



**GOVERNMENT OF INDIA**  
**MINISTRY OF COMMERCE & INDUSTRY**  
**DEPARTMENT OF COMMERCE**  
**OFFICE OF THE ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE**  
**4<sup>th</sup> & 5<sup>th</sup> Floor, SHASTRI BHAWAN, ANNEXE BUILDING,**  
**26, HADDOWS ROAD, CHENNAI 600 006**

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File No.I(38)/ECA/Addl.DGFT/Che/AM 14/611 To 612 Dated: 11.02.2014

Name of the Appellant: **M/s.Pescados Sebel Exports Pvt.Ltd.,**  
**18/1555, Pallichal Road, Cochin-682 005.**

Order Appealed Against: Order-in-Original  
No.10/36/021/00088/AM-03 dated 21.05.2013.  
Passed by Dy.DGFT., Cochin..

**ORDER IN APPEAL**

Passed by: Shri A.K. Choudhary,  
Addl.Director General of Foreign Trade,  
Chennai

Present on behalf of  
the Appellant: Shri P.V. Viju, Director

M/s. Pescados Sebel Exports Pvt.Ltd., Cochin-682 005 filed an appeal against the Adjudication Order No.10/36/021/00088/AM-03 dated 21.05.2013 passed by the DyDGFT, Cochin in terms of which a fiscal penalty was imposed on the firm for non-submission of export documents towards fulfillment of export obligation.

2. M/s. Pescados Sebel Exports Pvt.Ltd., Cochin-682 005 obtained an EPCG Authorisation No.1030000254 dated 26.03.2003 for a c.i.f. value of Rs.8,11,464.79/- for import of items duty free as specified in the licence, and shall export the resultant product for a f.o.b. value of Rs.40,57,323.99/-

as per conditions of authorisation in question viz: within 8 years from the date of issue of licence. The appellant firm did not submit the export documents showing block-wise fulfillment of export obligation. The appellant firm vide letter dated **02.06.2008** had submitted Installation Certificates for the Capital Goods installed on 04.08.03 and 23.09.03. On processing this letter, RA, Cochin, vide letter dated **26.06.2008** directed the appellant to furnish the declaration regarding the registration of the unit with Central Excise authorities as per Para 5.3.2 of HBP and for their request for extension of export obligation period by two years, their attention was invited to Para 5.11 of HBP-Vol.I. Since there was no reply from the appellant, they were directed to regularise the unfulfilled portion of export obligation for the 2<sup>nd</sup> and 3<sup>rd</sup> block period by payment of customs duty with 15% interest vide letter dated **20.04.2009**. Subsequently, they were issued with two more letters dated **14.09.2009** and **08.12.2009**. Since there was no reply, a Demand Notice dated **03.06.2010** was issued with opportunity of PH on **18.06.2010**. In their reply, the appellant vide letter dated **14.06.2010** had informed that no exports had been made during the said period and requested for additional eight years to fulfill the export obligation. Since there was no provision to extend the export obligation period by another 8 years as per Policy/Procedures, the appellant was requested to regularise the case as informed earlier. In the absence of a reply, the firm's name was placed under Denied Entities List (DEL) on **07.07.2010**. The firm informed vide letter dated **18.07.2012** and **09.08.2012** that their annual average export obligation was zero and only specific export obligation was imposed on their licence and requested this office to let them fulfill the same by taking into account the exports made by their group company M/s.Acquamarine for 1<sup>st</sup> and 2<sup>nd</sup> block periods. For the 3<sup>rd</sup> and 4<sup>th</sup> block period, they wanted to apply for extension of export obligation periods as per Para 5.11.1 of Policy. They had informed that their unit was affected by Tsunami of 2004 and had applied to the Tamil Nadu District Industries Centre, Ramanathapuram for rehabilitation package. The firm was informed that their request for taking into account the export of their group company could not be taken into account at this stage since their name had already been placed under Denied Entities List (DEL) and were directed to regularise the export obligation default immediately for all block years since their export obligation period was over by 25.03.2011. Since, the firm did not comply with the directions of RA, Cochin, a show cause notice dated **16.01.2013** was issued with an opportunity of Personal Hearing (PH) on **04.02.2013**. During the PH., Shri Viju P.V., Director of the company had informed that they shall pay customs duty plus interest within 15 days time, but did not keep up the promise, which finally led to the case being adjudicated and order issued on **21.05.2013**.

3. Aggrieved by the above mentioned Adjudication Order dated **21.05.2013** the appellant firm filed an appeal dated **23.07.2013**. In the appeal, the firm have reiterated their stand made before the RA, Cochin and requested to set aside the impugned order; allow them to redeem their case with export obligation already completed and allow them to pay the duty for the shortfall in export obligation; remand back the case to RA, Cochin to consider their request for fulfillment of export obligation against their group company exports. Accordingly, vide letter dated **20.12.2013**, a Personal Hearing was granted to the firm on **08.01.2014** at **12 PM** to appear either in person or through legally appointed Attorney/Representative and in case on non-availing of the said personal hearing, the Appellate Authority shall be at liberty to dispose of the appeal ex-parte by relying on the evidence/documents already on record.

4. On **08.01.2014**, the firm represented by **Shri P.V. Viju, Director** appeared before the Appellate Authority for Personal Hearing vide **Interview Slip No.12** and submitted a letter dated **08.01.2014**. In the said letter, he reiterated the damage caused due to Tsunami 2004 and requested to take into account the exports of their group company M/s.Acqua Marine, in which Shri Vikraman, Director of the Appellant Company, is a Partner and had done exports to the tune of US\$ 1,08,650 and apply Para 5.4 and 5.5(1) of FTP in their case. He has stated that they did not include the name of supporting manufacturer at the time of obtaining licence, due to ignorance. He has further stated that M/s.Acqua Marine also exports the same export product and no EPCG scheme was availed by them and if the exports of group company's and their own exports are taken together they meet the export obligation over and above fixed on the licence.

5. I have gone through the facts of the case available on record and the written submissions made by the firm in their letter received in this office on 23.07.2013 and documents submitted during the course of Personal Hearing.

*“ Their request for taking into account the exports of their group company in terms of Para 5.4 and 5.5(1) of FTP cannot be acceded to, since they do not fulfill the conditions stipulated in these paras. However, if their contention that they have made exports to the tune of US 35,186 (Rs.13,35,807/-) is right and if RA, Cochin is satisfied about the same based on documents to be submitted, the same may be taken into account. The appellant firm shall pay Customs duties and interest for the balance unfulfilled portion of the export obligation fixed.”*

6. I, therefore, in exercise of the powers vested in me under Section 15 read with Section 13 of the Foreign Trade (Development & Regulation) Act, 1992, as amended, pass the following order:

**ORDER**

File No.I(38)/ECA/Addl.DGFT/Che/AM 14

Dated: 11.02.2014

1. The Adjudication Order No.10/36/021/00088/AM-03 dated 21.05.2013 is set aside and the case remanded back to RA, Cochin for de-novo consideration by RA, Cochin, who may satisfy himself on partial fulfillment of export obligation by taking into account the exports made by the appellant to the tune of US 35,186 (Rs.13,35,807/-), on submission of prescribed documents by the appellant.
2. The appellant shall regularise the case by payment of Customs duties and interest for the balance unfulfilled portion of the export obligation fixed.

*opc*

*Ar*

(A.K. CHOUDHARY)

ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE

To

✓ M/s.Pescados Sebel Exports Pvt.Ltd.,  
18/1555, Pallichal Road,  
Cochin-682 005.

✓ Copy to: RA Cochin for information.

Order in Appeal No.38/AM14-Pescados

Despatch  
by Speed post  
LD  
13/2/14