

**Draft Minutes of the meeting of the Grievance Redressal
Committee held
on 25.08.2008 at 1500 Hours**

Item No: 1 M/s.Elite International (F.No. 06/12/2008-GRC)

- **Prayer in brief** : The petitioner's prayer to the Committee is to direct DGFT to take into account the turnover of M/s. Elite Inc. (a proprietary firm) for the purpose of grant of benefits under Target Plus Scheme to M/s. Elite International Pvt. Ltd. Company).
- **Grounds of prayer** : The petitioner have submitted that Part IX A Chapter IX of the Companies Act, deals with 'Amalgamation, Merger of Division or Companies" Amalgamation or Merger can be done of two or more existing companies in their case, as on 13th June, 2004 only one company M/s. Elite Inc., a Proprietary firm was in existence which was converted into M/s. Elite International Pvt. Ltd., a Pvt. Ltd. Company with all assets and liabilities. The petitioner has further submitted that the issue raised by PC-I Section of the DGFT was – "The Pvt. Ltd. company can not count past performance of Proprietary firm upon takeover if the said is not an organic growth on account of conversion under chapter IX of the Companies Act". In this case, M/s. Elite International Pvt. Ltd. (Pvt. Ltd Company) has not taken over M/s. Elite Inc. (Proprietary firm). Both the companies were never in existence independently at the same time. Actually, it is a conversion of a Proprietary firm, M/s. Elite Inc., into a Pvt. Ltd. Company, M/s. Elite International Pvt. Ltd. with all assets and liabilities on account of economic growth.

The petitioner have also submitted the following facts in support of their claim :

IEC: Same IEC No. has been issued to M/s. Elite International Pvt. Ltd. by the O/o Jt. DGFT, Mumbai as it was issued to M/s. Elite Inc. i.e. 0396054510.

RCMC: The Cotton Textile Exports Promotion Council have also issued the certificate as manufacturer exporter to M/s. Elite International Pvt. Ltd., with the same RCMC No. as M/s. Elite Inc. i.e. MM/21012(98)E.

Export House Certificate : The Export House certificate based on which the entitlement criteria is determined under the policy has been amended in favour of M/s. Elite International Pvt. Ltd. without cancelling the certificate from the inception.

EPCG : All the liabilities of the EPCG licence issued to M/s. Elite Inc. before its conversion into Elite International Pvt. Ltd have discharged by M/s. Elite International Pvt. Ltd. and the same has already been accepted by the DGFT office.

Drawback : The Drawback current account in SBI (Nhava Sheva) originally opened as "Elite Inc." has also been transferred / renamed as M/s. Elite International Pvt. Ltd. All the drawback amounts for eligible exports made under M/s. Elite International Pvt. Ltd. are getting credited in the above account.

The petitioner has also stated that reasons which necessitated the change from sole proprietorship to private limited company are economic growth in terms of export performance. He has also stated that by comparing the figures of export performance for the last three years i.e. 2003-04, 2004-05 and 2005-06 it can be seen that the growth has doubled in the year 2004-05 compared to the preceding year and 1 1/2 times the succeeding year 2005-06. It has become unwieldy for the proprietary concern to handle that kind of volume in particular from the banking and financial point of view. Otherwise the nature of business activity and character of the company remains the same. The composition of the shareholding remains with the erstwhile proprietor at the rate 99.99% and the remaining which is nominal is held by the wife of the proprietor.

- **GRC decision** : The Committee gave a patient hearing to the petitioner. From the information submitted by the petitioner it appears that the transformation had emerged out of financial banking and marketing compulsions so as to avail better banking facilities & market image. Committee has gone through the reasons which necessitated the change and was of the view that transformation has taken place due to economic growth, and no running business of other company has been merged. Committee directed DGFT to take into account the turnover of M/s . Elite (in proprietary form) for the purpose of grant of benefit under Target Plus Scheme to M/s. Elite International Pvt Ltd. (a Pvt Ltd. Co.)

Item No: 2 M/s. GIVO Ltd., Gurgaon (F.No. 06/25/2008-GRC)

- **Prayer in brief** : Request for grant of revalidation and EO extension both against Advance Licence No. 0510143868 dated 24.11.2004 – IEC No. 0593060423
- **Grounds of prayer** : The petitioner has submitted that their unit had remained a sick unit and was registered with BIFR vide case No. 128/2002 as per BIFR, New Delhi letter No. F3(G-1) BC /2002 dated 20th March, 2002. As the unit had remained a sick unit and under revival by BIFR up to Dec 2006 they had suffered financial constraints. In spite of that (within the validity of advance licence) they were able to fulfil EO 76.62% of the value and 48.7% as per quantity.
- **GRC decision** : Committee observed that request of the firm was rejected by EPCG PRC Division of DGFT on the ground that they have fulfilled export obligation to the extent of only 48% quantity-wise which is much below the norms of 50% followed by the Policy Relaxation Committee. GRC opined that considering the fact that unit is under BIFR and the export obligation fulfilled within validity period quantity-wise is 48.7% which is very near to the 50% norms followed by Policy Relaxation committee revalidation and EO extension may be granted for a period of 6 months against Advance Licence No. 0510143868 dated 24.11.2004 – IEC No. 0593060423 subject to the payment of composite fee of 1%.

Item No: 3 M/s. GIVO Ltd., Gurgaon (F.No. 06/26/2008-GRC)

- **Prayer in brief** : Request for grant of revalidation and EO extension both against Advance Licence No. 0510156338 dated 28.4.2005– IEC No. 0593060423
- **Grounds of prayer** : The petitioner has submitted that their unit had remained a sick unit and was registered with BIFR vide case No. 128/2002 as per BIFR, New Delhi letter No. F3(G-1) BC /2002 dated 20th March, 2002. As the unit had remained a sick unit and under revival by BIFR up to Dec 2006 they had suffered financial constraints. In spite of that within the validity of advance licence they were able to fulfil EO 49.38% in value and 14.03% in quantity.
- **GRC decision** : Committee observed that request of the firm was rejected by EPCG PRC Division of DGFT on the ground that they have fulfilled export obligation to the extent of only 14.03% quantity-wise which is much below the norms of 50% followed by the Policy Relaxation Committee. GRC opined that although the unit has remained under BIFR, but the export obligation fulfilled within validity period is only 14.03% quantity-wise which is much below the norms of 50% followed by the Policy Relaxation Committee. Therefore, the request for grant of revalidation and EO extension does not hold any merit and is therefore rejected.

Item No: 4 M/s. Wokhardt Ltd., Mumbai (F.No. 06/27/2008-GRC)

- **Prayer in brief** : The petitioner's prayer to the Committee is for waiver of average export performance.
- **Grounds of prayer** : The petitioner has requested for waiver of export performance on the ground that while applying for the EPCG licence for the plant, due to oversight, the export products mentioned in the condition sheet of 8 EPCG licence applications were Bulk Drugs, Drug Intermediates, Pharmaceuticals, Vet Medicaments and Bio-

pharmaceuticals, as against only Bio-pharmaceuticals as they had imported capital goods specifically required for manufacture of Bio-pharmaceuticals under EPCG. Therefore in the average export amount also the exports reflected were for all the drugs whereas the average export reflected should be nil because being a new EOU, where only bio-pharmaceutical were manufactured, no exports were made prior to its commissioning. Moreover Department of Bio-Technology, Department Science & Technology, Govt of India has also pointed out that Pharmaceuticals and Bio-pharmaceuticals are not same or similar products.

- **GRC decision** : The Committee observed that the case holds no merit as under the existing policy, there is no provision for waiver in such cases.

Item No: 5 M/s. Arch Pharmalabs Ltd (F.No. 06/30/2008-GRC)

- **Prayer in brief** : The petitioner's prayer to the Committee is for relaxation in Foreign Trade Policy for extension in export obligation period in respect of Advance Licence No. 0310298357/2/03/00 dated 21.10.2004 – File No. 03/20/040/00787/AM05-SION A 2440.
- **Grounds of prayer** : The petitioner have submitted that they have started manufacture and export of Azithromycin Dihydrate for the first time, which is an API product. They have imported only 5345.74 Kg as against 11000 Kg allowed for import against the above Licence. They would therefore, like to fulfil the E.O. only to the extent of imports effected. Advance Licence in question was obtained, keeping in view of a big order of 2200 kg for the export of this product to Malaysia for supply from April to October, 2005. They stated that the delivery against this order was indefinitely postponed by the buyer without assigning any reason but they continued to export small quantities of this product to countries like Syria, Argentina, Spain, Peru, etc in their effort to fulfil the E.O. However, they did not succeed because of the indefinite postponement of delivery schedule by the Malaysian buyer and other competitors offering this product at a much cheaper price.

The firm have requested to allow them a onetime E.O. extension of 6 months for fulfilling the balance E.O. keeping in view of their past blemish less record and they have assured that they will definitely fulfil the E.O. within this extended period.

- **GRC decision** : The Committee gave a patient hearing to the petitioner and agreed to extend the E.O by 4 months from the date of endorsement of the Licence with a clear condition that the firm will give an undertaking to fulfil the E.O. within 4 months and they are also requested to certify that they have also stated that they have imported the material, i.e. Erythromycin Thiocyanate through Registered sources. If they are not able to export within 4 months under this condition they are required to pay interest with composition fee.

Item No: 6 M/s. Ballarpur Industries Ltd., New Delhi (F.No. 06/31/2008-GRC)

- **Prayer in brief** : The petitioner's prayer to the Committee is for waiver of composition fee on grant of 2 years general EO period extension against EPCG Licence contrary to PIC decision taken in 2005.
- **Grounds of prayer** : The petitioner has requested for waiver of composition fee on the ground that despite taking over potentially sick unit they have fulfilled more than their mandatory block wise EO meant up to the third block (around 73% fulfilled against mandatory 50). They have compared their case with M/s Rayalseema Industries which was granted 2 years extension without composition fee by DGFT in 2005. Similarly, in the same year, Nirma Industries was given waiver in submission of composition fee.
- **GRC decision** : The Committee gave a patient hearing to the petitioner and was of the view that the decisions quoted by the firm were of earlier date and DGFT vide policy circular No. 33(RE-2007)/2004-09 dated 17th March, 2008 had clearly stated that request of the firm for extension for fulfilment of export obligation may be considered by the concerned regional authorities subject to payment

of 2% of composite fee. Therefore, Committee gave the decision that no exception can be made for waiver of composition fee.

Item No: 7 M/s. Studio 2000 (F.No. 06/34/2008-GRC)

- **Prayer in brief** : The petitioner's prayer to the Committee is for consideration of exports made up to 31st March, 2002 for fulfilment of EO against EPCG licence No. P/CG/2133710 dated 8.12.1994.
- **Grounds of prayer** : The petitioner have submitted that against the proportionate export obligation of US \$ 305,862 exports made up to 31st March, 2001 are US \$ 154,359 and exports made from 1.4.2001 up to 31.3.2002 are US \$71,612 and total exports made up to 31st March, 2002 are US\$ 225,971. DGFT vide Public Notice No.3 dated 31st March, 2001 had granted amnesty for acceptance of export made up to 31st March, 2001 without any requirement of BG. Due to non existence of demand in the international market for pre-recorded cassettes due to CD it has not been possible for any exporter to make any export. As BG was already in force at the time of Policy No.3 dated 31st March, 2001, they have requested to condone procedural lapse and count for exports made up to 31.3.2002 for the discharge of EO against the EPCG licence in question.
- **GRC decision** : The Committee gave a patient hearing to the petitioner and was of the view that though there is a procedural lapse, request of the firm for consideration of exports made up to 31.3.2002 for fulfilment of EO may be agreed to as unit has long back been closed and the manufacturing activity of pre-recorded cassettes is not in existence in the export market.

Item No : 8 M/s. Tricot Mills Ltd., Trissur (F.No. 06/28/2008-GRC)

- **Prayer in brief** : The petitioner's prayer to the Committee is for waiver of 18% annum from 26.6.85 till the date of actual remittance and penalty of Rs.2,10,000 in respect of Advance Licence. No.3085189 dated 09.01.85 on non compliance of discharge of export obligation.

- **Grounds of prayer :** The petitioner have submitted that the Tricot Mills has suffered accumulated loss continuously for several years and BIFR declared the company as sick industrial unit. Rehabilitation scheme of BIFR also failed and the company has stopped the business and closed the unit in May, 2000. The dues to the financial institutions and banks and cooperative banks were settled by paying principal amount only.
- **GRC decision :** The Committee gave a patient hearing to the petitioner and gave the decision that the firm has to pay the original duty and after payment a letter may be sent to the concerned division. So far as penalty is concerned, that may be waived off after getting a letter that payment regarding original duty has been made along with copy of payment order.

Item No: 9 M/s. Maruwa Electronics (I) Pvt. Ltd., Chennai (F.No. 06/47/2008-GRC)

- **Prayer in brief :** The petitioner's prayer to the Committee is for grant of import Licence for import of used Chiller, used Dryer and Air Conditioner.
- **Grounds of prayer :** The petitioner have submitted that the firm is stated to be a 100% Export Oriented Unit manufacturing chip inductors and other related products. The firm has stated that they have the approval of MEPZ for the import of several products. The import licence was granted to the firm on the recommendation of Ministry of Environment & Forests although the proposed items for imports are restricted for imports as per Policy Circular No.47 (RE-2205)/2004-09 dated 08.02.2006. Ministry Environment & Forests had conveyed their no objection for import of the aforesaid item on 20th November 2007. The case of the firm was rejected and firm made the representation against rejection of their case. But the requested of the firm was not acceded to and the rejection was maintained on the ground that imports were made only for used equipments.

- **GRC decision** : The Committee gave a patient hearing to the petitioner and directed that the firm may be allowed to import subject to the payment of 50% equivalent amount of penalty.

Item No: 10 M/s. M.S. Shoes, (F.No. 06/11/2008-GRC)

- **Prayer in brief** : Petitioner prayer to the Committee is to grant transferability with 6 months revalidation in respect of 9 advance licences without converting value based licences into quantity based licences (7 value based and 2 quantity based).
- **Grounds of prayer** : The petitioner has submitted that their request is covered under Public Notice No.2 1997-2002 dated 31st March, 2002.
- **GRC decision** : The Committee gave a patient hearing to the petitioner and directed the petitioner to provide a synopsis of Show Cause Notices before the case is processed further. Department of Revenue was requested to examine whether the applicant could have submitted the application along with necessary certificates especially as his records were seized by DRI.

Deferred Cases

Item No:11 M/s. Rajave Textiles (P) Ltd., Coimbatore (F.No. 06/24/2008-GRC)

- **GRC decision**: The Committee deferred consideration of the case to its next meeting as the petitioner did not appear.

Item No: 12 M/s. BPL Ltd., Bangalore (F.No. 06/32/2008-GRC)

- **GRC decision** : The Committee deferred consideration of the case to its next meeting as the petitioner did not appear.

Item No: 13 M/s. Deebro Textile Industries Ltd., Mumbai (F.No. 06/13/2008-GRC)

- **GRC decision** : The Committee deferred consideration of the case to its next meeting as the petitioner did not appear.

Item No: 14 M/s. Sudarshan Agencies Pvt Ltd, Chennai (F.No. 06/41/2008-GRC)

- **GRC decision** : The Committee gave a patient hearing to the petitioner and the Committee was of the views that it is premature to ask to condone annual average export performance at this stage. The firm should examine the case properly and should come with a proper request. Therefore, the matter was deferred.

Item No: 15 M/s. Sona Exports, Chennai (F.No. 06/42/2008-GRC)

- **GRC decision** : The Committee gave a patient hearing to the petitioner and the Committee was of the views that it is premature to ask to condone annual average export performance at this stage. The firm should examine the case properly and should come with a proper request. Therefore, the matter was deferred.

Item No: 16 M/s. Carbone Lorraine India Pvt Ltd, Chennai (F.No. 06/43/2008-GRC)

- **GRC decision** : The Committee deferred consideration of the case to its next meeting as the petitioner did not appear.
