



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

File No. 53/21/021/00072/AM 09/ECA/

Dated, 31<sup>st</sup> August, 2018

{IEC NUMBER 5302000334}

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 and O & M Instruction No.3/2016 dated 05.09.2016 issued by Ministry of Commerce & Industry, Directorate General of Foreign Trade, Udyog Bhawan, New Delhi, file an appeal against the same to the appropriate Appellate Authority, i.e., **Additional Director General of Foreign Trade, C & E Wing, 6<sup>th</sup> Floor, Kendriya Sadan, 17<sup>th</sup> Main, 2<sup>nd</sup> Block, Koramangala, Bangalore 560 034 (Karnataka)** 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 annexures to the appeal relied upon in support of the appeal.

2. Any person/party desirous of filing an appeal shall deposit the penalty amount in case the same is imposed in this order 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.

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4. A notice of even number dated 21.09.2017 under Section 13 & 14 for action under Section 11 (2), (3), (5), (6) (7) of Foreign Trade (Development & Regulation) Act, 1992, was issued to M/s.Italia Exporters, Muthoor P.O.,M.C. Road, Thiruvalla, Pathanamthita District, Kerala 689 107 asking them to show cause within 15 days from the date of receipt of the said notice as to why action should not be initiated against them for non-fulfillment of export obligation against EPCG Authorization No. 5330001185 dated 30.09.2008 and thereby impose fiscal penalty for violating licensing conditions imposed and their own undertaking given at the time of issue of Authorization on the allegation that they had mis-utilized the goods valued at Rs.3,82,239.45/- being Duty Saved Amount. A personal hearing was also fixed on 16.10.2017 at 3.00 PM.

5. S/Shri Nikhil, Managing Partner of the firm accompanied with Unnikrishnan of the Company appeared before me for personal hearing on 01.11.2017 instead of 16.10.2017. They have stated that though the Capital Goods have been installed, they could not make any export as export order has been cancelled by their overseas buyer. Shri Nikhil has further stated that the machinery is now in rusted condition and have no hope to export further. He has further stated that they have also lost EPCG Authorization in their factory and the same is still not traceable. He has stated that they will furnish Installation Certificate duly certified by the Chartered Engineer. They were advised to furnish detailed reply to the show cause notice duly supported with evidence substantiating their contention for further action in the matter.

6. After a lapse of more than 5 months, they have replied vide letter dated 25.04.2018 with the same contentions as stated during the personal hearing held on 01.11.2017. They have further stated that they had requested extension in export obligation period on the fervent hope of exporting even with some alternate products which also could not materialize due to stoppage of production, accumulated financial loss and non-availability of banking assistance etc. requested to withdraw their application for EOP extension and return them application fee paid so that they can pay duty saved value. They have submitted few photographs showing present condition of their factory requested to waive the interest part.

### FACTS OF THE CASE

7. M/s. M/s.Italia Exporters, Muthoor P.O., M.C. Road, Thiruvalla, Pathanamthita District, Kerala 689 107 had obtained EPCG Authorisation no. 5330001185 dated 30.09.2008 for a duty saved value of Rs.382239.45 under Chapter 5 of Foreign Trade Policy.



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In terms of the conditions of the Authorisation issued, the licence holder was under obligation to export Wooden Flooring Tiles, Panelling, Decorative Corners worth US\$52421.41 i.e. **6 times** the duty saved of capital goods on FOB basis within a period of **8 (Eight) years** from the date of issue of EPCG Authorization by the use of the imported capital goods and should also maintain annual average of the past export performance of Rs.4098489.00 (US\$94982.00).

At the time of preferring of EPCG application, they had given an undertaking agreeing to abide by the conditions of the EPCG Authorisation 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 to by the competent authority. Even after the expiry of obligation period, the licensee firm neither submitted installation certificates as required nor furnished any documents evidencing fulfilment of export obligation.

Therefore, the licensing authority had issued them letters/demand notices on 16.11.2010 and 15.03.2011 requiring them to submit necessary documents evidencing installation of Capital Goods and fulfilment of export obligation as undertaken by them. The licensee vide letter dated 25.11.2010 had furnished details of exports made during the year 2007-2008 and 2008-2009, but not furnished installation certificate. Vide another letter dated 29.05.2014, they have requested for extension of export obligation period and incorporation of two new export items "Rubber moulds & Rubber Mats" and issue of Duplicate copy of Custom Purpose Copy. In reply, they were informed of the deficiencies vide letter dated 19.06.2014 to which there was no reply from the firm. They were again reminded vide letter dated 05.10.2015 conveying expiry of export obligation period of 1<sup>st</sup> Block period and for compliance of letter dated 19.06.2014. They have not complied the requirements, however requested for extension in E.O. period vide letter dated 21.10.2015 and 10.04.2017. They have also furnished composition fee totalling Rs.22945/-. Their request has been examined by the Regional Authority and a letter dated 18/19.07.2017 was issued asking them to furnish a certificate from the jurisdictional Central Excise Authority or an Independent Chartered Engineer confirming Installation of Capital Goods at the factory and Utilisation Certificate from Customs Authorities showing actual duty saved amount as the Custom Purpose Copy of Authorization has been lost by them. They have not responded to the said letter.

They were therefore issued Show Cause Notice under Section 13 & 14 for action under Section 11(2), (3), (5), (6) & (7) of FT (D&R) Act, 1992 and for action under Rule 7 of FT (Regulation) Rules, 1993 read with Para 5.26 of HBP, 2015-20. A personal hearing was also afforded to the party on 16.10.2017.



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S/Shri Nikhil, Managing Partner and Unnikrishnan appeared for personal hearing on 01.11.2017 instead of 16.10.2017. They have stated that though the Capital Goods have been installed, they could not make any exports as the export order has been cancelled by the overseas buyer. They have stated that the machinery is in rusted condition, they have no hope to export further. They were advised to furnish reply to the show cause notice duly supported with evidence substantiating their contention for further action in the matter. They have replied vide letter dated 25.04.2018 i.e. after a lapse of more than 5 months conveying their inability to fulfil the export obligation requested to waive the interest part and return them the application fee remitted for grant of EOP extension to enable them to pay the duty saved amount and get out of the scheme.

On their failure to fulfil the conditions imposed on the EPCG Authorization and as per the EPCG Scheme, they were placed under DEL on 16.05.2018.

### FINDINGS

11. I have examined the information available on record. They had neglected to furnish documents evidencing installation of Capital Goods Machinery and export documents towards fulfilment of export obligation. They were very well aware that they were under obligation to export items mentioned in the Authorisation and earn foreign exchange worth US\$ 52421.41 i.e. six times (6) the duty saved of Capital Goods on FOB basis within a period of 8 years from the date of issue of authorisation by the use of imported Capital Goods. They were also required to maintain its average of the past three years export performance of the same and similar products worth Rs.4098489.00 (US\$94982/-) 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 nor surrendered original EPCG Authorisation No. 5330001185 dated 30.09.2008 to ascertain the actual imports made by them.

As stated in the foregoing paragraphs, the firm has neither surrendered the original EPCG Authorisation nor furnished utilization report of the Customs showing details of actual imports made by them, I am therefore inclined to treat the Duty Saved Value of Rs.382239.45 as originally mentioned/endorsed in the EPCG Authorisation no. 5330000873 dated 09.11.2004 as having been fully utilized by the Authorisation Holder for the purpose of finalisation of this case.

In view of what has been stated above, I conclude that they have violated the licence conditions of the EPCG scheme and are therefore liable for penal action for their failure to furnish Installation Certificate and documents evidencing fulfilment of export obligation.

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**ORDER**

12. It is observed that they have filed their request for extension in export obligation period for two years vide their letter dated 19.10.2015 and 07.04.2017 remitting composition fee totalling Rs.22945/- on the fervent hope of doing some exports to meet the export obligation with even some alternate products. However, they have failed to initiate the exports due to stoppage of production, accumulated financial loss and non-availability of banking assistance. Thus they have made extreme efforts to fulfil the export obligation in the severe circumstances, but were unsuccessful.

Taking into consideration the composition fee paid by the licensee amounting to Rs.22945/- for grant of extension in export obligation period and also the relaxation instructions stipulated in Public Notice No. 22/12/08.2013, I impose a fiscal penalty of **Rs.741500/- (Rupees Seven Lakhs Forty One Thousand Five Hundered Only)** in exercise of the powers vested in me under Section 13 of the Foreign Trade (Development & Regulation) Act, 1992 on **M/s.Italia Exporters,Muthoor P.O., M.C.Road, Thiruvalla, Pathanamthitta District, PIN 689 107 (IEC NO. 5302000334)** and their Partners.

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



(R.A. NAIR)  
DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE

To

- M/s.Italia Exporters, Muthoor P.O. M.C. Road,Thiruvalla, Pathanamthitta District, Kerala PIN 689 107.
- DDG, ECA.I, DGFT, Udyog Bhavan, New Delhi
- Central Economic Intelligence Bureau (CEIB)
- Customs, Cochin Sea
- NIC, Chennai for uploading in Website