reply to office of RA, Indore to the SCNs regarding past VKGUY scrips issued to Ruchi Soya Industries Ltd. While considering past claims, the Adjudicating Authority will also ascertain the orders of Resolution professional pertaining to assets and liabilities of the earlier company.

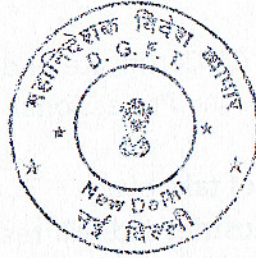
8. I, therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:

Order

F.No. 18/04/2022-23/ECA.I/ 146

Dated: 28.06.2022

The Review Petition dated 02.06.2022 is allowed and the Petitioner's IEC may be removed from DEL.



Santosh Kumar Sarangi
28.6.

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy To:

- (1) Ruchi Soya Industries Limited, Aastha Bhawan, 601, part B-2, metro Tower, 6th Floor, Vijay nagar, AB, Indore -452010.
- (2) Joint Director General of Foreign Trade, Ground Floor, 'A' Wing, C.G.O. Building, Residency Area, Indore -452001.
- (3) Central Economic Intelligence Bureau, 1st, 6th & 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001
- ✓(4) DGFT website

Dilip Kumar

(Dilip Kumar)
Dy. Director General of Foreign Trade