



भारत सरकार Government of India

वाणिज्य एवं उद्योग मंत्रालय Ministry of Commerce and Industry

आंचलिक अपर महा निदेशक विदेश व्यापार कार्यालय

Office of the Zonal Additional Director General of Foreign Trade

26, हैडोस रोड 26, Haddows Road

चौथी मंज़िल, शास्त्री भवन अनेक्स 4<sup>th</sup> Floor, Shastri Bhavan Annexe

चेन्नई - 600006 Chennai - 600006

Phone: 044 -28283404/08

Email: chennai-dgft@nic.in

F. No. 04/95/A(29,30,31,32)/ ECA/AM 21

Dated: 17/03/2021

Name of the Appellant

**M/s. Sargam Metals P. Ltd.**

7A, SIPCOT Industrial Park,  
Chellaperumbulimedu Village,  
Cheyyar Taluk,

Thiruvannamalai District – 613 701.

IEC No. 0488028361

(Old address: **M/s. Sargam Metals Pvt. Ltd.,**

No.2, Ramavaram Road, Manapakkam, Chennai – 89).

Order appealed against

Orders–in-Original Nos.

as tabulated, issued by Deputy DGFT.

Order-in-Appeal  
passed by

**M.K. Shanmuga Sundaram IAS,**

Appellate Authority &

Zonal Additional Director General of  
Foreign Trade, Chennai.

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**Order-in-Appeal**

M/s. Sargam Metals Pvt. Ltd., 7A, SIPCOT Industrial Park, Chellaperumbulimedu Village, Cheyyar Taluk, Thiruvannamalai District – 613 701 (Old address: No.2, Ramavaram Road, Manapakkam Chennai – 600 089) had filed this Appeal under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 against Orders-in-Original tabulated in the following, issued by the Deputy DGFT Chennai..

Order No. and date	License No. and date	Appeal date	Duty Saved Value	Penalty Imposed
04/21/021/00210/AM-08	0430005032 dated 05.06.2007	05.11.2020	₹ 11,78,052/-	₹ 40,00,000/-
04/21/021/01180/AM-08	0430005999 dated 01.04.2008	05.11.2020	₹ 9,08,017/-	₹ 40,00,000/-
04/21/021/00644/AM-08	0430005525 dated 07.11.2007	05.11.2020	₹ 3,38,422.50	₹ 10,00,000/-
04/21/021/00624/AM-08	0430005469 dated 17.10.2007	05.11.2020	₹ 4,29,536/-	₹ 15,00,000/-

2. M/s. Sargam Metals Pvt. Ltd., Chennai had obtained EPCG authorisations as tabulated, from the Office of Zonal Joint DGFT, Chennai for import of capital goods with an obligation to export for an FOB value as given in the licence, over and above the annual average fixed, within a period of 8 years. The firm had not submitted the required export obligation fulfilment documents even after expiry of the export obligation period. Therefore, a Show Cause Notice (SCN) was issued in each of the 4 cases with an opportunity of Personal Hearing (PH) in each case.

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The firm in their reply to the Show Cause Notice and PH stated that the licence had been granted to Die Casting Division of M/s. Sargam Metals Pvt. Ltd., which was later converted into M/s. Sargam Die Casting Pvt. Ltd. in 2008 and the same was later sold due to financial problems. The firm had requested for 3 months time to submit the export obligation documents. Since the same was not complied with, after expiry of the said three months, another opportunity of Personal Hearing was granted vide Show Cause Notice, which got returned undelivered. As the firm had failed to submit the export obligation fulfilment documents and did not regularise the case, the Orders-in-Original as tabulated, were issued in respect of the licences, imposing penalties as tabulated against the respective licences and the firm was also placed in the Denied Entity List (DEL).

3. Aggrieved by the above Orders-in-Original, the firm has preferred individual appeals on 05.11.2020. The appellant has requested to waive off the condition of pre-deposit of the penalty on account of severe financial hardship coupled with heavy loss of business. Considering the plea with plausible reasons, the request of the appellant has been allowed.

4. The firm, in their appeal, has stated that they could not prepare and submit the requisite documents towards the fulfilment of export obligation due to clerical oversight. By the time it was realised that the export obligation documents were pending for submission in these cases, their factory premises, where the documents were kept, got submerged during the unprecedented deluge of 2015 and considerable number of original documents had been lost. It is stated that they had installed the machinery, utilised the same and exported the products within the stipulated period, and that they have produced along with this appeal the recovered documents except for omission of non-indication of licence number in the Customs' Shipping Bills. The appeal further stated that important documents were lost during the floods of 2015 for which they had filed an FIR in the concerned Police Station (copy enclosed with the appeal) and that they could salvage some of the documents after hectic efforts and which were submitted along with the appeal. The appellant further states that they had submitted a reply dated 17.07.2019, to the Show Cause Notice received, putting forth the above points and requesting for time to submit the documents.

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However, the Orders-in-Original imposing penalty and placing them under DEL had been issued. Hence, the appellant has requested, in view of the foregoing, to condone the delay in submission of documents and to set aside the Orders-in-Original imposing penalty and also to remove the firm from DEL.

5. The appellant was given a Personal Hearing through video conferencing on 07.01.2021. Shri. Arun Sarathi, Managing Director of the firm attended the aforesaid PH. He reiterated what has been given in the appeal. He stated that they have been still making efforts to get hold of the originals of all the important documents. He also stated that they have a good track record and had obtained EODCs in 15 of their 19 EPCG licences earlier.

The present inability to submit the requisite documents, in spite of having fulfilled export obligation, was due to the unprecedented floods which had washed away most of their documents. However, he has shown the copies of corresponding Shipping Bills and BRCs. Hence, he requested to condone the lapse and remove the firm from DEL and set aside the Orders-in-Original imposing penalty.

6. I have gone through the appeal and submissions made during the Personal Hearing. The appellant has pleaded that their export obligation fulfilment documents got washed away in the unprecedented deluge of 2015 in Chennai and submitted copies of the documents showing maintenance of annual average and the specific export obligation imposed. However, the appellant has to submit the originals of all the required documents. The appellant has shown the intent to fulfil the export obligation, which he claims to have fulfilled and submitted copies of the documents evidencing the same. But, the appellant appears to have difficulty in submission of all the documents due to the severe damage caused by the floods for which copy of FIR from the local Police Station has been attached. As per the details given in their appeal, out of 19 EPCG licences obtained, EODCs have been issued in 15 of them except for these 4 licences in which they are unable to submit the requisite documents owing to the reasons elucidated above. The appellant *prima facie* appears to have fulfilled the export obligation fixed, if one goes by the copies of documents submitted along with the appeal.

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The firm has also submitted certain additional documents viz., Form ANF 5B duly signed, copy of Appendix 26, Statement showing the average exports maintained, Indemnity Bond, details of export wise Shipping Bills and summary of export obligation.

Hence, it does not seem to be any indication of the appellant firm causing loss to the government exchequer and the non-submission of the required documents appears to be not a wilful act. Further, there does not also seem to be any *mala fide* intention on the part of the appellant in not submitting the required documents. At the same time, the fact remains that the appellant has not been able to furnish the required documents even after expiry of considerable period of time which was largely owing to a situation of *force majeure*. The significant factors of a *force majeure* circumstances and the past track record of the firm were not taken into consideration while passing the Orders-in-Original by the Adjudicating Authority. They should have been *per se* the clinching factors in such cases. The firm has shown the copies of the Shipping Bills and BRCs at the time of personal hearing as a measure to confirm the fulfilment of export obligation. The firm has also given an undertaking to that effect in its Indemnity Bond.

7. I, therefore, after a careful perusal, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, as amended, pass the following Order:

**ORDER**

**F. No. 04/95/A(29,30,31,32)/ ECA/AM 21**

Dated: 17/03/2021

1. Orders-in-Original in respect of the 4 licences as tabulated at page No. 2 placing the firm in DEL are set aside.
2. Penalty payable is dispensed with, in each of the four cases.

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3. The four cases are remanded back to the adjudicating authority for *de novo* examination. Appropriate orders may be passed after examining the documents submitted and calling for original documents wherever required and available.



**(Dr. M.K. SHANMUGA SUNDARAM)**

Appellate Authority &  
Zonal Additional Director General of Foreign Trade

**M/s. Sargam Metals Pvt. Ltd.,**  
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