

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

F. No. 01/92/171/11/AM-18/PC-VI/93-94 Date of Order: 29.08.2018

Date of Dispatch: 29.08.2018

Name of the Appellant:

M/s. Doongersee Salt Works Pvt. Ltd.
Plot No. 355, Ward no. - 12B,
Post Box No. 9, Tagore Road,
Gandhidham, Kutch, Gujarat- 370201.

Order appealed against:

Order-in-Original No. 24/21/021
/00150/AM07, dated 24.07.2017,
passed by DC, Kandla, SEZ.

Order-in-appeal passed by:

Shri Alok Chaturvedi, DGFT

ORDER- IN -APPEAL

M/s. Doongersee Salt Works Pvt. Ltd. has filed this appeal under Section 15 of the Foreign Trade (Development & Regulation) Act 1992, as amended from time to time, against Order-in-Original No. 24/21/021/00150/AM07 dated 24.07.2017, passed by DC, Kandla, SEZ, imposing a penalty of Rs. 50, 000 (Rupees fifty thousand only) on the Appellant Company.

2.0 Brief facts of the case are as under:

2.1. M/s. Doongersee Salt Works Pvt. Ltd., Plot No. 355, Ward No- 12B, Post Box No. 9, Tagore Road, Gandhidham, Kutch, Gujarat- 370201 obtained EPCG Authorization No. 2430000697 dated 30.11.2006 for Duty Saved amount of Rs. 3,147,160/-. The company was required to fulfill export obligation by export of common salt for eight times the value of duty saved.

2.2 As the firm did not submit export documents for redemption despite letters from the DC office, a Show Cause Notice dated 29.06.2016 under section 14 of FTDR Act, 1992 was issued as to why action should not be taken against it under section- 11(2) and (7) of the FTDR Act, 1992, as amended and under Rule- 7.1 (k) of the Foreign Trade rules 1993.

2.3 In reply, the noticee firm submitted to DC that the Export Obligation was completed in time however they could not submit documents earlier. During Personal Hearing on 09.08.2016, it was informed that they submitted requisite documents the day before PH. The DC office issued deficiency letters on 28.03.2016 & 05.10.2016 and reminder letter on 06.07.2017. However, they had not rectified the deficiencies as was called in these letters.

2.4 On examination of the reply to the Show Cause Notice submitted by the unit, the DC concluded that the company has wilfully defaulted for non-fulfillment of Export Obligation under the EPCG license.

2.5 On conclusion of the adjudication proceedings, the Development Commissioner, Kandla SEZ, in exercise of power vested under section 11(2) read with section 13 of the FTDR Act, 1992, passed the following order vide Order-in-original No. 24/21/021/00150/AM07 dated 24.07.2017:

There is a demand for to pay the custom duty + interest to the Custom Authority of Rs. 314160/- + interest on the firm/company taking all factors such as interest etc, I impose a penalty of Rs. 50, 000/- (Rupees fifty thousand only) on the noticee firm/company amount is to be deposited under the Head of Account '0037' Customs other receipts, fines and penalties etc. within a period of 45 days from the date of this order failing which necessary order for recovery will be issued to the Customs Department to recover from your pending/future claims/the concerned State Government (where the factory/offices of the noticee are physically located) to recover as land revenue arrears without any further reference to the noticee firm.

3. Aggrieved by the adjudication order dated 24.07.2017, the appellant has filed the present appeal stating that they have paid an amount of Rs. 50, 000/- to Customs Authority and has submitted all documents to DC, Kandla for discharge of EO. Therefore, personal hearing was afforded to the appellant on 22.03.2018. Shri Ramesh Chandra Verma appeared before the undersigned on behalf of the company. He contended that they have fulfilled the Export Obligation and produced statements of Export enclosing a photocopy of related documents. In their written submission in appeal the appellant firm stated that:

- i. The appellant has already discharged the entire export obligation cast upon them in terms of the license under consideration and hence, there is no justification of imposing penalty upon them under the provisions of FTDR Act, 1992 as amended.

- ii. The Development Commissioner has erred in ignoring the documents submitted by appellant as well as submissions made during personal hearing held on 09.08.2016, which very clearly establish that the appellant has fulfilled the export obligation cast upon them in terms of the license.
- iii. The appellant has not received any demand notice under the provisions of Customs Act, 1962 issued by competent Customs authority in connection with import duty of Rs. 3,14,160/- and /or interest payable thereon, in connection with import of goods covered by the license. Hence, imposition of penalty on this ground is not tenable on the eyes of law.
- iv. No penalty is imposable by citing procedural lapse(s), if any. Therefore, inasmuch as the documentary evidence submitted by appellant before the Development Commissioner is sufficient to establish that export obligation is fully discharged, no penalty could have been lawfully imposed on appellant.

4. Comments from the office of the Development Commissioner, KASEZ have also been obtained on the appeal filed by the Unit. Comments furnished by office of the Development Commissioner, KASEZ, vide their letter dated 03.01.2018 is as follows:

- I. The firm has not shown due diligence in fulfilment of their export obligation.
- II. The authorised representative of the firm during the personal hearing informed that they had submitted all the required documents towards EO fulfilment. However, no formal reply to SCN dated 23.06.2016 was submitted by the firm.
- III. The documents produced by the firm were examined. Some deficiencies were pointed out to the firm vide letter dated 05.10.2016 followed by reminder dated 06.07.2017. However, there was no response from the firm to the aforesaid communication.
- IV. The office had no other alternative but to finalise the SCN and hence the said Order-in-Original was issued imposing penalty on the firm.

5. I have gone through the facts and request of the case; oral & written submission made by the appellant; comments of office of the DC, KASEZ and all other aspects relevant to the case. It is observed that the appellant had obtained EPCG authorisation No. 2430000697 dated 30.11.2006 for Duty Saved amount of Rs. 3,147,160/-. He was under obligation to fulfil eight times the value of duty saved amount within a period of eight years. He was also under obligation to submit the documents towards discharge of Export Obligation within two months immediately after expiry of the said EO. However, the appellant could not submit the prescribed documents as per ANF 5. Now, prima facie, it appears that the EO has been fulfilled by the exporter however, some deficiencies raised by the DC vide letter dated 06.07.2016 followed by reminder dated 5.10.2016 needs to be complied with. DC,

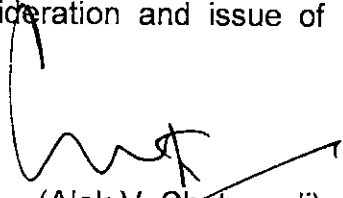
Kandla in his report has not denied that EO has not been fulfilled. He has reported that no proper reply to SCN was given by the applicant and also no reply to queries raised by DC office, were replied by the applicant. However, the appellant has already deposited Rs. 50,000/- towards penalty as imposed by the DC in his order dated 24.07.2017. Therefore, the case needs to be reviewed for issue of EODC. Accordingly, the following order is passed:

ORDER

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- (i) The order dated 24.07.2017 is set aside.
- (ii) The case is remanded to DC for De-Novo consideration and issue of EODC.


(Alok V. Chaturvedi)
Director General of Foreign Trade

To,

M/s. Doongersee Salt Works Pvt. Ltd.
Plot No. 355, Ward no- 12B,
Post Box No. 9, Tagore Road,
Gandhidham, Kutch, Gujarat- 370201.

Copy to: -Development Commissioner, Kandla, SEZ


(Shobhit Gupta)

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