

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
OFFICE OF THE ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE
SHASTRI BHAWAN, HADDOWS ROAD, CHENNAI-600 006

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F.No.04/36/021/00090/AM05

DATED: 02.07.2019.

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. Premier Garment Processing (IEC No.0403006112), No.29, Govindan Street, G.N.Chetty T.Nagar, Chennai, Tamilnadu-600 017 had been granted an EPCG Licence/Authorisation No.0430001794 dated 14.07.2004 for a total duty saved value of Rs.6,11,865.26/- under 5% concessional duty EPCG Scheme for import of capital goods listed with the said licence/authorisation, with an obligation to export "Readymade Garments" manufactured out of the imported capital goods to the tune of total f.o.b. value of US \$ 107,580.71 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 as "nil" within a period of 8 years from the date of its issue, subject to the

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condition that 15% of export obligation should be met in the 3rd and 4th year, 35% of export obligation should be met in 5th and 6th year and balance 50% export obligation should be met in the next two years from the date of issue of licence. For the purpose of discharge of said export obligation, M/s. Premier Garment Processing, Chennai were required to submit the export documents under Appendix-9A, as per Para-5.13 of Hand Book of Procedures 2002-07 as amended, within a period of three months from the date of expiry of above block periods. Despite, M/s. Premier Garment Processing, 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-5.9.1 of Hand Book of Procedures, 2002-07 as amended. M/s. Premier Garment Processing, 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-5.3.2 of Hand Book of Procedures, 2002-07 as amended.

Accordingly M/s. Premier Garment Processing, Chennai had submitted export documents under Appendix-9A /ANF 5B vide their letter dated nil received in this office on 05.12.2007, on scrutiny of which the following defects were noticed and the same were communicated to M/s. Premier Garment Processing, Chennai vide this office letter No.04/36/21/90/AM 05 dated 01.08.2008:-

1. To furnish installation Certificate.
2. Part of the E.O. is fulfilled in EURO whereas the E.O. is fixed in US\$. So asked to furnish the equivalent US\$ for the EURO.
3. To furnish S.B.No.567 dt.10.2.2005 with licence no. endorsed .

M/s. Premier Garment Processing, Chennai vide letter dated 06/07.08.2010 had replied that they had already submitted all the required documents to this office fulfilling the export obligation through 3rd Party, adding that no annual average has been fixed in this case with a request to process their case for redemption. M/s. Premier Garment Processing, Chennai had also enclosed Appendix 26A in a revised format. This office had again issued a letter No.04/36/021/090/AM05 dated 19.10.2010 on the following defects:-

1. Shipping Bill statement (in ANF.5B format) mentioning realization value in US\$ & attested by C.A.
2. Installation certificate mentioning Bill of Entry No. with date and machinery name.
3. No objection certificate (Disclaimer) from third party.
4. Shipping bill copies company's name legibly and duly attested by Customs.

Since there was no reply, a reminder letter of even no. dated 02.03.2011 was issued by this office. There was no reply from M/s. Premier Garment Processing, Chennai even after a period of more than seven years from the issue of deficiency letter dated 19.10.2010/reminder letter dated 02.02.2011. The total export obligation period was also over by 13.07.2012. Hence the undersigned had issued a Show Cause Notice No.043602100090AM05 (0403006112) dated 21.05.2019 to M/s. Premier Garment Processing, Chennai 1992. with an opportunity of personal hearing on 14.06.2019 to explain the reasons and facts within a period of 15 days, as to why action should not be taken for placing M/s. Premier Garment Processing, 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

powers vested in undersigned under Section-13 of the Foreign Trade (Development & Regulation) Act, 1992. However, M/s. Premier Garment Processing, Chennai had not cared to either reply to the said Show Cause Notice or attended the personal hearing granted to them on 14.06.2019, 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.

FINDINGS

M/s. Premier Garment Processing, Chennai had failed to submit the complete export documents under Appendix 9A/ANF 5B(revised) as directed by this office vide letter dated 19.10.2010 and reminder letter dated 02.03.2011 and also failed to attend the personal hearing granted on 14.06.2019 vide showcause notice No. 043602100090AM05 (0403006112) dated 21.05.2019, in the absence of which, it is presumed that M/s. Premier Garment Processing, Chennai had not fulfilled the export obligation imposed against the EPCG Licence No. 0430001794 dated 14.07.2004 defeating the very purpose of which, the said licence/authorisation was issued.

ORDER

The undersigned has gone through the above facts of the case thoroughly and carefully. In the absence of complete export documents under Appendix 9A/ANF 5B(revised), the undersigned has every reason to believe that M/s. Premier Garment Processing, 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.10,000/- (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 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. Premier Garment Processing, Chennai 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 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

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