

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.04/21/021/0433/AM05

DATED: 04.06.2019.

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.
- 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 The Appeal alongwith evidence of payment of penalty is required to be furnished to the Adjudicating Authority within 45 days from the date of serving of this Adjudication Order, failing which, 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, read with Foreign Trade (Development & Regulation) Amendment Act,2010 and as amended from time to time.

FACTS OF THE CASE

M/s. Excel Jewellery Mfg.&Services Co.,(IEC No.0404027199) No.1 Hunters Lane, Hunter Road, Choolai, Chennai-600 112 had been granted an EPCG Licence/Authorisation No.0430002487 dated 22.03.2005 for a total duty saved value of Rs.1,153,221/- under 5% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Gold & Silver Jewellery Products" manufactured out of the imported capital goods to the tune of total f.o.b. value of US \$ 209915.08 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, 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. Excell Jewellery Mfg. & Services Co., Chennai-600 112 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. Excell Jewellery Mfg. & Services Co., Chennai-600 112 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. Excell Jewellery Mfg. & Services Co., Chennai-600 112 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. Excell Jewellery Mfg. & Services Co., Chennai-600 112 submitted Export obligation documents under ANF 5B vide letter dated 24.08.2011 on scrutiny of which this office had issued rejection letter on 13.10.2011 for the reason that the export product endorsed on the shipping bills i.e. cut & polished diamonds differs from that of export item Gold & Silver Jewellery products allowed in the license as per the nexus certified by the chartered engineer, returning back their original EPCG Licence No.0430002487 dated 22.03.2005 with an advice to apply for redemption afresh after exporting the same product allowed in the said licence. M/s. Excell Jewellery Mfg. & Services Co., Chennai had also been advised therein that since the first block E.O. period was already over at the time of filing their redemption request, they were advised to produce the E.O. documents towards fulfilment of E.O. as required immediately or to apply for Export obligation period extension in terms of policy circular No.33 dated 17.03.2008. Since there was no reply, from M/s. Excell Jewellery Mfg. & Services Co., Chennai, a Show Cause Notice of even No. Dated 27.10.2018 was issued to them under copy to all branches/factory and the proprietor, by the undersigned with an opportunity of personal hearing on 07.12.2018 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Excell Jewellery Mfg. & Services Co., Chennai-600 112 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 read with 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. Excell Jewellery Mfg. & Services Co., Chennai-600 112 had not cared to either reply to the said Show Cause Notice or attended the personal hearing granted to them on 07.12.2018, 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 read with Rule-7(k) of Foreign Trade (Regulation) Rules, 1993. Moreover, the Show Cause Notices addressed to M/s. Excel Jewellery Mfg.& Services Co., No.1 Hunters Lane, Hunter Road, Choolai, Chennai-600 112, as per the details available in their IEC data base, had been returned undelivered by the Postal Authorities concerned with the remarks "No such addressee", even though other copies of Show cause notices addressed to the Proprietor and branches/factories had been received.

FINDINGS

M/s. Excell Jewellery Mfg. & Services Co., Chennai-600 112 had failed to fulfil the export obligation by export of Gold & Silver Jewellery products, as per the nexus certified by C.E. in the prescribed format submitted at the time of original application for getting the licence/authorisation.

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As advised by this office, M/s. Excell Jewellery Mfg. & Services Co., Chennai had failed to submit the export documents under ANF 5B for having exported the actual product as endorsed in the licence or applied for Blockwise EOP extensions 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 of more than six years.

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 actually imposed on the licence/authorisation 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. Excell Jewellery Mfg. & Services Co., Chennai-600 112 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 read with 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 read with 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 read with 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. Excell Jewellery Mfg. & Services Co., Chennai-600 112 and its proprietor or to any other firms in which the proprietor is directly involved in the capacity of Proprietor/Partners/Directors under Section-9(2) of Foreign Trade (Development & Regulation) Act, 1992 read with 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. Excel Jewellery Mfg. & Services Co.,
No.1 Hunters Lane, Hunter Road,
Choolai, Chennai-600 112.

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.