



**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE
OFFICE OF THE JOINT DIRECTOR GENERAL OF FOREIGN TRADE
GOKULAM, KLDB BUILDING, POST BOX NO. 1193, PATTOM,
THIRUVANANTHAPURAM 695 004**

File No. 53/21/021/00029/AM07/ECA/

Dated, 27.07. 2016

ORDER-IN-ORIGINAL

**Passed by: R.A. NAIR
DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE**

Any person/party aggrieved by this Order may, under Section 15 (b) of the Foreign Trade (Development & Regulation) Act, 1992, file an appeal against the same to the appropriate Appellate Authority, i.e., Additional Director General of Foreign Trade, 4th Floor, Shastri Bhavan Annex, 26, Haddows Road, Chennai 6000 006, within 45 days from the date of serving 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 along with appeal to the Appellate authority failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 15 (b) of the Foreign Trade (Development & Regulation) Act, 1992.

3. The penalty amount is to be deposited under the Head of Account "1453 - Foreign Trade Export Promotion, Minor Head - 102 other receipts, fines and penalties, etc. - Imports and Exports Control Organization" within a period of 30 days from the date of receipt of this order failing which their Importer Exporter Code Number may be suspended without any further action till the payment of full penalty amount.

4. A notice of even number dated 07.02.2011 under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 was issued to M/s.Southern Hospitalities Pvt. Ltd, Santhi, TC 50/1057,Cotton Hills LPS,Vazhuthacaud,Trivandrum 695 014, asking them to show cause within seven days from the date of receipt of the said notice as to why action should not be initiated against them including denial of further benefits for violation of licence conditions and breach of terms and conditions of the undertaking given at the time of preferring of application for non-fulfillment of export obligation against EPCG Authorisation No. 5330001000 dated 11.10.2006 for the Duty Saved Valued Rs.392041/89. Another notice of even number dated 15.01.2014 under Section 9 of FT (D & R) Act, 1992 read with Rule 7 of FT (Regulations) Rules, 1993 for violation of license conditions, placing them under DEL refusing issuance of further license and renewal of old licenses for non-fulfillment of Export Obligation against EPCG Authorization No. 5330001000 dated 11.10.2006. Personal hearing was also fixed on 28.02.2011 & 06.02.2014.

5. Nobody appeared for Personal Hearing on both the said dates nor any reply is received to our show cause notices dated 07.02.2011 and 15.01.2014. Hence, a further opportunity of a personal hearing was afforded before the undersigned on 14.10.2015 at 3.00 PM.

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Shri Xavi Mano Mathew, Managing Director and Shri Shyam Shekhar K.R., Legal Advisor of the Company appeared before me for personal hearing. They stated that they are not having any papers in respect of the above Authorisation. Because of the litigation issues they had with Hon'ble Kerala High Court and other Forums, they could not fulfil the requisite export obligation. They have further stated that Customs Authorities had already invoked the B.G. Executed with them. They have therefore pleaded that since B.G. has been invoked by the Customs, the interest part may be waived as they are still under litigation in respect of some of the issues. They were advised to submit a written reply with evidence to substantiate their contentions. As agreed to by the M.D. and the Legal Advisor, another Personal hearing has been fixed for 27.10.2015. The same has been postponed to 28.10.2015 due to some official engagements. The postponement of date of personal hearing has also been conveyed to party over phone. Nobody however appeared for personal hearing on 28.10.2015 nor there is any written submission received from the firm. I am therefore left with no other alternative, but to decide the case ex-parte on merits.

FACTS OF THE CASE

6. M/s. Southern Hospitalities Pvt. Ltd., Park Field Residency, Near Trivandrum Central Railway Station, Near Keerthi Hotel, Thampanoor, Trivandrum(Kerala), a Service Provider engaged in Hotel & Tourism had obtained an EPCG Authorization no. 5330001000 dated 11.10.2006 for a duty saved value of Rs.392041.89 under Chapter 5 of Foreign Trade Policy. In terms of the conditions of licence issued, the licence holder was under obligation to provide service to Hotel Industry, Tourism and Travel related services and earn foreign exchange worth Rs.3136335.12/US\$67959.59 within a period of 8 years from the date of issue of Authorization.

7. At the time of preferring of EPCG application to this office, they had also given an undertaking agreeing to abide by the conditions of the EPCG licence and the provisions of the Foreign Trade (Development & Regulation) Act, 1992, the Rules and Orders framed there under, the Export and Import Policy and the Hand Book of Procedures. They have also declared that they shall be liable to penal action in accordance with the Policy/Procedure/Foreign Trade (Development & Regulation) Act, 1992, the Rules and Orders framed there under and the Customs Act, 1962 in addition to forfeiture of Bank Guarantee or any other Bond/Guarantee given to Customs/Licensing Authority in the event of their failure to fulfil the export obligation as stipulated within the export obligation period prescribed or subsequently extended by the competent authority. Even after the expiry of export obligation period, the licensee firm neither submitted installation certificates as required nor furnished any documents evidencing fulfillment of export obligation.

8. Therefore, the licensing authority issued Demand/Show Cause notices on 07.02.2011 called upon to show cause within seven (7) days from the date of issue of the said show cause notice as to why action should not be taken against them under Foreign Trade (Development & Regulation) Act, 1992 for non-submission of installation certificates of the Capital Goods imported by them, year-wise export performance and relevant documents towards fulfillment of export obligation. A personal hearing was also fixed for 28.02.2011. They have not replied to our show cause notice nor did anybody appear for personal hearing on the date fixed. As the first Block period of export obligation had already expired by the said time, they were issued yet another Show Cause Notice for non fulfillment of export obligation. A personal hearing was also fixed for 06.02.2014. Nobody appeared for personal hearing nor any reply tendered by the notice firm. They were therefore placed under Denied Entity List on 02.12.2014 denying issue of further licenses.

9. The case has been taken up for finalization since there was no response from the notice firm. Accordingly, a fresh opportunity of personal hearing was afforded to the firm on 14.10.2015 at 3.00 PM. The personal hearing letter was communicated to the firm on 17.09.2015. It was clearly mentioned in the personal hearing letter that in case they failed to attend the personal hearing neither on the date fixed nor in a position to submit export documents evidencing fulfilment of export obligation, their case will be decided ex-parte on merits without any further reference to them.

Shri Xavi Mano Mathew, Managing Director and Shri Shyam Shekhar K.R., Legal Advisor of the Company appeared before me for personal hearing. They stated that they are not having any papers in respect of the above Authorization. Because of the litigation issues they had with Hon'ble Kerala High Court and other Forums, they could not fulfil the requisite export obligation. They have further stated that Customs Authorities had already invoked the B.G. Executed with them. They have therefore pleaded that since B.G. has been invoked by the Customs, the interest part may be waived as they are still under litigation in respect of some of the issues. They were advised to submit a written reply with evidence to substantiate their contentions. As agreed to by the M.D. and the Legal Advisor, another personal hearing has been fixed for 27.10.2015. The same has been postponed to 28.10.2015 due to some official engagements of the Adjudicating Authority. The postponement of date of personal hearing has also conveyed to party over phone. Nobody however appeared for personal hearing on 28.10.2015 nor there is any written submission received from the firm.

FINDINGS

10. I have examined the information available on record. They had failed to furnish export documents though they were very well aware that they were under obligation to export/provide service to Hotel and Tourism related services and earn foreign exchange worth US\$ 67959.59 i.e. 8 times the duty saved of Capital Goods on FOB basis within a period of 8 years from the date of issue of license and that they should submit statement of export to the office within three months from the date of expiry of block year duly certified by a Chartered Accountant and concerned bank. They were also aware that installation certificates along with yearly performance of exports needs to be furnished to this office as per the provisions of Hand Book/Foreign Trade Policy. They have not furnished these requirements in spite of our communications addressed to them on 07.11.2008, 05/06.01.2010 & 14.03.2014 or surrendered original EPCG Authorization No. 5330001000 dated 11.10.2006 to ascertain the actual imports made by them.

11. It is observed that this office had made references on 29.10.2015 & 22.2.2016 to the Commissioner of Customs, Cochin – 682 009 asking them to intimate this office whether Bank Guarantee executed against the above said EPCG Authorization has been invoked or not to enable this office to arrive at the actual amount of penalty to be imposed in this case. A letter was also faxed to them on 20.07.2016. To this, Customs vide their E- mail sent to trivandrum-dgft@nic.in & ra.nair@nic.in on 26.07.2016 **informed that no imports were effected by M/s.Southern Hospitalitys Pvt. Ltd using the said EPCG Authorization on verification of their EDI system.** It is thus transpired that they have not utilized EPCG Authorization No. 5330001000 dated 11.10.2006 issued for Duty Saved Value of Rs.392041/86 imported all the items as per the list attached with the said EPCG Authorization for a Duty Saved Value of Rs.392041/89.

ORDER

12. Keeping in view of the report dated 26.07.2016 received from Customs to the effect that M/s.Southern Hospitalities Pvt. Ltd has not made any imports against the said EPCG Authorization 5330001000 dated 11.10.2006 as verified from their EDI system, I conclude that no action for imposing penalty is to be initiated against the service provider – M/s.Southern Hospitalities Pvt. Ltd. Trivandrum. I therefore conclude that the said EPCG Authorization has not been utilized by the said M/s.Southern Hospitalities Pvt. Ltd., Trivandrum and treat the case as finally closed.

13. This order is issued without any prejudice to any other action that may be initiated against the firm under any other Law/Act/Rules for the time being in force.



(R.A. NAIR)

DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE

To

- 1) M/s.Southern Hospitalities Pvt. Ltd, Park Field Residency, Near Trivandrum Central Railway Station, Near Keertjhi Hotel, Thampanoor, Trivandrum.
- 2) TC 19/2192(4)/Telematics Complex, Mudvanmughal, Poojappura Post, Trivandrum 695 012.
- 3) Shri Xavi Mano Mathews, D-10, Tagore Nagar, Vazhuthacaud, Trivandrum 695014.
- 4) Shri Cherian A Paul, Mangalath House, Kurissummodu P.O., Changanassery, Kottayam Dist. Kerala
- 5) Mrs. Saramma C. Paul, Mangalath House, Kurissummodu P.O., Changanassery, Kottayam Dist. Kerala.
