

GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
OFFICE OF THE ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE  
SHASTRI BHAWAN, HADDOWS ROAD, CHENNAI-600 006

F.No.04/21/021/00261/AM04

DATED: 12.06.2019.

**ORDER-IN-ORIGINAL**

**PASSED BY : J. MURALIDHARAN, DY. DIRECTOR GENERAL OF FOREIGN TRADE**

- 1 Any person/party aggrieved by this Order may, under Section-14 of the Foreign Trade (Development & Regulation) Act, 1992 readwith Foreign Trade (Development & Regulation) Amendment Act, 2010 (Notification dated 20.8.2010) and as amended from time to time, file an appeal against the same to the appropriate authority viz. The Additional Director General of Foreign Trade, Chennai within 45 days from the date of issue of this Adjudication Order together with a copy of this Order and complete set of evidences in the form of annexure/attachment to the appeal relied upon in support of the appeal, alongwith the proof of penalty amount imposed under this Act.
- 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 alongwith 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 & Regulation) Act, 1992 readwith Foreign Trade (Development & Regulation) Amendment Act, 2010 and as amended from time to time.
- 3 The penalty amount is to be deposited under the Head of Account "1453-Foreign Trade and Export Promotion Minor Head 102 – Other receipts, fines and penalties etc. – Imports and Exports Trade Control Organisation" or through "eMPS (Electronic Miscellaneous Payment System)" as the case may be.
- 4 If the penalty imposed under this Act is not paid, the same will be recovered as an arrear of land revenue and the Importer-Exporter Code Number of the person/firm/company or other entities concerned is liable to be suspended under the provisions of Section-11(4) of the Foreign Trade (Development & Regulation) Act, 1992, readwith Foreign Trade (Development & Regulation) Amendment Act,2010 and as amended from time to time.

**FACTS OF THE CASE**

M/s. Swasik Enterprises (IEC No.0488055181), Flat No.47, 4<sup>th</sup> Floor, Rishikesh Apartment, No.75/38, G.N.Chetty Road, T.Nagar, Chennai-600 017 had been granted an EPCG Licence/Authorisation No.0430001435 dated 19.12.2003 for a total duty saved value of Rs. 29,30,791/- under 5% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Granite Blocks" manufactured out of the imported capital goods to the tune of total f.o.b. value of US \$ 505,853.89 i.e. 8 times of the Duty Saved Value equivalent to foreign currency over and above the annual average of the past export performance fixed for Rs.168,777,939/-, subject to the condition that 50% export obligation should

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be met in the first block within six years from the date of issue of licence/authorisation and balance 50% export obligation in the next two years. For the purpose of discharge of said export obligation, M/s. Swasik Enterprises , Chennai were required to submit the export documents under ANF-5B, as per Para-5.13 of Hand Book of Procedures, 2004-09 as amended, within a period of three months from the date of expiry of above block periods. Despite, M/s. Swasik Enterprises , Chennai were required to submit a report on fulfilment of export obligation by 30<sup>th</sup> April of every year to the Licensing Authority/Regional Authority concerned, as per Para-5.6 of Hand Book of Procedures, 2004-09 as amended. M/s. Swasik Enterprises , Chennai were also required to submit the Installation Certificate issued by the Central Excise Authority or Chartered Engineer as the case may be, within a period of six months from the date of import to the Regional Authority/Licensing Authority concerned, as per Para-5.3.1 of Hand Book of Procedures, 2004-09 as amended.

M/s. Swasik Enterprises , Chennai had not submitted the export documents under ANF-5B or yearwise progressive Report and Installation Certificate as required, this Office had issued a show cause notice on 10.04.2012, granting a personal hearing on 24.04.2012 to their office address at Flat No.47, 4<sup>th</sup> Floor, Rishikesh apartment, No.75/38, G.N.Chetty Road, T.Nagar, Chennai-600 017 which was returned undelivered by the postal authorities with the remarks "Left" and hence the same show cause notice dated 25.04.2012 issued by this office to their Head office address was also returned undelivered with same remarks by the postal authorities. Subsequently, Show Cause Notice for adjudication under Section-14(b) of FT(D&R) Act, 1992 issued on 15.05.2012 and a fresh show cause notice dated 27.07.2012 issued to their Head office address under copy to branch office address at Flat No.47, 4<sup>th</sup> Floor, Rishikesh Apartment, No.75/38 G.N.Chetty Road, T.Nagar, Chennai were also returned undelivered by the Postal authorities with the remarks "Left". Hence, one more Show cause Notice dated 17.10.2012 for taking action under Section-14 of FT(D&R) Act, 1992 read with Rule – 7(k) of FT (Regulation) Rules, 1993 was issued to their Head office under copy to their Branch office and the proprietor, which were also returned undelivered with the same remarks by the Postal authorities.

Since there was no response from M/s. Swasik Enterprises , Chennai either to attend the Personal Hearings granted or reply to the said Show Cause Notices furnished, the undersigned had issued a fresh Show Cause Notice of even No. Dated 13.11.17 with an opportunity of Personal Hearing on 28.11.2017 to M/s. Swasik Enterprises , Chennai under copy to their branch and to the proprietor namely Shri.S.Samraj, S/o S.Sarayan Kumar, 19, New No.9, Padmanaban Street, T.Nagar, Chennai-600 017 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Swasik Enterprises , Chennai under Denied Entity List, refusing issuance of further licences/authorisations/renewal of old licences/authorisations and other export benefits etc. in terms of Section-9(2) of Foreign Trade (Development) Act, 1992 readwith Rule-7(k)of Foreign Trade (Regulation) Rules, 1993 and as to why penalty should not be imposed adjudicating their case under Section-11(2) of Foreign Trade (Development & Regulation) Act, 1992, in exercise of the powers vested in undersigned under Section-13 of the Foreign Trade (Development & Regulation) Act, 1992. Eventhough the said Show Cause Notices addressed to M/s. Swasik Enterprises , Flat No.47, 4<sup>th</sup> Floor, Rishikesh Apartment, No.75/38, G.N.Chetty Road, T.Nagar, Tamilnadu-600017 and Shri.S.Samraj, S/o S.Sarayan Kumar, 19, New No.9, Padmanaban Street, T.Nagar, Chennai-600017 were returned undelivered by the postal authorities with remarks "no such company" and "left" respectively , the show cause notice addressed to their factory at No.132 A & 132/B, Eliampedu Road, Peruvoyal Village, Gummidipoondi Taluk, Thiruvallur District, Pin-601206 was delivered. However M/s. Swasik Enterprises , Chennai had not cared to either reply to the said Show Cause Notice or attended the personal hearing granted to them on 28.11.17, which

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tantamounts to gross violation of EXIM/Foreign Trade Policy/Procedures, attracting action under the provisions of Section-9(2) & 11(2) of Foreign Trade (Development & Regulation) Act, 1992 readwith Rule-7(k) of Foreign Trade (Regulation) Rules, 1993.

#### FINDINGS

M/s. Swasik Enterprises , Chennai had failed to submit the export documents under ANF-5B and installation certificate as required under Para-5.13 of hand Book of Procedures, 2004-09 or regularised the issue by paying the entire duty saved value utilised alongwith interest thereon to the Customs Authority at Port of Registration and produced documentary evidence towards such payments for the non-fulfilment of above export obligation, as per Para-5.14 of Hand Book of Procedures, 2004-09, even after a period of more than seven years from the date of expiry of total export obligation period i.e., 18.12.2011. M/s. Swasik Enterprises , Chennai had also violated the condition laid down under Para-5.3.2 of Hand Book of Procedures, 2004-09, by not furnishing the Installation Certificate evidencing the installation of imported capital goods at their own manufacturing premises/supporting manufacturers' premises as the case may be, as endorsed in the subject licence/authorisation within the time limit prescribed therein.

#### ORDER

The undersigned has gone through the above facts of the case thoroughly and carefully. In the absence of any export documents towards fulfilment of export obligation and installation certificate as well as in the absence of documentary proof for having paid the duty saved value utilised and interest thereon in case of non-fulfilment of export obligation intended for the above authorisation/licence, the undersigned has every reason to believe that M/s. Swasik Enterprises , Chennai had misutilised the EPCG Scheme and wilfully defaulted in fulfilling the export obligation, deserving themselves for action/penalty under Foreign Trade (Development & Regulation) Act, 1992 readwith Foreign Trade (Development & Regulation) Amendment Act, 2010 (Notification dated 20.8.2010) and Foreign Trade (Regulation) Rules, 1993, as amended from time to time.

The undersigned, in exercise of the powers vested in him under Section-13 of Foreign Trade (Development & Regulation) Act, 1992 readwith Foreign Trade (Development & Regulation) Amendment Act, 2010 (Notification dated 20.8.2010) as amended from time to time, hereby impose a fiscal penalty of Rs.3,00,000/- (Rupees Three Lakhs only), in addition to the customs duty (duty saved value utilised) and interest thereon under Section 11(2) of Foreign Trade (Development & Regulation) Act, 1992 readwith Foreign Trade (Development & Regulation) Amendment Act, 2010 (Notification dated 20.8.2010) as amended from time to time.

The undersigned, further, orders that no further licence/authorisation/export incentives etc. shall be granted to M/s. Swasik Enterprises , Chennai and its proprietor or to any other firms in which the proprietor are directly involved in the capacity of Proprietor/Partners/Directors under Section-9(2) of Foreign Trade (Development & Regulation) Act, 1992 readwith Foreign Trade (Development & Regulation) Amendment Act, 2010 (Notification dated 20.8.2010) and Rule-7(k) of Foreign Trade (Regulation) Rules, 1993 as amended from time to time.

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

  
(J. MURALIDHARAN)

DY. DIRECTOR GENERAL OF FOREIGN TRADE

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To

M/s. Swasik Enterprises (IEC No.0488055181),  
Flat No.47, 4<sup>th</sup> Floor, Rishikesh Apartment, No.75/38,  
G.N.Chetty Road, T.Nagar, Chennai-600 017

Copy to :-

1. All the branches/factories, as per IEC Data-base.
2. To the proprietor , as per IEC Data-base.
3. Customs Authority at Port of Registration.