

22.02.2019 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.04/21/021/01274/AM09

DATED: 26.09.2019.

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. SBQ STEELS LTD.,(IEC NO. 0408016981) NO.6/13, North Avenue, Kesavaperumal puram, Chennai, Tamil nadu, Pin-600028 had obtained 17 EPCG licences/authorisations for import of capital goods under concessional duty EPCG Scheme with an obligation to earn five/six/eight times of the duty saved value by export of Finished Products, as per nexus certified in Chartered Engineer's certificate within a period of five/six/eight years in the prescribed proportions over and above the annual average prescribed in the respective licences/authorisations, as detailed in the annexure enclosed herewith For the purpose of discharge of said export obligation, M/s. SBQ

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STEELS 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. SBQ STEELS 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. SBQ STEELS 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.

As M/s. SBQ STEELS LTD., Chennai had not submitted the export documents under ANF-5B or yearwise progressive Report and Installation Certificate as required, this Office had issued cautionary letter on January/February/March/April/August of 2019 against all the 17 cases under reference. One Shri.Ritesh Rai in his letter head on 26.02.2019 had informed that he was not the Director of M/s. SBQ Steels Ltd., Chennai with effect from 30.10.2017 and that CIRP has been initiated against M/s. SBQ Steels Ltd., Chennai under the provisions of insolvency and bankruptcy Code, 2016 (IBC) by an order of National Company Law Board Tribunal, Chennai Bench with effect from 29.12.2017 and appointed Shri.Ashish Rathi as the Resolution Professional to conduct the IBC proceedings, requesting this office to contact him for any further information. As there is no provision under policy/procedures to follow such procedure in case of default in fulfilment of export obligation against EPCG Licences, except to get the cases regularised, M/s. SBQ Steels Ltd., Chennai were issued show cause notice on 27.05.2019 by the undersigned with an opportunity of personal hearing on 19.06.19 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. SBQ STEELS 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. As M/s. SBQ Steels Ltd., Chennai either attended the personal hearing fixed on 19.06.19 or replied to the said show cause notice, M/s. SBQ Steels Ltd., Chennai were placed under Denied Entity List vide order dated 22.07.2019 for non-fulfillment of export obligation against all the 17 cases under reference. One Shri. Ashish Arjunker Rathi, Liquidator for M/s. SBQ Steels Ltd., had vide letter No SBQ-Liquidation/Notices-Ref/2019/026 dated 19.08.2019 (in the letter head of M/s. SBQ Steels Ltd.) informed that they had taken note of the contents of the DEL order and would once again like to bring the facts therein as detailed below:

1. Vide their letter dated June 5, 2019 they had intimated this office that, Hon'ble NCLT, Chennai had vide its order pronounced on 30th January, 2019 and dated February 15, 2019 ("Liquidation Order") ordered the liquidation of the company as per the provisions of Section 33 of Insolvency and Bankruptcy Code, 2016 ("IBC") read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 with amendments thereto ("Liquidation Regulations). Pursuant to the Liquidation Order, the undersigned was appointed as the liquidator ("Liquidator") to perform his duties as per the provisions of IBC and Liquidation Regulations.
2. They would once again reiterate that, that Section 34(2) of the IBC, which interalia provide that once the Liquidator had been appointed, all powers of the board of directors, key

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managerial personnel of the Company shall cease to have effect and shall be vested in the liquidator.

3. Further, in terms of Section of 33(5) of the IBC, no suit or other legal proceeding shall be instituted against the corporate debtor. The Liquidation Order states among other things states that "since the liquidation order has been passed, no suit or other legal proceedings can be instituted by or against the Corporate Debtor without the prior approval of Hon'ble NCLT, Chennai".
4. They would like to state that, as per Section 238 of the Code, the provisions of IBC overrides all other laws which are inconsistent with the provisions of IBC. Section 238 of IBC reads as follows:

"238.The provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law".

Therefore, the provisions of Section 33(5) of IBC read with the Liquidation Order shall prevail over the DEL order.

5. Therefore, this office is required to take note of the aforesaid facts as intimated by them vide their letter dated June 5, 2019 and August 09, 2019 and withdraw the DEL orders.
6. Any action taken against the Company pursuant to enforcement of the DEL order shall be in violation of the provisions of IBC and the Liquidation Order. Therefore the DEL order is in contravention to the provisions of IBC and they request this office to withdraw the aforesaid DEL order and not take any action in furtherance of implementing the DEL order, failing which they reserve their legal rights against any actions taken pursuant to enforcement of the DEL order.

The above request of M/s. SBQ Steels Ltd., Chennai has been scrutinised with reference to the policy provisions as well as the sections/Rules contained in Foreign Trade (Development) Act, 1992 and Foreign Trade (Regulation) Rules, 1993 and found that there is no provision to consider such request of Shri.Ashish Arjunkumar Rathi, Liquidator for M/s.SBQ Steels Ltd., Chennai made in Sl. No.6 above.

FINDINGS

M/s. SBQ STEELS 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 two years from the date of expiry of total export obligation period. M/s. SBQ STEELS 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.

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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. SBQ STEELS 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 consolidated fiscal penalty of Rs.50,00,000/- (Rupees Fifty Lakhs only), against all the 17 EPCG Licences as detailed in the list appended herewith.

The undersigned, further, orders that no further licence/authorisation/export incentives etc. shall be granted to M/s. SBQ STEELS 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. SBQ STEELS LTD.,(IEC NO. 0408016981)
NO.6/13, NORTH AVENUE, KESAVAPERUMAL PURAM,
CHENNAI, TAMIL NADU, PIN-600028

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.

ANNEXURE

List of EPCG Authorisations/Licences obtained during April,2010 – March 2011 by
M/s. SBQ STEELS LTD, Chennai

SL.NO.	LicNo	LicDate	FileNo	DutySaved	AnnualAvg	USD
1	0430007180	12-03-2009	042102100942AM09	1143848	0	182105.2
2	0430007262	01-04-2009	042102101253AM09	729295	0	115991.3
3	0430007270	03-04-2009	042102101274AM09	307960	0	48979.72
4	0430007389	28-05-2009	042102100082AM10	590850	0	93507.41
5	0430007465	25-06-2009	042102100138AM10	356498820	0	11908103
6	0430007809	03-11-2009	042102100539AM10	26793615	0	3307854
7	0430007849	17-11-2009	042102100623AM10	24094833	0	3056427
8	0430007852	17-11-2009	042102100589AM10	32809965	0	4050613
9	0430008004	24-12-2009	042102100751AM10	3817710	0	489973.5
10	0430008669	24-06-2010	042102101034AM10	455133	0	67261.03
11	0430008816	05-08-2010	042102100408AM11	2831670	0	71763.54
12	0430009141	03-11-2010	042102100718AM11	61762095	0	1625318
13	0430009142	03-11-2010	042102100731AM11	397746	0	17445
14	0430009543	15-02-2011	042102101167AM11	2280645	0	99266.37
15	0430009617	03-03-2011	042102101234AM11	6873415	0	89750.79
16	0430009646	11-03-2011	042102101249AM11	8348660	0	109610.4
17	0430009939	02-06-2011	042102100138AM12	36642375	0	977130



J.MURALIDHARAN)

DY. DIRECTOR GENERAL OF FOREIGN TRADE