

Government of India
Ministry of Commerce & Industry
Office of the Joint Director General of Foreign Trade
117, K.K.Nagar, Madurai – 625020

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File no. 35/21/051/02067/AM12 | 2017-17

Date: 31.08.2017

ORDER-IN-ORIGINAL

PASSED BY: J. M. BISHNOI

Deputy Director General of Foreign Trade, Madurai

1. Any person/party aggrieved by this order may, under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992 & notification no. 21(RE-2013)/2009-2014 dt. 13.6.2013 file and appeal against the same to the appropriate authority viz. The Additional Director General of Foreign Trade, Office of the Additional Director General of Foreign Trade, 4th Floor, Shastri Bhavan Annex, 26, Haddows Road, Nungambakkam, Chennai – 600006 within a period of forty five days (45 days) from the date of service of this adjudication order together with a copy of this order and a complete set of evidence in the form of Annexure to the appeal relied upon in support of the appeal.

2. Any person/party desirous of filing an appeal against this order shall deposit the penalty amount and produce proof of payment of penalty amount along with the appeal to the Appellate Authority failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 15 of the Foreign Trade (Development and Regulation) Act, 1992.

3. The penalty amount is to be deposited in an authorized bank of Central Bank of India under the Head of Account "1453 Foreign Trade & Export Promotion Minor Head 102 other receipts fines, penalties etc." The bank receipt must show the name of Dept. viz. Directorate General of Foreign Trade. The bank receipt drawn in favour of Pay & Accounts Officer (Foreign Trade), Chennai.

4. Evidence of payment of penalty is required to be furnished to the Adjudicating Authority within forty five days (45 days) from the date of service of this Adjudication Order, failing which the Importer-Exporter Code Number of the persons/companies/ other entities concerned is liable to be suspended under the provisions of Section 11(4) of the foreign Trade (Development & Regulation) Act, 1992 without making any further reference to them.

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5. M/s. Siva Agencies, No. 9/1 (Upstairs), Toovipuram 8th street, Tuticorin – 628003 had obtained authorization No. 3510038467 dated: 01.06.2012 for duty Credit value of Rs. 4,87,709 under DEPB Scheme.
6. Customs Receipt Audit, O/o The Director General of Audit, Chennai raised an audit objection for Rs. 1,36,007 for excess DEPB credit obtained by M/s. Siva Agencies in authorization No. 3510038467 dated: 01.06.2012.
7. As per the audit objection, "Ordinary Portland Cement / Portland pazzalona Cement / Portland slag Cement" falling under the DEPB serial number 899 under the product group – Chemical and allied Products – code no. 62 was entitled to DEPB duty credit at the rate of 3% ad valorem on FOB value in terms of Public Notice no. 102/2008 (RE 2008)/2004-09 dt: 05.11.2008. Subsequently with effect from 27.08.2009, DEPB rates were further revised and description in respect of Sl. No 899 of chemical and allied products was amended as "Ordinary Arsenic Cement/ Arsenic Pazzalona Cement/ Arsenic Slag Cement" with the entitlement of 3% ad valorem. Hence "Ordinary Portland Cement / Portland pazzalona Cement / Portland slag Cement" was not entitled for DEPB duty credit on or after 27.08.2009
8. This Office vide letter dt: 21.11.2013 and 06.03.2017 requested M/s. Siva Agencies to pay excess duty credit with applicable interest. Vide letter dt: 08.05.2017 M/s. Siva Agencies had sent Demand Draft No. 257942 dt: 03.05.2017 for Rs. 36,007 and informed that balance amount of Rs. 1,00,000 along with applicable interest will be paid within a month. Though one month period is already over, M/s. Siva Agencies had not submitted balance duty credit value of Rs. 1,00,000 with applicable interest.
9. As per Rule 7(3) of Foreign Trade (Development and Regulation) Rules 1993 as amended vide Foreign Trade (Regulation) (Amendment) Rules, 2015, in case of any benefits erroneously obtained from Central Government, the same can be recovered as arrears of land revenue or by adjustment against future claims.
10. Notice dt: 21.07.2017 under Section 14 for action under section 11 – (2) (3) (5) (6) & 11- (7) of FT (DR) Act 1992 as amended in 2010 and as per Rule 7 (i)(k) and (3) , of the Foreign Trade Regulation Rules, 1993 as amended, M/s. Siva Agencies were called upon to show cause within 15 days from the date of receipt of this notice as to why action should not be taken against them and partners under Rule 7 (3) of the Foreign Trade (Development & Regulation) Rules for non compliance of audit objection. M/s. Siva Agencies neither attended personal hearing nor submitted documentary evidence for having paid excess duty credit obtained with applicable interest. Hence M/s. Siva Agencies and its partners were placed under Denied Entities List vide DEL order dt: 04.08.2017.

11. In the circumstances, the undersigned is now fully convinced that the M/s. Siva Agencies and its partners are guilty of violating the conditions of the authorization and liable to pay penalty under Section 11 (2) of Chapter IV of Foreign Trade (Development and Regulation) Act, 1992. In exercise of powers vested in me vide Notification No. SO (E) dt. 17.4.2009 issued by DGFT, New Delhi in F.No. 18/27/HQ/06-07/ECA-II, I hereby impose a penalty of **Rs. 3,00,000** on the Licensee and its partners towards non-refund of excess duty credit obtained against the subject authorization.

I further order that no further authorization shall be issued to the firm/Company or to any other firm/Company in which the partners of this firm/Company are directly or indirectly involved in the day-to-day activities of that firm/Company as per Provisions of Handbook read with Rule 7(1) of the Foreign Trade (Regulation) Rules, 1993.

This order is issued without prejudice to any other action that may be taken under any other Act, Rules or Regulations in force.


(J. M. Bishnoi)

Deputy Director General of Foreign Trade

To

M/s. Siva Agencies,
No. 9/1 (Upstairs),
Toovipuram 8th street,
Tuticorin – 628003.

Shri. Nirmala Sivaji 68 Bharathi Nagar, Madavakkam Main Roadmadipakkam, Chennai-600091	Shri. P. Balasekar, No. 99c, Piramuthu Vilai, Vadakkur Tuticorin -628001
Shri. R. Suthananthan No 4/46/15, KTC Nagar Tuticorin -628008	

Copy to:

- 1) The Additional Director General of Foreign Trade, Chennai.
- 2) The Commissioner of Customs, Sea Port, Tuticorin for information.