

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.04/21/021/00046/AM08

DATED: 11.06.2019.

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. Rifah Shoes (P) Ltd. (IEC No. 0497014742), No.221, 865 Poonamallee High Road, Kilpauk, Chennai-600 010 had been granted an EPCG Licence/Authorisation No.0430004881 dated 18.04.2007 for a total duty saved value of Rs.532,484.34/- under 5% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Leather Shoes, Leather Sandals & Chappels" manufactured out of the imported capital goods to the tune of total f.o.b. value of US\$ 97,035.87 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.168,338,830/-, subject to the condition that 50% export obligation should be met in the

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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. Rifah Shoes (P) Ltd., Chennai 600 010 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. Rifah Shoes (P) Ltd., Chennai 600 010 were required to submit a report on fulfilment of export obligation by 30th 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. Rifah Shoes (P) Ltd., Chennai 600 010 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. Rifah Shoes (P) Ltd., Chennai 600 010 had submitted export obligation documents under ANF 5B on 27.02.2015, on scrutiny of which a letter No.04/21/21/46/AM08/2235 dated 04.03.2015 was issued to M/s. Rifah Shoes (P) Ltd., Chennai by this office conveying the following deficiencies :-

1. The D.S.V. utilized against B/E No.493050/27.06.07 has not been debited & not shown on the reverse side of the licence. Hence, requested to give clarification and the original C.P. copy of Licence with enclosures are returned for correction by customs with attestation.
2. Copy of B/E No.493050/27.06.07
3. The address mentioned in the Installation Certificate differs from that of licence. Hence requested for clarification.
4. As per the condition sheet, the Annual Average is to be refixed. Hence requested to furnish a revised Appendix-26 certified by C.A. showing Past Export Performance of the same and similar product for AM05, AM06 and AM07 in original Certified by C.A.
5. Custom's Notification showing Exchange Rate of F.C. in USD as on 06.07.07, 07.07.07 and 16.07.07

Since there was no reply from M/s. Rifah Shoes (P) Ltd., Chennai 600 010 in this regard even after a period of more than four years from the issue of said letter received by this office a show cause notice of even no. Dated 26.04.2019 (despatched on 08.05.2019) was issued by the undersigned to M/s. Rifah Shoes (P) Ltd., Chennai 600 010 with an opportunity of Personal Hearing on 29.05.2019 between 2.30 P.M. and 4.00 P.M. in accordance with the principle of natural justice to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Rifah Shoes (P) Ltd., Chennai 600 010 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. However, M/s. Rifah Shoes (P) Ltd., Chennai 600 010 had not cared to either reply to the said Show Cause Notice or attended the personal hearing granted to them on 29.05.2019, which 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. Rifah Shoes (P) Ltd., Chennai 600 010 had failed to submit the complete export documents under ANF-5B and installation certificate as required under Para-5.13 of hand Book of Procedures, 2004-09 failing which, it is presumed that M/s. Rifah Shoes (P) Ltd. had not fulfilled the export obligation imposed on the EPCG Licence No. 0430004881 dated 18.04.2007, defeating the very purpose of which the said licence/authorisation was issued.

ORDER

The undersigned has gone through the above facts of the case thoroughly and carefully. In the absence of the complete 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. Rifah Shoes (P) Ltd., Chennai 600 010 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.20,000/- (Rupees Twenty Thousand 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. Rifah Shoes (P) Ltd., Chennai 600 010 and its Directors or to any other firms in which the Directors 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

To
M/s. Rifah Shoes (P) Ltd. (IEC No. 0497014742),
No.221, 865 Poonamallee High Road,
Kilpauk, Chennai-600 010

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Copy to :-

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