

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

F.No. 18/30/2019-20/ECA.I

Date of Order: 02.03.2022

Date of Dispatch: 03.03.2022

Name of the Petitioner:

Mithila Drugs Pvt. Ltd., F-70, Road No.2,
Mewar Industrial Area, Madri, Udaipur,
Rajasthan -313003.

IEC No. :

1308001851

Order reviewed against:

Order-in-Appeal No. 03/16/144/00041/
AM18 dated 26.03.2018 passed by Addl.
DGFT, Mumbai

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, DGFT

Order-in-Review

Mithila Drugs Pvt. Ltd., Udaipur (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 18.09.2019 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against Order-in-Appeal No. 03/16/144/00041/AM18 dated 26.03.2018 passed by Addl. DGFT, Mumbai upholding the Order-in-Original (OIO) dated 05.10.2017 passed by the Adjudicating Authority (Deputy DGFT, Mumbai), imposing a penalty of Rs.1,00,000/- on the Petitioner and its directors.

Brief of the Case

2.1 The Petitioner obtained an Advance Authorization No. 0310533722 dated 13.08.2009 for a CIF value of Rs. 1,16,63,187/- with an obligation to export for an FOB value of US\$244,800 (Rs. 1,19,21,760/-) to be completed within a period of 36 months from the date of issue of the Authorization. As per conditions of the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled export obligation (EO) within two months of expiry of EO period.

2.2 EO period expired in August 2012. After the expiry of the EO period the Petitioner did not submit complete documents evidencing fulfilment of export obligation. A demand notice dated 06.09.2012 and Refusal Order dated 19.11.2013 were issued but the



Petitioner did not respond. A Show Cause Notice dated 13.10.2014 was issued to the Petitioner and its directors under Section 14 for action under Section 11(2) of the Act. The Petitioner on 01.03.2016 intimated that due to dispute amongst the directors, their production completely stopped. The Petitioner vide its letter dated 10.03.2016 submitted some documents for redemption. Since the documents submitted were not complete, RA, Mumbai issued deficiency letter dated 15.03.2016 to the Petitioner. The Petitioner did not respond. The Adjudicating Authority observed that the Petitioner did not submit complete export documents and did not get regularized the excess imports and passed an OIO No. 03/01/002/00563/AM15 dated 05.10.2017 imposing a penalty of Rs. 1,00,000/- on the Petitioner and its directors.

2.3 The Petitioner filed an appeal on 27.11.2017 before the Appellate Authority. The Petitioner was granted PH on 22.02.2018. The representative of the Petitioner informed that after the settlement of disputes due to financial crisis and introduction of the GST, it was not in a position to pay Customs duty on excess import and requested to grant them time to settle and enable them to pay the duty. The Appellate Authority observed that the Petitioner did not pay Customs duty with interest on entire excess imports despite sufficient time was given and dismissed the appeal vide OIA dated 26.03.2018.

3.1 The Petitioner has now submitted a review petition dated 18.09.2019 to the undersigned stating that:

- (i) it could not fulfill export obligation due to disputes among its directors.
- (ii) its manufacturing activity completely stopped from November 2011.

3.2 The Petitioner has prayed that:

- (i) to set aside the OIA dated 26.03.2018,
- (ii) to stay the operation of the OIA and to stay recovery during the pendency of the Review Petition.

4 A report was called from RA, Mumbai. RA, Mumbai vide their letter dated 24.11.2021 furnished its comments in which they have informed that the Petitioner did not submit complete export documents and did not regularize excess imports and shortfall and in value addition.

5. The Petitioner was granted an opportunity of Personal Hearing on 17.02.2022 which was attended by Shri Amol Vyas, Advocate, representative of the Petitioner. He informed that the Petitioner did not fulfill export obligation due to disputes among the directors of the Petitioner and there was no malafide in non-fulfilment of export obligation and therefore penalty should not be imposed on the Petitioner. He also requested for waiver of interest on the Customs duty. Dr. Sampat Kumar, JDG, Mumbai also attended the hearing. He informed that the Petitioner has to pay Customs duty and interest on excess imports and



also to pay composition fee for regularization of excess imports and of shortfall in value addition.

6. I have gone through the records and facts carefully. The Petitioner did not submit complete export documents towards fulfilment of export obligation and also did not pay Customs duty and interest on excess imports. It also did not regularize the excess import and value addition shortfall by paying composition fee in terms of Para 4.49 of Handbook of Foreign Trade Policy 2015-20 for more than 09 years after expiry of export obligation period and therefore there is excess import in violation of Foreign Trade Policy 2009-14 and the Act.

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

Order

F.No. 18/30/2019-20/ECA.I / 519

Dated: 02.03.2022

The Review Petition dated 18.09.2019 is dismissed. The Order-in-Appeal No. 03/16/144/00041/AM18 dated 26.03.2018 and the Order-in-Original No. 03/01/002/00563/AM15 dated 05.10.2017 are upheld.



Santosh Kumar Sarangi
2.3.2022

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy To:

- (1) Mithila Drugs Pvt. Ltd., F-70, Road No.2, Mewar Industrial Area, Madri, Udaipur, Rajasthan -313003.
- (2) Addl. Director General of Foreign Trade, Nishtha Bhawan, New CGO Building, 48, Vithaldass Thakersey marg, New Marine Lines, Churchgate, Mumbai - 400 020. It is requested to initiate recovery the penalty amount from the Petitioner and outcome be intimated to this Directorate.
- (3) CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- (4) DGFT Website.

Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade