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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3195/2018

LOK-BETA PHARMACEUTICAL INDIA PVT. LTD. ..... Petitioner

Through: Ms Anjali J. Manish and Ms Nidhi Saini, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Kirtiman Singh, CGSC with Mr Prateek Dhanda, Mr Waize Ali Noor and Ms Shruti Dutt, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **23.05.2019**

1. The petitioner has filed the present petition impugning the decision of respondent no.3 (Policy Relaxation Committee – PRC), taken in its meeting dated 08.08.2017 in Case No.3, whereby the petitioner's request to review an order dated 15.10.2013 was rejected.

2. The grievance of the petitioner, essentially, relates to the non-extension of the export obligation period beyond a period of six months in respect of Advance Authorization bearing no. 0310554733.

3. The petitioner is a merchant exporter, *inter alia*, engaged in purchase and sale of pharmaceutical products. The petitioner states that it had entered into an agreement with a Russian Company for supply of a drug named Meropenem, which is used to prevent/treat bacterial infections. It is stated

that the said Russian Company intended to supply the said drugs to the Russian Government pursuant to a tender invited by the Russian Government.

4. The petitioner applied for an Advance Authorization for importing the bulk drugs for the purposes of supplying the same to the Russian Company after repackaging the drug for retail trade and exporting the same. Pursuant to the petitioner's application, it was issued an Advance Authorisation No.310554733 dated 12.01.2010. In terms of the Advance Authorization, the petitioner was entitled to import the specified inputs for exporting the drug, "Meropenem for Injection USP 1 gm". The petitioner claims that it utilised the said Advance Authorization for importing 70 kgs of bulk Meropenem with Sodium Carbonate USP under the bill of entry bearing no.38436416 dated 16.01.2010.

5. According to the petitioner, it exported 68.98 kgs of "Meropenem for Injection USP 1 gm" at FOB value of ₹2,68,30,665/- against the Advance Authorization in question. The said exports were made in two consignments; the first was exported on 03.02.2010 and the second was exported on 03.08.2011. It is stated that the second consignment constituted 12.01% of the export obligations. The petitioner has also realised the price for the said consignment. Thereafter, by a letter dated 04.05.2013, the petitioner requested the Licensing Authority for issuance of an Export Obligation Discharge Certificate (EODC) as it had already fulfilled its export obligations related to the Advance Authorization in question.

6. In response to the aforesaid letter, the Licensing Authority issued a letter dated 08.05.2013 pointing out certain deficiencies including that the

consignment, exported on 03.08.2011, was beyond the export obligation period.

7. The petitioner was also called upon to furnish the Destruction Certificate as required in terms of the Policy Circular no.18 dated 30.10.2007.

8. In view of the above, the petitioner filed an application dated 07.09.2013 with the PRC for extending the export obligation period and for exempting the petitioner from furnishing the Destruction Certificate in terms of the Policy Circular no.18 dated 30.10.2007.

9. The petitioner's request was considered by the PRC in a meeting held on 15.10.2013 and it extended the export obligation period for a further period of six months, that is, from twelve months to eighteen months. Accordingly, the export obligation period was extended upto 31.07.2011. The said extension was subject to payment of composition fee at the rate of 0.5% of the FOB value of exports made beyond the initial export obligation period of twelve months and minimum value addition of 15%. The condition for providing re-export/Destruction Certificate for exports made beyond the export obligation period, as required under Policy Circular no.18 dated 30.10.2007, was waived.

10. Since, the second consignment was exported on 03.08.2011, which was three days beyond the extended export obligation period, the petitioner filed an application dated 02.01.2014 requesting the PRC to review its decision and to extend the export obligation period for a further period of three days.

11. Subsequently, the petitioner also paid the composition fee as

stipulated by the PRC, at the rate of 0.5% of the FOB value of the second export consignment, which was made beyond the export obligation period of twelve months. Thereafter, the petitioner filed an application dated 09.01.2017 requesting the PRC to review its decision dated 15.10.2013 and to extend the export obligation period by three days.

12. The petitioner's application was taken up by the PRC at its meeting held on 08.08.2017 and the same was rejected. The PRC held that it had already allowed an extension of six months and in this view, it decided not to accede to the petitioner's request and maintained its earlier decision. The said decision of the PRC is impugned in the present petition.

13. At the outset, it is relevant to note that the petitioner had imported the drugs in question from unregistered source and therefore, in terms of the relevant policy circulars, the petitioner had no option but to either use the said products as an input and exporting the resultant product or to re-export/destroy the imported product. Under no circumstances, the drugs imported by the petitioner could be used or sold to consumers in India. There is no dispute that the petitioner had fulfilled its export obligations and, therefore, the question of calling upon the petitioner to re-export or destroy the products imported under the Advance Authorization in question, does not arise. In this view, the PRC has rightly acceded to the petitioner's request for waiver of such a condition.

14. The only other issue to be considered by the PRC was regarding extension of the export obligation period. As noticed above, the petitioner had fulfilled its export obligations by exporting two consignments. The first consignment was admittedly within the export obligation period of twelve

months and the relaxation sought by the petitioner was in context of the second consignment, which was exported on 03.08.2011. Although, the PRC extended the export obligation period by six months, that is, from 15.01.2011 to 31.07.2011, the same is meaningless as the petitioner had not exported any consignment within the said period.

15. Thus, it is apparent that the decision rendered by the PRC on 15.10.2013 was without examining the relevant facts.

16. At this stage, it is also relevant to examine the powers of the PRC for granting exemptions from any procedure or policy. Paragraph 2.5 of the Foreign Trade Policy 2009-2014 (FTP 2009-2014) expressly empowers the Director general of Foreign Trade (DGFT) to grant exemptions from policy/procedure. The said paragraph is relevant and is set out below:-

> "**2.5 Exemption from Policy/Procedure**
>
> DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardships and adverse impact on trade. DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as he may deem fit. Such request may be considered only after consulting committees as under:

Sl.No.	**Description**	**Committee**
(i)	Fixation/modification of product norms under all Schemes	Norms Committee
(ii)	Nexus with Capital Goods (CG) and benefits under EPCG Schemes	EPCG Committee
(iii)	All other issues	Policy Relaxation

		Committee (PRC)

17. It is clear from the above that the PRC could recommend grant of relaxation on the grounds of genuine hardship. In the present case, the second tranche of the exports was made just three days beyond the extended period of the export obligation period.

18. At this stage, Mr Kirtiman Singh, learned counsel appearing for the DGFT states, on instructions, that given the mitigating circumstances of this case and considering that the balance part of the export obligation was discharged just three days beyond the extended period of the export obligation period, the DGFT/PRC would reconsider its decision. He requests that the matter be remanded to the DGFT/PRC for reconsideration.

19. In view of the above, the impugned order dated 08.08.2017 rendered in Case No.3 is set aside and the DGFT/PRC is directed to reconsider the petitioner's request for extension of the export obligation period.

20. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

MAY 23, 2019
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