

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.04/21/021/00337/AM11

DATED: 21.06.2019.

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. Arthi Impex (IEC No.0407026380), 162, Sholingur Road, Arakonam, Tamilnadu-631001 had been granted an EPCG Licence/Authorisation No.0430008770 dated 21.07.2010 for a total duty saved value of Rs.8,81,381/- under 3% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Readymade Garments" manufactured out of the imported capital goods to the tune of total f.o.b. value of US \$ 150,182.06 i.e. 8 times of the Duty Saved Value equivalent to free foreign currency over and above the annual average of the past export performance fixed as "nil" 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

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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. Arthi Impex , Tamilnadu were required to submit the export documents under ANF-5B, as per Para-5.13 of Hand Book of Procedures, 2009-14 as amended, within a period of three months from the date of expiry of above block periods. Despite, M/s. Arthi Impex , Tamilnadu 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, 2009-14 as amended. M/s. Arthi Impex , Tamilnadu 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, 2009-14 as amended.

As M/s. Arthi Impex , Tamilnadu had not submitted the export documents under ANF-5B or yearwise progressive Report and Installation Certificate as required, a Show Cause Notice No.042102100337AM11 dated 22.05.2019 (despatched on 24.05.2019) was issued by the undersigned with an opportunity of personal hearing on 17.06.2019 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Arthi Impex , Tamilnadu 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. M/s. Arthi Impex , Tamilnadu had submitted a letter dated 13.06.2019 in reply to the said Show Cause Notice stating that a fire accident had occurred in their company on 24.11.2012 during which the machineries, fabrics, goods and all documents got destroyed/burnt, resulting to a loss of around Rs.1 Crore, adding that they did not have any documents and copies of export details. M/s. Arthi Impex , Tamilnadu had also informed that they approached their banker viz. Canara Bank, Arakonam Branch, who had in turn informed that they did not have any documents in this regard. M/s. Arthi Impex , Tamilnadu had also enclosed a certificate No.5215/E2/2012 dated 17.04.2012 issued by Tamilnadu Fire Station at Vellore alongwith a copy of F.I.R. dated 04.07.2012 filed in the Court of Law at Arakkonam.

FINDINGS

M/s. Arthi Impex , Tamilnadu had failed to submit the export documents under ANF-5B and installation certificate as required under Para-5.13 of hand Book of Procedures, 2009-14 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, 2009-14, even after a period nearly one year. M/s. Arthi Impex , Tamilnadu had also violated the condition laid down under Para-5.3.2 of Hand Book of Procedures, 2009-14, 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.

While going through the original application submitted by M/s. Arthi Impex , Tamilnadu for issue of EPCG Licence No. .0430008770, it was noticed that M/s. Arthi Impex , Tamilnadu had no past export performance during April-March 2008, April-March 2009 and April-March 2010. M/s. Arthi Impex , Tamilnadu had obtained EPCG Licence on 21.07.2010 and the fire accident happened

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on 24.11.2012 i.e. within 2 years and 4 months and it is not possible for them to manufacture the export item proposed, out of the imported capital goods after import and installation of the same within a period of 2 years and 4 months. It is clear evident from their statement regarding the non-availability of any documents in their banker that they did not realise any foreign exchange against exports and had they exported, the banker could have given the bank certificate in this regard. M/s. Arthi Impex, Chennai had stated in their explanation letter dated 03.06.2019/13.06.2019 in reply to Show Cause Notice dated 22.05.2019 that the fire accident occurred on 24.11.2012. But the certificate given by the Fire Station at Vellore was issued on 17.04.12 and F.I.R. copy was dated 04.07.2012 i.e. prior to date of occurrence of fire accident as stated by M/s. Arthi Impex in their letter, which is a clear evidence that M/s.Arthi Impex is lying on the issue to cook the reasons for non-fulfillment of export obligation imposed against the EPCG Licence No.0430008770 dated 21.07.2010. M/s. Arthi Impex had not taken efforts to find out the utilisation details and export details based on their IEC No. From the customs authorities concerned. Moreover there is no policy/procedures to give relaxation/condonation against fulfilment of export obligation in such circumstances by this office. Alternatively M/s. Arthi Impex , Tamilnadu should have to regularised the case by payment of duty plus interest.

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-fulfillment of export obligation intended for the above authorisation/licence, the undersigned has every reason to believe that M/s. Arthi Impex , Tamilnadu 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.2,000/- (Rupees Two 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. Arthi Impex , Tamilnadu 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. Arthi Impex (IEC No.0407026380),
162, Sholingur Road, Arakonam,
Tamilnadu-631001.

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.