

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.04/21/021/00207/AM06

DATED: 18.06.2019.

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. Sunbright Designers (Pvt) Ltd.,(IEC No.0498052079) Module No.6, SIDCO Readymade Garment Complex, Industrial Estate, Guindy, Chennai-600 032 had been granted an EPCG Licence/Authorisation No.0430003013 dated 14.09.2005 for a total duty saved value of Rs.168,445/- under 5% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Embroidered Garments" manufactured out of the imported capital goods to the tune of total f.o.b. value of US \$ 30,696.13 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.48,442,842.33/- within a period of 8 years from the date of its issue, subject to the condition that 50% export obligation should be met in the first block within six years

(cont.....2)

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. Sunbright Designers (Pvt) 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. Sunbright Designers (Pvt) 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. Sunbright Designers (Pvt) 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. Sunbright Designers (Pvt) Ltd., Chennai had failed to submit export documents and installation certificate as stated above, in spite of the entire export obligation period was over by 13.09.2012. Hence a Show Cause Notice was issued by this office on 28.04.2017 granting an opportunity of personal hearing on 19.05.2017 to M/s. Sunbright Designers (Pvt) Ltd., Chennai under copy to all branches and Directors. Since there was neither any reply received from M/s. Sunbright Designers (Pvt) Ltd., Chennai nor attended the personal hearing fixed on 19.05.2017, a reminder was issued to M/s. Sunbright Designers (Pvt) Ltd., Chennai by this office on 29.05.2017. Even then there was no reply received from M/s. Sunbright Designers (Pvt) Ltd., Chennai or its Directors. The undersigned had therefore issued a fresh Show Cause Notice No.04/36/021/00032/AM05 dated 16.10.2017 (despatched on 24.10.17) to M/s. Sunbright Designers (Pvt) Ltd., Chennai with an opportunity of personal hearing on 30.10.2017 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Sunbright Designers (Pvt) 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. One Shri. B.Lordson Roy, Ex.Assistant to Managing Director, holder of Power of Attorney had attended the personal hearing vide interview slip No. 241 dated 07.11.2017 in lieu of on 30.10.2017 and requested for three months time. The undersigned had advised the representative to submit the export documents within 30 days time or to regularise the case by payment of customs duty (duty saved value utilised) and interest thereon. However M/s. Sunbright Designers (Pvt) Ltd., Chennai had not cared to either submit the export documents as committed during the personal hearing or regularised the entire issue by payment of customs duty plus interest 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. Sunbright Designers (Pvt) 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 Book of Procedures, 2004-09, even after a period nearly six years. M/s. Sunbright Designers (Pvt) 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. Sunbright Designers (Pvt) 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.5,000/- (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. Sunbright Designers (Pvt) 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. Sunbright Designers (Pvt) Ltd., (IEC No.0498052079),
Module No.6, SIDCO Readymade Garment Complex,
Industrial Estate, Guindy, Chennai-600 032

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.