

Government of India/ भारत सरकार
Ministry of Commerce & Industry/वाणिज्य और उद्योग मंत्रालय
Directorate General of Foreign Trade/विदेश व्यापार महानिदेशालय
Udyog Bhawan, New Delhi/उद्योग भवन, नई दिल्ली

F.No. 18/24/2021-22/ECA.I/

Date of Order: 08 .08.2022

Date of Dispatch: 10 .08.2022

Name of the Applicant:

Star Cement Meghalaya Limited, Vill. Lumshnong,
P.O. Khaliehariat, Dist. Jaintia Hills, Meghalaya -
793200

IEC No.

1609001605

Order reviewed against:

Order-in-Original No. 16/21/021/00036/AM11 dated
28.08.2021 passed by Addl. DGFT, Guwahati.

Order-in-Appeal passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Appeal

Star Cement Meghalaya Limited, Jaintia Hills (here-in-after referred to as 'Appellant') filed a an appeal dated 11.10.2021 under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Original No. 16/21/021/00036/AM11 dated 28.08.2021 passed by Addl. DGFT, Guwahati imposing a penalty of Rs. 3,11,56,111/- on the Appellant to be paid within 45 days and if paid thereafter with an interest of 18% per annum for the period beyond 45 days.

Brief of the case

2.1 The Appellant obtained an EPCG Authorisation No. 1630000010 dated 12.01.2011 from the office of Dy. DGFT, Shillong as per provisions of Foreign Trade Policy (FTP) prevalent during that period, for import of Capital Goods for Duty Saved value of Rs.65,10,026/- with an obligation to export for an FOB value of US\$1,159,915.54 (Rs.5,20,80,208/-) to be fulfilled by the use of the Imported Capital Goods, within a period of 8 years from the date of issue of the Authorization. 50% of Export Obligation is to be fulfilled in 1st block (1st to 6th year) and balance 50% of EO to be fulfilled in 2nd block (7th and 8th year) and the Annual Average to be maintained is Nil. As per the condition of the authorization, the Petitioner was required to submit the prescribed documents showing fulfillment of obligation within a time frame as mentioned in the FTP.

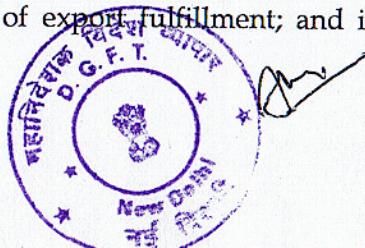


2.2 The Appellant requested in September 2011 for inclusion of its holding company Centuary Plyboard (I) Ltd (CPIL) as a group company in EPCG authorization stating that the group company would fulfill 50% of its export obligation. In response, RA, Shillong requested the Appellant to submit past export performance of the group company vide letters dated 26.12.2011, 31.02.2012 and 31.07.2012. The Appellant submitted past export performance for the years 2008-09, 2009-10, & 2010-11 on 19.03.2014. RA, Kolkata requested the Appellant to furnish export performance for the years 2011-12, 2012-13 & 2013-14 as the relevant preceding three years were 2011-12, 2012-13 & 2013-14 vide letter dated 16.04.2014. Despite several communications between RA (RA, Shillong and RA, Kolkata) & the Appellant and granting personal hearing, it did not submit the requisite documents. Later on, the Appellant on 23.05.2016 submitted a letter that CPIL, was no longer a group company w.e.f. 01.04.2012 and requested to return its EPCG Authorisation.

2.3 Export Obligation period for first block expired on 11.01.2017. The Appellant did not submit documents evidencing fulfilment of export obligation in the first block despite show cause notice under Rule 7 (1)(k) of FT(Regulation) Rules, 1993. The Appellant and its Directors were placed under DEL on 21.12.2017 by RA, Kolkata. On 11.01.2018, the Appellant again stated that 50% of EO required to be fulfilled during first block period has been completed by group company CPIL and on 07.08.2018 submitted a CA certificate showing export performance of CPIL for three years 2011-12, 2012-13 and 2013-14 for endorsement of group company name. RA, Kolkata on 01.08.2019 called for fulfilment of annual average since if the group company exports have to be reckoned for EO fulfilment then Annual Average would have to be first added to the authorisation based on the preceding 3 years exports performance of the group company. Subsequently, Export Obligation Discharge (EOD) was agreed on file and communicated to RA, Shillong vide letter dated 09.12.2019.

2.4 The RA, Shillong office had thereafter merged with RA, Guwahati and the case was dealt by Adjudicating Authority Shri S. Sashikumar, Addl DGFT, RA, Guwahati. RA, Guwahati directed the Appellant on 07.11.2020 to pay customs duty with interest on EO shortfall. Since the Appellant did not comply, Adjudicating Authority issued show cause notice dated 27.04.2021 under Section 14 of the Act to the Appellant and its Directors for action under Section 11 of the Act. The Appellant did not reply despite extension of time. The Adjudicating Authority passed Order-in-Original (OIO) dated 21.06.2021. The Appellant filed WP (C) No. 3426/2021 in Guwahati High Court against the OIO. The Court in its order dated 21.06.2021 set aside the OIO and allowed 3 weeks time to file reply to Show Cause Notice. The Appellant submitted reply to Show Cause Notice on 18.08.2021 and it was granted PH on 26.08.2021.

2.5 The Adjudicating Authority after examining the facts and records concluded that the Appellant did not fulfil export obligation completely and did not pay Customs Duty and interest on unfulfilled export obligation and was trying to produce unconnected exports of CPIL as evidence of export fulfillment; and imposed a penalty of Rs. 3,11,56,111/- on the



Appellant to be paid within 45 days failing which 18% per annum simple interest shall be paid for delayed payment of penalty vide OIO dated 28.08.2021. The Adjudicating Authority also ordered for continuation of DEL of the Appellant and or any other connected entity.

3.1 The Appellant submitted an appeal dated 11.10.2021 against the OIO dated 28.08.2021, stating that :

- (i) it imported capital goods of duty saved value of Rs.54,05,736,65/- against allowed duty saved value of Rs, 65,10,026 and as such had a reduced export obligation for FOB value of US\$ 963,160.23,
- (ii) as per para 5.5(i) of FTP 2009-14 upto 50% of Export Obligation may also be fulfilled by exports of other good(s) manufactured or service(s) provided by the same firm/company, or group company/managed hotel, which has the EPCG authorization,
- (iii) the holding Company CPIL was willing to fulfil 50% of its export obligation by export of products manufactured by CPIL and accordingly approached before custom authorities who have asked it to get the name of CPIL endorsed on the authorization to allow it to make export against the authorization,
- (iv) it therefore requested RA, Shillong for endorsement of the name of CPIL on the authorization vide its letter dated 10.09.2011,
- (v) its holding company CPIL fulfilled export obligation for the first block prior to demerger of CPIL from it w.e.f. 01.04.2012,
- (vi) it has made several correspondences between it and RAs (RA, Kolkata and RA Shilong) for endorsement of CPIL as group company with RA, Kolkata,
- (vii) Joint DG, Kolkata approved the endorsement of CPIL as group company and granted issuance of EPCG,
- (viii) after one year RA, Guwahati vide the letter dated 7.11.2020 informed that Group Company exports cannot be considered towards EO fulfillment as these exports were effected before endorsement of Group Company name in the authorization and requested to pay customs duty plus interest on the unfulfilled EO and to regularizes the shortfall ,
- (ix) despite all the correspondences and paper have been submitted, Addl. DGFT, Guwahati issued an SCN dated 27.04.2021 on the already decided issue of endorsement of Group Company and fulfillment of EO,
- (x) it asked for extension of time through filing reply to the SCN dated 27.04.2021, but, the Adjudicating Authority passed the OIO dated 21.06.2021,
- (xi) it preferred a Writ Petition before the Hon'ble High Court of Guwahati which remanded the case to the Adjudicating Authority with the direction to allow the Appellant to file a reply with reference to the SCN dated 27.04.2021.
- (xii) it submitted its reply on dated 28.08.2021 to the SCN and the Adjudicating Authority again passed OIO dated 28.08.2021,



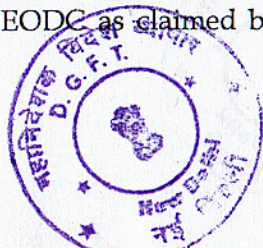
(xiii) there being no 'means rea' on its part, the imposition of penalty is illegal, without jurisdiction and not tenable in law.

3.2 The Appellant has prayed that :

- (i) the OIO dated 28.08.2021 be set aside and quashed,
- (ii) RA, Kolkata's letter dated 09.12.2019 may be upheld,
- (iii) it may be allowed to avail the benefit to fulfill 25% of the stipulated export obligation in terms of para 5.12 of FTP 2009-14.

4. The Appellant was granted personal hearing on 21.07.2022 which was attended by Shri Manoj Agarwal, CFO and Ms. Debjani Ray, Advocate for the Appellant. The Advocate informed that the Appellant fulfilled the export obligation completely- 50% by its Group Company before 01.04.2012 and 50% by the Appellant itself; and documents have been submitted to RA, Kolkata and RA, Guwahati and the then Joint DGFT, Kolkata was convinced that export obligation had been completed and sent a letter to RA, Shillong to consider issuance of discharge certificate vide letter dated 9.12.2019. Shri Amit Sharma, Joint DGFT was also present during the personal hearing. On being enquired whether the CPIL submitted shipping bills and the period upto which CPIL made the export under the Authorization, he informed that presently he does not have the copy and has to check the records. Joint DGFT has also informed that though the Appellant submitted CA certificate of past three years export performance of CPIL, it submitted a letter on 23.05.2016 to RA, Kolkata stating CPIL is no more a Group Company w.e.f 01.04.2012 and it has not exported from CPIL till now, and it requested to return its EPCG authorization. On the one hand it submitted three years Export Performance data of the Group Company and on the other hand it submitted vide letter dated 23.05.2016 that it did not make any export by its group company at all. On this Appellant's Advocate informed that Shipping Bills submitted by the Appellant will clarify that export were made CPIL before 01.04.2012.

5. I have gone through the facts and records carefully. RA, Guwahati furnished para-wise comments on the Review Petition vide their e-mail dated 20.12.2021. The Appellant submitted on 19.03.2014 CA certified export performance for preceding three years 2008-09, 2009-10 and 2010-11 of CPIL, the group company whose exports the Appellant is requesting to be considered for export obligation fulfillment of the Appellant. In terms of Para 5.5 (c) & (d) of FTP -2009-14, CPIL may be allowed to fulfill 50% of export obligation which shall be over and above average export achieved by CPIL in the preceding three years. However, the Appellant on 23.05.2016 has intimated that CPIL is no more its Group Company w.e.f. 01.04.2012 and it has not exported from CPIL till now and requested to return its EPCG Authorization. It submitted again on 07.08.2018 a CA certificate showing export performance of CPIL for three years i.e. 2011-12, 2012-13 and 2013-14 for endorsement of group company name. The letter of RA, Kolkata dated 9.12.2019 does not approve the endorsement of CPIL as group company nor did it grant issuance of EODC as claimed by the Appellant, the letter merely states that the



request of the Appellant for inclusion of CPIL as group company and issuance of EODC has been considered but does not unequivocally state that the same has been agreed. Moreover, Para 5.12 of FTP 2009-14 reducing specific EO to 25% of the EO for units located in North Eastern Region is not applicable in the instant case as it came into existence on 05.06.2012 after issue of the said Authorization.

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

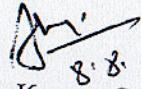
ORDER

F.No.18/24/2021-22/ECA.I/222

Dated: 08.08.2022

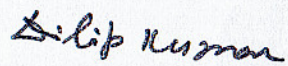
The appeal is admitted and the case is remanded to RA, Guwahati for de novo consideration.




(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. Star Cement Meghalaya Limited, Vill. Lumshnong, P.O. Khaliehariat, Dist. Jaintia Hills, Meghalaya - 793200
2. Joint DGFT, 209, R.G. Baruah Road, Guwahati - 781024.
3. CEIB, Janpath Bhawan, 8th Floor, B-Wing, Janpath, New Delhi-110 001.
- ✓ 4. DGFT Website.


(Dilip Kumar)
Dy. Director General of Foreign Trade