

(2017) 09 DEL CK 0022

In the Delhi High Court

Case No : 2564 of 2017 & CM No 11087 of 2017

M/S BRIGHT ENGINEERING WORKS

APPELLANT

Vs

THE UNION OF INDIA AND ORS.

RESPONDENT

Date of Decision : 15-09-2017

Acts Referred:

[Foreign Trade \(Regulation\) Rules, 1993](#), [Rule 8](#)

Citation : (2017) 09 DEL CK 0022

Hon'ble Judges : Vibhu Bakhru

Bench : SINGLE BENCH

Advocate : Devan Parikh, Mahesh Agarwal, Rishi Agrawala, Rishabh Parikh, Anachla Mullick, Sanjeev Narula, Abhishek Ghai

Final Decision : Disposed off

Judgement

1. The petitioner has filed the present petition, inter alia, impugning a clarification dated 22.03.2016, inter alia" clarifying the petitioner's export obligation to be equivalent to six / eight times the depreciated value of assets on the debonding unit shifting to the EPCG scheme; and, therefore, directing the petitioner to comply with the requirements of the Policy Circular no.84 dated 30.04.2009. According to the petitioner, its export obligation, under the Foreign Trade Policy 2009-14 (hereafter "FTP 09-14") was six times the duty saved on the capital goods and not their depreciated value.

2. The petitioner was also issued an Authorisation (licence) computing the export obligation on the basis as claimed by the petitioner. However, the Authorisation was sought to be amended subsequently, after the petitioner had sought a discharge certificate of its export obligation and closure of the Authorisation.

3. The principal controversy involved in the present petition is whether under FTP 09-14 read with Handbook of Procedures (hereafter "HOP"), the export obligation under the applicable EPCG scheme is to be computed as multiple of the duty saved, as claimed by the petitioner, or as multiple of the depreciated

value on the capital goods as insisted upon by the respondents. The petitioner also claims that amendment of the Authorisation enhancing the export obligation is without jurisdiction. This is disputed by the respondents.

4. Briefly stated, the relevant facts necessary to address the aforesaid controversy are as under:-

4.1 The petitioner is a partnership firm and is engaged in the manufacture of Glass Beads, Chatons etc. The petitioner setup a 100% Export Oriented Unit (hereafter "EOU") at Valsad in 2005. In terms of the EOU regime, the petitioner was exempt from payment of duty on certain capital goods utilised to setup the said unit. Thereafter, the petitioner sought permission to exit the EOU scheme and to be treated as a unit in the Domestic Tariff Area (hereafter "DTA").

4.2 On 23.05.2011, the Development Commissioner, Kandla Special Economic Zone granted the permission for petitioner to exit from the 100% EOU Scheme and migrate to the EPCG Scheme (Export Promotion Capital

Goods Scheme) in terms of paragraph 6.18(d) of FTP 09-14 read with paragraph 5.4 of the HOP and called upon the petitioner to submit certain relevant documents. The final exit order was issued on 21.07.2011.

4.3 Under the EPCG Scheme, an importer of capital goods is permitted to import the goods on concessional duty (or zero % customs duty), subject to the importer committing to export goods of a specified value. While applying for permission to migrate from EOU scheme to EPCG scheme, the petitioner also, by an application dated 31.05.2011, applied to respondent no.2 (DGFT) indicating the duty saved to be Rs. 2,04,56,219.53/- and reflecting the corresponding export obligation as six times the same value at Rs.12,27,37,317.18/-.

4.4 The petitioner's application was accepted and the DGFT issued an EPCG Authorisation, fixing the export obligation computed at six times the duty saved on capital goods on FOB basis. The condition sheet attached with the Authorisation also specifically provided that the petitioner would have to fulfil the export obligations "as per Para 5.5 of FTP read with Para 5.7 of the Handbook of Procedure (Vol.I) 2009-14". The average annual export obligation to be maintained by the petitioner was stated at Rs. 28,49,60,333.33/-.

4.5 According to the petitioner, the stipulation to maintain average export obligation was not applicable as the petitioner's unit in question was the only unit engaged in exports and, therefore, was to be treated as a standalone unit. Admittedly, the requirement of maintaining an average annual export turnover is applicable only in cases where a person/entity has multiple units engaged in exports and therefore, the average annual turnover of other units have to be excluded in determining the export

obligation of the debonding unit. Accordingly, the petitioner sent a letter dated 15.07.2011 requesting for an amendment in the condition sheet. This was accepted by the DGFT by a letter dated 04.08.2011 and the average annual

value of exports was amended from Rs. 284,960,333.33/- to zero.

4.6 The petitioner states that it performed its export obligations as per the EPCG authorisation and, thereafter, on 22.11.2013 filed an application for redemption / closure of the EPCG authorisation. Thereafter, the petitioner received a communication dated 23.01.2014 from the DGFT unilaterally enhancing the export obligation from Rs. 12,27,37,317.18/- to Rs. 51,14,05,488/-. The said communication did not indicate any reason for such amendment. The petitioner objected to such amendment by its letter dated 27.01.2014.

4.7 Thereafter, DGFT issued a deficiency letter dated 28.01.2014 indicating that the petitioner's application was deficient for the following reason:-

"1. IT IS INFORMED THAT E.O IS AMENDED AS PER POLICY CIRCULAR 84/DT. 30/4/2009 AS LICENCE WAS TO BE ISSUED ON DEPRECIATED VALUE AND E.O. 6 TIMES OF DEPRECIATED VALUE. THIS IS THE FIRST LIC AFTER THE FIRM WAS DEBONDED FROM EOU." 4.8 The petitioner sent various representations, contesting the aforesaid amendment, however, the same were not accepted; and, on 22.03.2016, the DGFT issued a communication, rejecting the petitioner's representation for re-fixation of the export obligation. The said communication is set out below:-

"F. No. 01/36/218/102/AM-15/EPCG-I

Government of India

Ministry of Commerce and Industry

(Department of Commerce)

Directorate General of Foreign trade

504, Udyog Bhavan,

Maulana Azad Road,

New Delhi-110 011

Dated 22.03.2016

To,

M/s Bright Engineering Works,

5/32,2nd Panjrapole Lane,

C.P. Tank Road, Mumbai 400 004

Subject: Re-fixation of EO consequent upon debonding from EOU to EPCG scheme.

Sir,

This has reference to your representation dated 30.11.2015 for re-fixation of EO consequent upon on conversion from EOU to EPCG Scheme.

2. The matter has been examined. It is clarified that as per existing policy provisions at the time of issuance of authorisation, export Obligation equivalent to 6 times or 8 times of the depreciated value would be imposed on the debonding unit shifting to the EPCG Scheme. You are therefore, informed to comply with the requirements as stipulated in FTP/HBP Vol. I 2009-2014, read with Policy Circular 84 dated 30.04.2009.

3. This issues with the approval of Competent Authority."

4.9 The aforesaid clarification is impugned in the present petition.

Submissions

5. Mr Devan Parikh, learned Senior Advocate appearing for the petitioner submitted that there was no allegation of fraud and concealment of any fact and, therefore, the respondents could not unilaterally amend the authorisation after the petitioner had fulfilled the specified export obligation. He submitted that the petitioner had no power to amend the licence as there was no error or omission in the licence. He contended that the DGFT did not have any power / jurisdiction to review the authorisation. He referred to the decision of the Punjab and Haryana High Court in Vikrant Overseas v. Union of India : AIR 1999 P&H 258 in support of his contention.

6. Next, he next submitted that the insistence on the part of the DGFT to calculate the export obligations on the basis of depreciated value of capital goods was ex facie erroneous and contrary to the FTP 09-14. He referred to paragraph 5.1 of the FTP 09-14 in support of his contentions. He contended that the DGFT's reliance on Policy Circular no. 84 of 30.04.2009 was misplaced. According to him, Circular no. 84/2004-09 dated 30.04.2009 was issued to clarify an earlier notice (Circular no. 79 dated 01.04.2009), regarding the maintenance of average annual export turnover in case of entities having multiple units. He submitted that the reference to export obligation equivalent to six / eight times the depreciated value was erroneously incorporated from an earlier circular - Circular no. 35 dated 01.10.1999 - which had been issued as per the then FTP which was prevalent at that time.

7. Mr Parikh further contended that in any event, the Circular no. 84 dated 30.04.2009 could not override the FTP 09-14. He relied upon the

decision of the Supreme Court in Atul Commodities Private Limited and Ors. v. Commissioner of Customs, Cochin 9: (2009) 5 SCC 46 and the decision of this Court in Yum Restaurants (I) Pvt. Ltd. v. Union of India : 2015 (320) E.L.T. 781 (Del.) in support of his contention.

8. Mr Sanjeev Narula, learned counsel appearing for the respondent submitted that FTP 09-14 and paragraph 5.4 of HOP only provided for an exit from the EOU

regime and did not permit "conversion" to the EPCG scheme. He earnestly contended that there was a difference between permitting an exit from the EOU scheme and a conversion to the EPCG scheme. He submitted that the exit order permitting conversion to EPCG scheme was issued on 21.07.2011 and, therefore, the circular no. 84 dated 30.04.2009 - having been issued prior to that date - was squarely applicable. He submitted that the provision for conversion from EOU scheme to EPCG scheme was notified by a public notice dated 25.03.2009 (public notice no. 164), which was subsequently further clarified by circular no. 79 dated 01.04.2009 and circular no. 84 dated 30.04.2009.

9. Next, Mr Narula contended that in terms of Rule 8 of the Foreign Trade (Regulation) Rules, 1993, the licensing authority was entitled to amend any licence and, therefore, the power of the DGFT to amend any EPCG authorisation could not be questioned. He relied upon the decision of the Bombay High Court in *Bhilwara Spinners Ltd. v. Union of India (UOI)* through the Secretary, Ministry of Commerce and Industry, Department of Commerce and Ors.: 2011 (267) ELT 49 (Bom.) in support of his contention.

Reasoning and Conclusion

10. The Foreign Trade (Development & Regulations) Act, 1992 [hereafter "the FT (D&R) Act"] was enacted for providing a legal framework for development and promotion of foreign trade as it was found that the earlier enactment - the Imports and Exports (Control) Act, 1947 - was no longer adequate for the said purpose. Section 5 of the FT (D&R) Act provides that "the Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the export and import policy and may also, in the like manner, amend that policy."

11. Section 6 of FT (D & R) Act provides for appointment of DGFT and his functions and reads as under:-

"6. Appointment of Director General and his functions.-

(1) The Central Government may appoint any person to be the Director General of Foreign Trade for the purposes of this Act. (2) The Director General shall advise the Central Government in the formulation of the export and import policy and shall be responsible for carry that policy.

(3) The Central Government may, by Order published in the Official Gazette, direct that any power exercisable by it under this Act (other than the powers under sections 3, 5, 15, 16 and 19) may also be exercised, in such cases and subject to such conditions, by the Director General or such other officer subordinate to the Director General, as may be specified in the Order."

12. It is apparent from the above that the role of DGFT is to carry out the foreign trade policy (FTP) that may be formulated by the Central Government. Paragraph 2.4 of FTP 09-14 also empowers DGFT to specify

the procedure to be followed by an exporter / importer / licensing authority / competent authority for the purposes of implementing the FT D&R Act, the rules, orders made thereunder and the FTP. The DGFT has notified the HOP 09-14 in terms of the said delegated power.

13. It is, thus, obvious that DGFT cannot amend or alter the FTP and is bound by the same. In terms of paragraph 2.3 of the FTP, the DGFT is empowered to interpret the FTP. However, the question of interpreting the FTP would arise only where there is any ambiguity or doubt as to any of its provisions. Plainly, the DGFT cannot issue a clarification, which is ex facie contrary to the FTP and HOP (Handbook of Procedures) notified by the DGFT.

14. Chapter 5 of the FTP 09-14 contains the provisions with respect to EXPORT PROMOTION CAPITAL GOODS (EPCG Scheme). In terms of paragraph 5.1 of FTP-09-14, import of capital goods are permitted at zero customs duty, subject to the importer undertaking an export obligation equivalent to the six times of the duty saved on the said capital goods. Paragraph 5.1 of the FTP 09-14 is set out below:-

"Zero duty EPCG

5.1 Zero duty EPCG scheme allows Scheme import of capital goods for pre production, production and post production (including CKD/SKD thereof as well as computer software systems) at zero Customs duty, subject to an export obligation equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6years reckoned from Authorization issue-date.

The scheme will be available for exporters of engineering & electronic products, basic chemicals & pharmaceuticals, apparels & textiles, plastics, handicrafts, chemicals & allied products and leather & leather products; subject to exclusions as provided in HBPv1.

Validity period for import of capital goods and provision for extension in export obligation period will be as separately provided in the HBPv1. All other provisions pertaining to concessional 3% duty EPCG scheme under this Chapter, to the extent they are not inconsistent with the above provisions of zero duty EPCG scheme, shall be applicable to the zero duty EPCG scheme also. The zero duty EPCG scheme will be in operation till 31.3.2011."

15. The provisions containing EOUs are included in Chapter 6 of the FTP 09-14. Paragraph 6.18 of the FTP 09-14 provides for an exit from the EOU scheme. The relevant extract of paragraph 6.18 of FTP 09-14 is quoted below:-

"Exit from EOU 6.18 (a) With approval of DC, an EOU may Scheme opt out of scheme.

Such exit shall be subject to payment of Excise and Customs duties and industrial policy in force.

(b) If unit has not achieved obligations, it shall also be liable to penalty at the

time of exit.

(c) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by DoC, at price to be determined by that agency.

(d) An EOU/EHTP/STP/BTP unit may also be permitted by DC to exit from the scheme at any time on payment of duty on capital goods under the prevailing EPCG Scheme for DTA Units. This will be subject to fulfilment of positive NFE criteria under EOU scheme, eligibility criteria under EPCG scheme and standard conditions indicated in HBP v 1. (e) Units proposing to exit out of EOU scheme shall intimate DC and Customs and Central Excise authorities in writing. Unit shall assess duty liability arising out of debonding and submit details of such assessment to Customs and Central Excise authorities. Customs and Central Excise authorities shall confirm duty liabilities on priority basis, subject to the condition that the unit has achieved positive NFE, taking into consideration the depreciation allowed. After payment of duty and clearance of all dues, unit shall obtain "No Dues Certificate" so issued by the Customs and Central Excise authorities, unit shall apply to DC for final debonding." [underlining for emphasis]

16. A plain reading of paragraph 6.18(d) of FTP 09-14, clearly indicates that exit from an EOU scheme may be permitted on payment of duty under the prevailing EPCG Scheme. Thus, clearly the EPCG scheme applicable to the petitioner would be as provided under the FTP 09-14. 17. The contention that the FTP 09-14 only provides for an exit from EOU and not a conversion from EPCG Scheme, is unmerited. A plain reading of paragraph 6.18(d) clearly indicates that a unit exiting from the EOU scheme is, subject to fulfilment of conditions, also eligible to avail of the benefit of the EPCG Scheme for the DTA. Further, in the letter dated 23.05.2011 - whereby the petitioner was permitted to exit from the EOU Scheme to the EPCG Scheme - a specific reference is made to paragraph 6.18(d) of FTP 09-14 and paragraph 5.4 of HOP 09-14. Paragraph 5.4 of the HOP 09-14 reads as under:-

"An EOU/ a relocated SEZ unit, while converting to a DTA Unit, may apply for an EPCG authorization in ANF alongwith documents prescribed therein. "No Objection Certificate" should be produced from concerned Development Commissioner."

18. In the counter affidavit filed on behalf of the respondents, it is also suggested that the FTP 09-14 distinguishes between a zero duty / 3% EPCG Scheme and EPCG authorisation obtained after conversion from EOU to the EPCG Scheme. However, Mr Narula could not point out any such distinguishing feature in the FTP 09-14. On the contrary, paragraph 6.18(d) expressly provides that an EOU unit would be permitted to exit from the EOU scheme on payment of duty on the capital goods under the prevailing EPCG Scheme; and indisputably, the EPCG Scheme prevailing

at the material time provided for export obligation to be computed on the basis of duty saved on the capital goods imported and not on the basis of its depreciated value.

19. At this stage, it is also expedient to refer to the relevant circulars. By the Circular no. 35 dated 01.10.1999, the DGFT issued a clarification for fixing export obligation for units debonding under the EPCG Scheme. The said circular is set out below:-

"Government of India

Ministry of Commerce

Directorate General of Foreign TradeV (P.C.IV Division)

Policy Circular No. 35 (RE-99)/99-2000

Dated 1.10.99

To

ALL LICENSING AUTHORITY

ALL COMMISSIONER OF CUSTOMS

Subject: Debonding of EOU/EPZ units under EPCG Scheme.

Attention is invited to paragraph 9.27 of the policy read with paragraph 6 of the Handbook (Vol.1) relating to option available to EOU/EPZ units to debond the capital goods under the EPCG scheme.

It is clarified that units debonding capital goods under EPCG scheme are required to execute BG/LUT with the licensing authority as per the provisions given in the HandBook (VoI.I). The BG/LUT is to be submitted alongwith the application for debonding under LPCG scheme. The issue of fixation of export obligation in such cases has also been examined. It is clarified that where one unit of the firm/company opts to debond under EPCG scheme, the average export obligation in respect of the licence issued to the firm/ company (other than the debonding unit) shall remain unchanged. On the debonding unit, the average export obligation shall be fixed by excluding the export made by the debonding unit from the total exports of the firm/company which runs concurrently for all the units of the firm/company. Moreover, an additional export obligation equivalent to 6 times or 8 times of the depreciated value may be imposed on the unit debonding under EPCG scheme as the case may be, depending on the scheme in which unit opts for debonding .

However, if a standalone EOU/EPZ unit which to debond under EPCG scheme, there shall be no export obligation for maintenance of the average the only such an obligation under EPCG scheme on a standalone unit shall be imposed which may be equivalent to 6 times or 8 times of the depreciated value, as the case may be, depending upon the scheme in which the unit opts for debonding.

The issues with the approval of DGFT. (A.K. Srivastava)"

20. It is apparent from the above that the essential purpose of the above circular was to clarify the manner in which export obligation was to be computed in case of a firm or a company having multiple units and entities having a standalone unit. The FTP as applicable prior to FTP 04-09 provided for computation of export obligation on the basis of multiple of the capital value of the goods imported. Thus, the mention of export obligation as equivalent to six times or eight times the depreciated value, in the circular no. 35, was in conformity with the FTP applicable at the material time.

21. Thereafter, there was a material change in the FTP framed by the Central Government. In terms of paragraph 5.1 of the FTP 04-09, import of capital goods under the EPCG Scheme was permissible at concessional

rate of duty "subject to an export obligation equivalent to 8 times of duty saved on capital goods imported under EPCG Scheme".

22. The DGFT also issued a public notice dated 25.03.2009 (public notice no. 164) to amend paragraph 5.4 of HOP 2004-09 (Volume I). The said notification reads as under:-

"TO BE PUBLISHED IN THE GAZETTE OF INDIA

(PART-I, SECTION-I)

GOVERNMENT OF INDIA

MINISTRY OF COMMERCE AND INDUSTRY

DEPARTMENT OF COMMERCE

PUBLIC NOTICE NO. 164 (RE-2008)/2004-09

NEW DELHI: the 25th March, 2009

In exercise of powers conferred under para 2.4 of the Foreign Trade Policy, 2004-09, the Director General of Foreign Trade hereby makes the following amendments in the Handbook of Procedures (Vol.1) (RE-2008):

1. The para 5.4 of HBP (Vol.1) 2004-09, updated as on 11.4.2008 is amended as under-

"An EOU/ a relocated SEZ unit, while converting to a DTA unit, may apply for an EPCG authorization in ANF alongwith documents prescribed therein. "No Objection Certificate" should be produced from concerned Development Commissioner."

This issues in public interest."

(R.S.Gujral) Director General of Foreign Trade ex-officio Additional Secretary to the Govt. of India"

23. Thereafter, the DGFT issued Circular no. 79 dated 01.04.2009, clarifying that the export obligation for a unit, which converts from EOU to EPCG Scheme would be the same as available to a direct EPCG authorisation holder. The said circular is set out below:- "F. No. 01/36/218/88/AM09/EPCG-I

Government of India

Ministry of Commerce & Industry

Department of Commerce

Directorate General of Foreign Trade

Udyog Bhawan, New Delhi

Dated the 1st April, 2009

CIRCULAR NO. 79(RE:20008/2004-09

To

All RAs,

Subject:- Terms and conditions to govern EPCG Authorizations issued to DTA unit after conversion from EOU unit.

In view of various representations received from different Regional Authorities and individual firms, the issue regarding exit from EOU Scheme and transition to EPCG Scheme has been examined and Para 5.4 of Handbook of Procedures Vol. I (RE:2008) / 2004-2009 has been amended vide Public Notice No. 164 dated 25.03.2009.

2. It has further been decided to clarify with regard to export obligation period and fulfilment of export obligation:

(a) The export obligation period for a unit which converts from EOU / SEZ Scheme to EPCG Scheme would be the same as is available to a direct EPCG Authorization Holder i.e. 8/12 years

from issue date of EPCG authorization as per Para 5.1 of Foreign Trade Policy (FTP).

(b) The unit upon conversion from EOU shall be required to maintain the Annual Average Export Obligation in terms of Para 5.4(i) of FTP. This issues with the approval of DGFT.

Sd/- (Akash Taneja) Joint Director General of Foreign Trade"

24. It is apparent from the above circular that the DGFT had amended the HOPv1 and had also issued a subsequent clarification expressly providing that the export obligation period for unit which converts from EOU to EPCG Scheme would be the same as available for a direct EPCG authorisation and the unit would require to maintain the annual average export obligation. It is in the aforesaid context, the

DGFT issued the circular dated 30.04.2009, which reads as under:- "F. No. 01/36/218/88/AM09/EPCG-I

Government of India

Ministry of Commerce & Industry

Department of Commerce

Directorate General of Foreign Trade

Udyog Bhawan, New Delhi

Dated the 30th April, 2009

CIRCULAR NO. 84 (RE:2008/2004-09

To

All RAs,

Subject:- Terms and conditions for issue of EPCG authorizations to EOU units after conversion to DTA unit-Regarding

Attention is invited to Circular 79 dated 1.4.2009 regarding terms and conditions for issue of EPCG authorizations to EOU units after conversion to DTA unit. The matter has been reviewed in light of Policy Circular No.35(RE:99) dated 1.10.99 (copy enclosed). Sub-Para 2(b) of Circular No. 79 dated 1.4.2009 is clarified to read as under:- (i) If a standalone EOU / EPZ unit wishes to debond from EOU to EPCG Scheme, there shall be no export obligation for maintenance of average and the unit shall be required to maintain only additional export obligation equivalent to six/eight times of the depreciated value. (ii) In case one unit of a firm / company opts to debond from EOU to EPCG Scheme, while other unit(s) are DTA units, then the average export obligation in respect of the licences issued to the firm / company (other than debonding unit) shall remain unchanged and the average EO after debonding of the unit shall be fixed by excluding the exports made by the debonded unit from the total exports of the firm / company, which runs concurrently for all the units of the firm / company. In such a case, an additional EO equivalent to six/eight times of the depreciated value would be imposed on the debonding unit shifting to the EPCG Scheme. This issue with the approval of DGFT.

(Akash Taneja) Joint Director General of Foreign Trade"

25. A plain reading of the aforesaid circular indicates that the central purpose of the circular was not to define the quantum of export obligation but to provide a clarification with regard to maintenance of annual average turnover. Clause (i) of the aforesaid circular clarified that a standalone unit was not required to maintain an annual average export obligation.

However, in case where the firm or a company had multiple units, average export

obligation after debonding of unit would be fixed by excluding the exports made by the debonded units from the total exports of the firm. If the said circular is read in the context of the FTP 04-09, it is at once clear that the reference to computation of export obligation on the basis of depreciated value of machinery, is inapposite and contrary to the provisions of the FTP 04-09. However, it appears that this error had crept into the circular because a similar clarification was provided by the Policy Circular no. 35 issued on 01.10.1999 and that circular (Circular no. 35) referred to additional export obligation to be six times or eight times the depreciated value of goods (which was in conformity with the then FTP). The same measure seems to have been copied in Circular no. 84 completely ignoring the material change in the manner of calculating the export obligations as effected by FTP 04-09; the measure of export obligations as provided in FTP 04-09 and FTP 09-14 had changed to multiple of duty saved and not the value of capital goods.

26. There is thus much merit in Mr Parikh's contention that reference to the export obligation as being equivalent to six / eight times the depreciated value in Circular no. 84 dated 30.04.2009 is erroneous. However, even if it is accepted that the same is not an inadvertent error - which in this court's view it is - but a conscious decision taken by the DGFT, the same is nonetheless not sustainable as such provision runs contrary to the applicable FTP (FTP 09-14).

27. In view of the above conclusion, it is not necessary to examine the question, whether DGFT had the power to amend the authorisation. The said question is left open.

28. Accordingly, the petition is allowed and the impugned clarification dated 22.03.2016 is set aside. The licence amendment sheet dated 23.01.2014, issued by the DGFT is also set aside. The DGFT is directed to consider the petitioner's application for discharge / closure of EPCG authorisation on the basis of the EPCG authorisation dated 13.06.2011 as amended on 04.08.2011.

29. The pending application is also disposed of. The parties are left to bear their own costs.