

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.04/21/021/01246/AM13

DATED: 24.06.2019.

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. Sreevaree Exports (IEC No.0401007669), No.18, Jambulingam Main Road, Annai Anjugam Nagar, Chennai-600 082 had been granted an EPCG Licence/Authorisation No.0430012266 dated 08.03.2013 for a total duty saved value of Rs.52,10,484/- under 3% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Rough Granite Blocks & Dimensional Dressed Granite Blocks" manufactured out of the imported capital goods to the tune of total f.o.b. value of US \$ 759,269.07 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 for Rs.145,612,420.66/- 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. Sreevaree Exports, Chennai-600 082 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. Sreevaree Exports, 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. Sreevaree Exports, 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.

Accordingly M/s. Sreevaree Exports, Chennai had submitted the export documents under ANF-5B and Installation Certificate as required, vide letter dated 30.11.2015 (received in this office on 10.12.15), on scrutiny of which the following defects were noticed by this office and the same communicated to M/s. Sreevaree Exports vide this office letter No.04/36/165/00631/AM16/780 dated 30.06.2016:-

1. To furnish copy of supply invoices for 2 Nos. Of Hydraulic Excavator.
2. Copies of installation certificates for 2 Nos. of Hydraulic excavator to be submitted.
3. All the shipping bills are free shipping bills and requested to submit shipping bills endorsed with EPCG Licence No. along with revised ANF 5B

M/s. Sreevaree Exports, Chennai vide their letter dated 03.05.2017 had submitted copy of supply invoice and installation certificate, informing that since their claim for redemption is as per Para 5.14 (d) (iii) of Hand Book of Procedures 2015-2020, the free shipping bills may be accepted and case redeemed, which is irrelevant to the issue and pertains to condition of fulfilment of block wise Export Obligation. As free shipping bills could not be considered towards fulfilment of export obligation not only against EPCG scheme but also for any other export benefits, under policy/procedures, the undersigned had issued a Show Cause Notice No.042102101246AM13 dated 26.03.2019 with an opportunity of personal hearing on 11.04.2019 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Sreevaree Exports, 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.K.Venkatesam, authorised representative of M/s. Sreevaree Export, Chennai vide Interview slip No.125 dated 11.04.2019 appeared before the undersigned for personal hearing and requested to accept free shipping bills as per policy circular No. 7/2002 dated 11.07.2002 for not mentioning the licence No. in the shipping bills. The undersigned had advised to give a proper reply with a revised ANF 5B and shipping bills endorsed with EPCG Licence No. certified by Chartered Accountant within a week's time. However there was no reply from M/s. Sreevaree Exports, Chennai even after a period of two months from the date of issue of Show Cause Notice and personal hearing granted to them .

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FINDINGS

M/s. Sreevaree Exports, Chennai had failed to submit the export documents under ANF-5B 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 more than two months from the date of expiry of first block Export Obligation period.

ORDER

The undersigned has gone through the above facts of the case thoroughly and carefully. In the absence of complete export documents towards fulfilment of export obligation 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. Sreevaree Exports, 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.25,000/- (Rupees Twenty 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. Sreevaree Exports, Chennai 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 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. Sreevaree Exports (IEC No.0401007669),
No.18, Jambulingam Main Road, Annai Anjugam Nagar, Chennai-600 082

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.