

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.04/21/021/00058/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. Sushen Constructions Private Ltd.,(IEC No.0404000681) Sucons Sivagami Square, Suite No.2, 147/1, G.N.Chetty Road, T.Nagar, Chennai-600 017 had been granted an EPCG Licence/Authorisation No.0430004958 dated 17.05.2007 for a total duty saved value of Rs.12,55,963.89/- under 5% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to earn free foreign exchange using imported capital goods to the tune of total f.o.b. value of US\$ 228,877.24 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 as "nil" by export of "construction services" covered under S.No.3 A of Appendix-10 of Hand Book of Procedures 2004-09 as certified in the nexus certificate issued by Chartered Engineer

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subject to the condition that 50% export obligation should 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. Sushen Constructions Private Ltd, 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. Sushen Constructions Private Ltd, Chennai 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. Sushen Constructions Private Ltd, 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. Sushen Constructions Private Ltd, Chennai had informed vide letter dated 18.09.2008 that since they were not confident of fulfilling the Export Obligation under EPCG authorisation No.0430004958 dated 17.05.2007, they were left with no other option but to request this office to allow them for regularising the import by payment of duty as a special case. Accordingly a letter No.04/21/21/58/AM08 dated 30.09.2008 was issued by this office to M/s. Sushen Constructions Private Ltd, Chennai in this regard, advising them to approach the O/o Commissioner of Customs (SEA), Custom House, Rajaji Salai, Chennai-600 001 with whom the licence was registered for payment of Customs Duty with applicable interest as per Para 5.14 of Hand Book of Procedures 2004-09 wherein the original EPCG Licence No. 0430004958 dated 17.05.2007 in duplicate was returned for compliance. However there was no reply from M/s. Sushen Constructions Private Ltd, Chennai received by this office towards such payment of Customs duty and interest till then for more than 10 years from the date of issue of that letter. Meanwhile the total export obligation period of 8 years was over by 16.05.2015. Hence a Show Cause Notice of even No. Dated 26.03.2019 (Despatched on 02.04.2019) was issued by the undersigned with an opportunity of personal hearing on 10.04.2019 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Sushen Constructions Private Ltd, 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. However, M/s. Sushen Constructions Private Ltd, Chennai had not cared to either reply to the said Show Cause Notice or attended the personal hearing granted to them on 10.04.2019, 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. Sushen Constructions Private Ltd, 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

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Book of Procedures, 2004-09, even after a period nearly four years from the date of expiry of total export obligation period i.e. 16.05.2015. M/s. Sushen Constructions Private Ltd, 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. Sushen Constructions Private Ltd, 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.1,00,000/- (Rupees One Lakh 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, also, orders that no further licence/authorisation/export incentives etc. shall be granted to M/s. Sushen Constructions Private Ltd, Chennai 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. Sushen Constructions Private Ltd.,(IEC No.0404000681)
Sucons Sivagami Square, Suite No.2, 147/1,
G.N.Chetty Road, T.Nagar, Chennai-600 017

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.