

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.04/21/021/00756/AM10

DATED: 28.06.2019.

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. Vinkem Labs Ltd.,(IEC No. 0400024152) AH29, Shanthi Colony, 4th Avenue, Anna Nagar, Chennai, Tamil nadu, Pin-600 040 had been granted an EPCG Licence/Authorisation No. 0430007986 dated 17.12.2009 for a total duty saved value of Rs.2,16,86,226/- under 0% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Anti-Cancer Medicines" manufactured out of the imported capital goods to the tune of total f.o.b. value of US \$ 2,783,258.95 i.e. 6 times of the Duty Saved Value equivalent to free foreign currency over and above the annual average of the past export performance fixed for Rs.4,286,185.33/- within a period of 6 years from the date of its issue, subject to the condition that

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50% export obligation should be met in the first block within four 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. Vinkem Labs Ltd., Chennai 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. Vinkem Labs 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, , 2009-14 as amended. M/s. Vinkem Labs 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, , 2009-14 as amended.

M/s. Vinkem Labs Ltd., Chennai vide their letter dated 10.03.2015 (received in this office on 12.03.2015) had requested for extension of total export obligation period against EPCG Licence No.430007986 dated 17.12.2009 for the reasons explained therein. As such request of M/s. Vinkem Labs Ltd., Chennai was not made in time as prescribed under Para 5.8.3 of Hand Book of Procedures 2009-20014, a rejection letter No.04/21/021/00756/AM10/2377 dated 27.03.2015 was issued to M/s. Vinkem Labs Ltd., Chennai, advising them to pay proportionate customs duty plus interest for the non-fulfillment of first block export obligation and to produce documentary evidence to this office. Since there was no reply, a cautionary letter No.04/21/021/00756/AM10 dated 06.03.2019 was issued by this office to M/s. Vinkem Labs Ltd., Chennai . M/s. Vinkem Labs Ltd., Chennai vide their letter dated 30.03.2019 (received in this office on 02.04.2019) had admitted that though they had imported the capital goods, they could not complete the project and start their the production for various reasons explained therein, resulting to non-fulfilment of export obligation, adding that their banker had now filed suit in various court DRT/NCLT etc. for the recovery of the supported finance in the project and they appealed to the Honorable High Court of Judicature at Chennai which is pending to be decided by the court of Law. As there is no policy/procedure to waive the main condition of fulfillment of export obligation for the purpose of which the said EPCG Licence was issued, against the reasons stated in letter dated 30.03.2019 of M/s. Vinkem Labs Ltd., Chennai , a Show Cause Notice No.042102100756AM10 dated 29.04.2019 was issued by the undersigned with an opportunity of personal hearing on 22.05.2019 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Vinkem Labs 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. S.Manikandan, Advocate representing M/s. Vinkem Labs Ltd., Chennai alongwith Vakalatnama appeared before the undersigned for personal hearing vide Interview Slip No.418 dated 22.05.2019 and informed that M/s. Vinkem Labs Ltd., Chennai had approached the High Court for Revival Order which is expected to be delivered within four months time and that they would then take the decision to regularize the case by paying the customs duty and interest. Meanwhile M/s. Vinkem Labs Ltd., Chennai vide their letter dated 13.05.2019 (received in this office on 15.05.2019) had also admitted that though they had imported capital goods allowed in the EPCG Licence No No.430007986 dated 17.12.2009,they had not fulfilled the export obligation explaining various reasons with a request to consequently

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exempt them, taking into account of their lay-off for over five years on account of factors stated therein. There was no policy/procedure to wait beyond 3 months from the date of expiry of total export obligation period for any reasons stated in the firm's letter dated 13.05.2019 as well as by their representative during the personal hearing, which would not prevent them in taking action under Foreign Trade (Development & Regulation) Act, 1992 read with Rule 7(k) of Foreign Trade Regulation Rules, 1993. Moreover, there was no any documentary proof such as Court's order/direction, bank's letter etc. produced in support of their statements. This 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. Vinkem Labs 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, 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 more than three years from the date of expiry of total export obligation period. M/s. Vinkem Labs Ltd., Chennai 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.

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. Vinkem Labs 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.10,00,000/- (Rupees Ten Lakhs 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. Vinkem Labs 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. Vinkem Labs Ltd., (IEC No. 0400024152),
AH29, Shanthi Colony, 4th Avenue,
Anna Nagar, Chennai,
Tamil nadu, Pin-600 040.

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.