

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.04/21/021/00833/AM08

DATED: 19.06.2019.

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. Satish Garments (IEC No.0405034261) 1, Santhuvalli Amman Koil Street, Kundrathur, Chennai-600 069 had been granted an EPCG Licence/Authorisation No.0430005742 dated 24.01.2008 for a total duty saved value of Rs.13,35,400/- under 5% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Readymade Garments Embroidered" manufactured out of the imported capital goods to the tune of total f.o.b. value of US \$ 268,085.31 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.981,663.66/- within a period of 8 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 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. Satish Garments, Chennai-600 069 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. Satish Garments, Chennai-600 069 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. Satish Garments, Chennai-600 069 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. Satish Garments, Chennai-600 069 had submitted the export documents in ANF 5B on 28.01.2016 on scrutiny of which the following defects were observed by this office and informed the same to M/s. Satish Garments, Chennai-600 069 vide this office letter No.04/36/165/00758/AM16/438 dated 24.05.2016 giving them 30 days time to comply with:-

1. 1st Block E.O. not fulfilled and no E.O. period extension obtained, requested to approach Headquarters for condonation of 1st Block E.O.
2. In the statement of shipping bills for maintenance of Annual Average for AM 14-15 includes Shipping bills shown towards specific E.O. which cannot be considered. Therefore asked for a revised statement.
3. Third party shipping Bills should not be shown in the statement of Shipping Bills for Annual Average Maintenance.
4. Revised ANF 5B to be furnished duly mentioning the value in Foreign Currency in Col.No.7.
5. An amount of Rs.4,731 (excess value) has been utilised, requested to furnish additional utilization fee of Rs.100/-.

Since M/s. Satish Garments, Chennai-600 069 was not in a position to rectify the deficiencies at Sl.No. 1 & 3 due to non-availability of policy provision for consideration of late request for block wise export obligation condonation as well as non-availability of policy provision to consider the third party exports towards maintenance of annual average, M/s. Satish Garments, Chennai-600 069 had approached the EPCG committee for approval, against which EPCG Committee at New Delhi had called for report in the prescribed format vide their letter No.01/37/218/202/AM-17/EPCG-II dated 06.10.2016. This office had also sent the report vide letter No.04/21/021/838/AM08 dated 16.11.2016 by mail on 22.11.2016 as required by the said committee. Meanwhile M/s. Satish Garments, Chennai-600 069 had also forwarded a copy of such application in the format of ANF 2D filed with EPCG Committee at New Delhi alongwith prescribed application fee vide their letter dated 29.11.2016 received in this office on 15.12.2016. The EPCG Committee at DGFT, New Delhi had

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communicated their decision, on the issue vide letter No.01/37/218/202/AM-17/EPCG-II dated 13.02.2017 as follows:

“ The Committee noted the submission of the party that they have fulfilled 90% E.O. in second block of EOP through third party exports and are hopeful of completing remaining E.O. in the extended period.

The Committee deliberated upon the case and decided to recommend to DG for relaxation under Para 2.58 of FTP 2015-20 to allow:

- a) Extension of block-wise EOP as the party could not apply to RA within the prescribed time period. This shall be subject to payment of 2% composition fee on duty saved amount in proportion to the shortfall at the end of first block in terms of the provisions of Para 5.8.3 of HBP 2004-09; and
- b) Extension of EOP for 2 years on payment of composition fee equal to 2% of proportionate duty saved amount on unfulfilled EO or an enhancement in EO imposed to the extent of 10% of total EO at the choice of exporter, for each year of extension sought in terms of provisions contained in Para 5.11 of HBP 2009-14, as the party could not apply to RA within the prescribed time period.

Third party exports shall be subject to conditions prescribed in Para 5.10(d) of HBP 2015-20 read with policy circular No.3 dated 02.09.2015. This has the approval of DG.”

Based on the decision taken by the EPCG Committee, New Delhi this office had issued a letter No.04/21/021/968/AM17 dated 03.03.2017, calling for the composition fee for Rs.35,023/- due towards 1st Block E.O. condonation and two years total E.O. period extension, against which no reply had been received from M/s. Satish Garments, Chennai-600 069 by this office . The total export obligation period had also expired on 23.01.2016. Hence the undersigned had issued a Show Cause Notice No.042102100833AM08 dated 26.03.2019 (despatched on 02.04.19) to M/s. Satish Garments, Chennai-600 069 with an opportunity of personal hearing on 10.04.2019 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Satish Garments, Chennai-600 069 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. Satish Garments, Chennai-600 069 had not cared to either reply to the said Show Cause Notice or attended the personal hearing granted to them on 10.04.2019, 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.

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FINDINGS

M/s. Satish Garments, Chennai-600 069 had failed to submit the complete export documents under ANF-5B and also not paid the required composition fee as per the decision of the EPCG Committee at DGFT, New Delhi even after a period of more than two years from the date of issue of this office letter dated 03.03.2017 and even after a period of more than three years from the date of expiry of total export obligation period violating the condition laid down under Para-5.14 of Hand Book of Procedures, 2004-09.

ORDER

The undersigned has gone through the above facts of the case thoroughly and carefully. In the absence of complete export documents as required under ANF 5B as per Para 5.14 of Hand Book of Procedures, 2004-09, the undersigned has presumed that M/s. Satish Garments, Chennai-600 069 had not fulfilled the entire export obligation intended for the prescribed blockwise export obligation and has every reason to believe that M/s. Satish Garments, Chennai-600 069 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.10,000/- (Rupees Ten 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 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. Satish Garments, Chennai-600 069 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 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. Satish Garments (IEC No.0405034261),
1, Santhuvalli Amman Koil Street,
Kundrathur, Chennai-600 069.

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.