

Chapter 4 *Licences issued to ineligible applicants and defaulters*

We scrutinised whether the RLAs were exercising checks to ensure that licences are not issued to defaulters or to applicants not eligible for the benefits of the scheme. In the following instances, we found that licences were issued in contravention of provisions.

4.1 Licences issued to ineligible applicants

We came across 26 licences that were not scrutinised properly and were issued to three licencees who were not eligible to avail the benefits of the scheme.

- M/s. OPG Energy (P) Ltd. Chennai, a Company involved in power generation, was issued eight licences between November, 2003 and August, 2008 by JDGFT, Chennai for import of capital goods involving duty concession of ₹ 6.02 crore. Instead of imposing the export obligation on M/s. OPG Energy, who availed the EPCG benefit, the liability of fulfilling EO was imposed on 18 other industries which were consumers of electricity generated and transmitted by the Company. The EPCG licences issued were irregular as there was no captive consumption of electricity by the licencee for the manufacture and export of any goods. Moreover, the foreign trade policy did not provide for grant of EPCG licence to one entity and discharge of export obligation by other entities.
- We noticed that two entities, M/s Simplex Concrete Piles (India) Ltd. and M/s Gammon India Ltd., providing civil construction services to power projects in India, were issued 18 licences by RLA, Chennai for import of construction equipments for CIF value of ₹ 211.87 crore involving duty concession of ₹ 66.66 crore under deemed export category. We observed that the licences issued were irregular as the provisions of 'deemed export' in terms of paragraph 8.1 of FTP apply only to supply of goods and not to rendering of services. Thus, the entities were ineligible for grant of EPCG licence. We further noted that the DGFT, HQ certified the nexus in both cases subject to free foreign exchange realisation (FFE). However, the licences were redeemed without examining whether FFE realisation had been achieved.

4.2 Issue of EPCG licences to licencees against whom refusal orders were issued

As per the provisions of Rule 7 of the Foreign Trade (Regulation) Rules, 1993, the licensing authority may for reasons to be recorded in writing, refuse to grant or renew a licence for various reasons which include failure to produce any document called for by the licensing authority. The order issued by the licensing authority under this provision is termed as Refusal Order (RO).

Guidelines for Maintaining the Denied Entities List, dated 31 December, 2003 issued by the Enforcement division of the DGFT provides that entities who are issued Refusal orders for not fulfilling Export obligation should be issued a demand notice and should be placed in the Denied Entities List if the demand is not complied with. The Denied Entities List also debars the licencee from getting any fresh licence from any other licensing authority. Entities can also be placed in this list in cases of fraud/mis-declaration and as a result of adverse findings by investigating agencies.

4.2.1 We observed that RLA, Mumbai had issued four EPCG licences with CIF value of ₹ 6.53 crore to M/s Pioneer Embroideries Ltd. during the currency of a refusal order (RO) which was issued in September 2008 and had not been withdrawn upto July 2011.

We scrutinized the files to ascertain how the licences were issued despite the RO. We found that the licencee had been issued an EPCG licence earlier, in 2003. Since he did not submit the proof of block wise export obligation in respect of this licence, the RLA issued a Demand Notice (October 2007) directing the licencee to submit the documents evidencing fulfilment of EO within 15 days from the date of receipt of the notice.

As the licencee failed to comply with the directions in the Demand Notice, the RLA issued a refusal order on 10 September 2008. The licencee replied to the refusal order stating that it had made exports of ₹ 4.58 crore in the year 2004-05 and requested for grant of abeyance for a period of 60 days. Although the documents were not produced in support of this statement, the RLA issued an abeyance on 18 September 2008 for a period of one month as the licencee had reported some exports. After conclusion of abeyance period, the licencee came in the Denied Entities' List from 18 October 2008 as he had not fulfilled the commitment to furnish the documents showing the block-wise exports.

The licencee again applied for and was granted an abeyance by the RLA on 9 January 2009 for a period of one month. Thereafter, the licencee applied for a fresh EPCG licence which was granted by the RLA on 16 January 2009. The licencee was then reverted to DEL from 9 February 2009 as he continued to default on the submission of the documents showing blockwise EO.

The RLA granted another abeyance on 02 March 2009 for one month after the licensee submitted export details upto year 2005. During this abeyance period, he was granted another three EPCG licences. Thereafter, he again reverted to DEL for non-submission of evidence of fulfilling the entire blockwise EO.

In this manner, though there was a refusal order which debarred him from getting any fresh licence, the licensee was given four EPCG licences by way of abeyance orders. The details are tabulated below:

Period of Abeyance	Number of EPCG Licences issued during the Abeyance Period	CIF value of the EPCG Licences issued during the Abeyance Period (₹ In lakh)
09.01.2009 to 10.01.2009	1	534.82
02.03.2009 to 02.04.2009	3	118.64
Total	4	653.46

4.2.2 We found that there were another 22 licensees who had been issued refusal orders but 319 EPCG licences were issued to them during the currency of the ROs by issuing abeyance orders. The CIF value of the 319 licences was ₹ 3,828.91 crore. The grant of licences in this manner was a very serious irregularity as the RLAs had taken on discretionary powers for issue of abeyance orders which was not provided for in the rules. This violated the control exercised over defaulters through Refusal Orders.

On this being pointed out, the RLA stated that the abeyances to Refusal Orders were granted for the purpose of issue of fresh licences in deserving / genuine cases. The reply was not acceptable because the RLAs were not empowered to grant any abeyances. Moreover, M/s Pioneer Embroideries could not be described as a 'deserving or genuine' case as it had remained a defaulter from September 2008 to date (July 2011).

4.2.3 We observed the use of abeyance orders in a similar manner during test check in RLA, Ahmedabad. A refusal order was issued to M/s RaajRatna Metal Industries in October 2007 for not submitting documents showing fulfilment of export obligation and was withdrawn on 16 March 2011 after fulfilling the obligation. The licensee was granted 23 EPCG licences between April 2008 and October 2010 i.e. during the currency of the RO.

As in the case of RLA, Mumbai, cited above, the 23 EPCG licences were issued by issuing abeyance orders. The CIF value of these 23 licences was ₹ 100.73 crore. Table 4 shows the number of these licences issued during the abeyance periods.

Table 4		
Period of Abeyance	Number of EPCG Licences issued during the Abeyance Period	CIF value of the EPCG Licences issued during the Abeyance Period (₹ In lakh)
1/4/08 to 30/4/2008	1	22.90
8/5/08 to 7/8/08	7	8690.28
18/8/08 to 17/11/08	3	81.58
25/11/08 to 24/2/09	2	79.84
28/7/09 to 27/9/09	2	146.87
26/10/09 to 25/12/09	1	23.60
30/12/09 to 15/1/10	3	71.40
21/1/10 to 20/3/10	1	27.99
9/6/10 to 8/10/10	3	928.86
Total Licences	23	10073.32

In these cases we observed that in addition to the 23 EPCG licences, the licensee was also issued 124 DEPB licences and 24 Advance licences by way of abeyance orders.

We found four other licencees against whom refusal orders were issued, but 58 EPCG licences had been issued in the same manner through abeyances.

The RLA, Ahmedabad replied (May 2011) that refusal orders are issued with a view to keep exporters under pressure to ensure compliance and at the same time abeyance circulars are issued so that their (licencee's) economic activities are not stopped as otherwise it would result in severe/serious consequences for the economy/ generation of revenue/ employment. Hence, fresh licences are issued to defaulting firms during the abeyance period. It was also stated that in many cases, LEMIS (EDI system) put the licencees in DEL list as soon as export obligation period of 18 months was completed, without taking into account the extended total export obligation period of 36 months as provided in Foreign Trade Policy for fulfilment of Export obligation.

The replies of these two RLAs that abeyance orders are issued for deserving and genuine cases and for continuance of economic activities are not acceptable. If there was such a requirement relating to sustenance of revenue generation, employment etc., it should have been brought to the notice of the DGFT/ Ministry of Commerce to review the rules and make changes at policy level to regulate the issue in the manner found appropriate. The FTR Rules provide that RLA can issue RO to a defaulter and withdraw the same when he ceases to be a defaulter. The ROs also debar such defaulters from getting any other licences. The rules do not provide for the RLA to use any discretion and grant interim relief by issuing abeyance orders. For the numerous licencees in respect of whom abeyances were given against the ROs, it created a situation where the defaulter licencees were approaching the RLAs repeatedly for fresh licences and the RLAs were granting the same through abeyances although they were not empowered to do so under the rules.

The reply regarding the LEMIS software indicated that the RLAs should have communicated matter to DGFT for updating of relevant changes in the system.

Recommendation 4: - *The DGFT may issue instructions to stop the issue of abeyances and investigate the basis on which the RLAs had given themselves the discretion to issue abeyance orders. The DGFT may also review and remove those licences from the DEL, which had been included because information had not been updated in the software. DGFT may also institute a control to ensure that the changes in FTP are updated on the LEMIS system within a prescribed time frame.*

The DGFT in their reply stated (August 2011) that whenever there is some default in fulfilment of EO, the firms are put in DEL so that in future licences are not issued to them. However, in the interest of Export Promotion, in case of regular exporter in the event of submission of evidence of fulfilment of EO, abeyance is granted so that their business activities do not suffer. Abeyance is granted for a limited time only to put pressure to get their cases redeemed. They also stated that these abeyance orders were issued under the power vested to the adjudicating and other authorities in terms of section 17(3) of the Foreign Trade (Development and Regulation) Act, 1992 which inter alia provides that 'every authority making any adjudication or hearing any appeal or exercising any powers of revision under this Act shall have the power to make such orders of an interim nature as it may think fit and may also, for sufficient cause, order the stay of operation of any decision or order'. Further they stated that it is ensured that the Public Notice/Notification is uploaded on EDI system as soon as the same is sent to Government Press for Publication.

The reply of the DGFT is not correct as there is no provision in the Policy or related rules to issue abeyance order and the provision quoted by the department is not applicable as these cases cited by us were neither adjudication of any show cause notices nor hearing of any appeals preferred by the aggrieved party. The issue of abeyance orders in a discretionary manner is not a transparent process as it is not regulated by any norms. The practice of putting licences in DEL, taking them out, putting them back again and so on makes the DEL totally farcical as licences know that they can approach the RLAs and get abeyances. The reply also did not indicate if DGFT had reviewed and removed licences wrongly included in the DEL due to delays in the past, in updating changes in FTP on the LEMIS system.