

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.04/21/021/00076/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. Forward Leather Company (IEC No.0488016339) Old No.50, New No.37, Raja Muthiah Road, Periamet, Chennai-600 003 had been granted an EPCG Licence/Authorisation No.0430004943 dated 16.05.2007 for a total duty saved value of Rs.58,217/- under 5% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Leather Shoe Uppers" manufactured out of the imported capital goods to the tune of total f.o.b. value of US \$ 10,609.02 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.669,591,333.33/-, subject to the condition that 50% export obligation should be met in the first block within six years

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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. Forward Leather Company, Chennai-600 003 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. Forward Leather Company, Chennai-600 003 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. Forward Leather Company, Chennai-600 003 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.

Accordingly M/s. Forward Leather Company, Chennai-600 003 had submitted the export documents under ANF 5B vide letter dated 01.10.2012, on scrutiny of which it was observed that they had not fulfilled the specific Export obligation over and above the annual average export performance of Rs. 66,95,91,333 fixed in the EPCG License No. 0430004943 dated 16.05.2007 by this office. Hence a formal letter was issued to M/s. Forward Leather Company, Chennai vide letter No.04/21/21/76/AM08 dated 15.10.12 by this office, requesting them to regularise the case in terms of Para 5.14 of Hand Book of Procedures 2009-14 as M/s. Forward Leather Company had not maintained the annual average export performance wherein the original customs purpose copy of licence/authorisation was returned. M/s. Forward Leather Company, Chennai had replied vide their letter No. FLC/14-15/EPCG/4943 dated 08.06.2015 received in this office on 16.06.2015, that since they had completed the prescribed specific Export Obligation (i.e. 8 times of duty saved amount) before the expiry of the total export obligation period of 8 years, they had requested this office to consider maintenance of 75% of annual average export obligation in view of the fact that they were facing lot of constraints in getting the export orders due to stiff competition in the international market. Since there is no policy provision for consideration of such waiver this office vide letter No.04/21/21/00076/AM08/693 dated 31.08.15 had again advised M/s. Forward Leather Company, Chennai to regularise the case in terms of para 5.14 of Hand Book of Procedures 2009-14 as they had not fulfilled the specific export obligation over and above the annual average of past export fixed in the licence No. 0430004943 dated 16.05.2007. Since there was no reply from M/s. Forward Leather Company, Chennai-600 003 even after a period of more than three years from the date of issue of the said latest letter dated 31.08.2015 and also nearly four years from the date of expiry of total Export obligation period, a Show Cause Notice of even No. Dated 26.03.2019 (despatched on 29.03.2019) was issued by the undersigned with a personal hearing on 11.04.2019 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. Forward Leather Company, Chennai-600 003 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. Forward Leather Company, Chennai-600 003 had not cared to either reply to the said Show Cause Notice or attended the personal hearing granted to them on 11.04.2019, which tantamounts to gross violation of EXIM/Foreign Trade Policy/Procedures, attracting action under the

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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. Forward Leather Company, Chennai-600 003 had failed to fulfil the specific export obligation over and above the annual average export obligation fixed in the EPCG Licence No. 0430004943 dated 16.05.2007 issued by this office, resulting to non-fulfillment of total export obligation which had defeated the very purpose for which said licence/authorisation was issued. M/s. Forward Leather Company, Chennai-600 003 had also failed to regularise the entire issue for such default by payment of customs duty (duty saved value utilised) and interest thereon by submitting the documentary proof/evidence towards such payments for the non-fulfilment of above export obligation imposed against EPCG Licence No.0430004943 dated 16.05.2007 as per para 5.14 of Hand Book of Procedures 2004-09 after a period of more than three years from the date of issue of demand letter dated 31.08.15. The total Export obligation period was also over by 15.05.2015. M/s.Forward Leather Company, Chennai had also violated the condition laid down under para 5.4(i) of Hand Book of procedures 2004-09 by not fulfilling the specific export obligation over and above the annual average export performance fixed in the EPCG Licence/authorisation No. 0430004943 dated 16.05.2007 as explained in para 2 of facts of the case above.

ORDER

The undersigned has gone through the above facts of the case thoroughly and carefully and observed that M/s. Forward Leather Company, Chennai 600 003 had not fulfilled the total export obligation and has every reason to believe that M/s. Forward Leather Company 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.5000/- (Rupees Five 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. Forward Leather Company, Chennai-600 003 and its Partners or to any other firms in which the Partners 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.

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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. Forward Leather Company (IEC No.0488016339)
Old No.50, New No.37, Raja Muthiah Road,
Periamet, Chennai-600 003.

Copy to :-

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