

Government of India
Ministry of Commerce & Industry
Office of the Additional Director General of Foreign Trade
Kendriya Sadan, 6th Floor, C & E Wing, 17th main Road, Koramangala 2nd Block
BENGALURU- 560 034
Tel : 080-25537214/25537215 Email:- bangalore-dgft@nic.in

Dated 29.4.2019

IEC No. 0788012096

Passed By: P.R.Madhusoodanan
Joint Director General of Foreign Trade

ORDER – IN – ORIGINAL

1. Any person/party aggrieved by this Order, may under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, file an appeal against the same to the appropriate authority viz. The Additional Director General of Foreign Trade, "C" & "E" wing 6th floor, Kendriya Sadan, 2nd Block, Koramangala, Bengaluru-560034. Appeal shall be filed within 45 days from the date of receipt of this Adjudication Order and shall bear a requisite Court fee stamp as per Court Stamp fee Act. Appeal must be accompanied by a copy of this order in original duly affixed requisite stamp thereon with all the documents of evidence in the form of Annexure to the appeal relied upon in support of the appeal under intimation to this office.
2. Any person/party desirous of filing an appeal against this order shall deposit the penalty amount along with 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.
3. The penalty amount is to be deposited under the Heads of Account: 1453" Foreign Trade and Export Promotion Minor Head 102 Other Receipts Fines and penalties etc. Imports and Exports Control Organization maintained by Central Bank of India, Bengaluru.
4. Evidence of payment of penalty or appeal is required to be submitted to the Adjudicating Authority within 45 days from the date of serving of this Adjudication Order, failing which the Importer/Exporter Code Number of the persons/companies entities concerned is liable to be suspended till the penalty is paid in terms of Section 11(7) of Foreign Trade (Development & Regulation) Amended Act, 1992 as amended as on 19/8/2010 and in terms of Section 11(5) of Foreign Trade (Development & Regulation) Amendment Act, 1992 as amended as on 19/8/2010 penalty amount shall be recovered by any one of the following modes, namely:-

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- i) The Addl. Director General of Foreign Trade, Bengaluru may deduct or require any officer subordinate to him to deduct the amount payable under this Act from any money owing to such person which may be under the control of such officer; or
- j) The Addl. Director General of Foreign Trade, Bengaluru may require any officer of Customs to deduct the amount payable under this Act from any money owing to such person which may be under the control of such officer of Customs, as if the said amount is payable under the Customs Act, 1962; or
- k) The Addl. Director General of Foreign Trade, Bengaluru may require the Asstt. Commissioner of Customs or Deputy Commissioner of Customs or any other officer to recover the amount so payable by detaining or selling any goods (including the goods connected with services or technology) belonging to such persons which are under the control of the Assistant Commissioner or Deputy Commissioner of Customs or any other officer of Customs, as if the said amount is payable under the Customs Act, 1962; or
- l) If the amount cannot be recovered from such persons in the manner provided in Clause (a), (b) and) (c) :-
- v) The Addl. Director General of Foreign Trade, Bengaluru or any Officer authorized by him may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the District in which such person owns any property or resides or carries on business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as it were an arrears or land revenue; or
- vi) The Addl. Director General of Foreign Trade, Bengaluru or any officer authorized by him (including an officer of Customs, who shall then exercise his powers under the Customs Act, 1962) and in accordance with the rules made in this behalf detain any moveable or immovable property belonging to or under the control of such person, and detain the same until the amount is paid, as if the said amount is payable under the Customs Act 1962; and in case, any party of the said amount payable or of the cost of the distress or keeping of the property remains unpaid for a period of 30 days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and costs including the cost of sale remaining unpaid and shall render the surplus, if any to such person.

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BRIEF FACTS OF THE CASE:

5. In brief, the facts of the case are that M/s. Naptha Resins & Chemicals Limited, 491, IV phase, Peenya industrial estate, Bangalore , Karnataka 560058 had obtained the following quantity based Advance Authorisations from this office with an obligation to export for an FOB value as under against this authorization, the noticee firm was allowed to import items listed with authorization for a CIF value mentioned as below .

| SL.NO. | FILE NO. | AUTHORISATION NO. | DATE | FOB VALUE IN RS | CIF VALUE IN RS |
|--------|----------------------|-------------------|------------|-----------------|-----------------|
| 1 | 07/81/040/00131/AM04 | 0710025928 | 10.12.2003 | 125580 | 103675 |

6. The above said authorization were issued to the noticee firm with the specific conditions. Some of them are as follows:

- a) that they shall export the products of quantities and value specified within a period prescribed under para of Hand Book of Procedures (Vol.I) ,
- b). the export obligation shall be fulfilled by the noticee firm as per terms and conditions specified in the Foreign Trade Policy 2004-09 and the Hand Book of Procedures (Vol.I) 2004-09 and other guidelines issued by the Director General of Foreign Trade from time to time,
- cii) the noticee firm shall deliver or cause to deliver to this office within 2 months from the date of expiry of the export obligation period stated above documents as prescribed under Para 4.25 of Hand Book of Procedures (Vol.I) 2004-09 as amended from time to time as evidence of fulfillment of export obligation imposed on this licence. Failure to fulfillment of export obligation in the manner as prescribed in the Hand Book of Procedures (Vol.I) 2004-09 shall attract penal proceedings under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and as per provisions of Para of the Handbook of Procedures (Vol.I) 2004-09 , as amended from time to time
- d) the exempted goods imported against this authorization shall only be utilized in accordance with the provisions of para of the Foreign Trade Policy 2004-09 and other provisions and the relevant Customs Notification as amended from time to time
- e) The noticee firm shall maintain a true and proper account of consumption and utilization of imported goods in the proforma given in Appx 18 of Hand Book of Procedures Vol.I 2004-09

7. The Export obligation Period against the said authorisation have already expired The firm had not submitted documents showing fulfilment of export obligation undertaken by them. Therefore showcause notice were issued giving them opportunity for personal hearing to explain their case.

8. The noticee firm has submitted reply dated 23.3.2018 to the said notice issued by this office .The firm stated in the letter that the advance authorisation was not used for imports. However they have not produced Original Authorisation at any earlier date to this effect.

9. The Show Cause notices under provisions contained in para 11(2) & (3) of Foreign Trade (Development & Regulation) Act 1992 and Rules there-under were issued to the noticee firm and its Directors, requiring them to show cause as to why issuance of fresh authorizations and renewal of existing authorization issued to them should not be stopped under Rule 7(c) of Foreign Trade (Regulation) Rules 1993 and action to impose fiscal penalty should not be initiated against them under the said Act. Vide this Show Cause Notice they were also afforded opportunity of personal hearing before the Dy.DGFT.

10. The representatives of the noticee appeared for a personal hearing on 22.2.2018 before the undersigned and requested to extend the PH date to 12.3.2018. Mr Murali, Purchase Manager, met the undersigned on 12.3.2018 and requested for time which was extended upto 23.3.2018. Thereafter the firm has not submitted any documents either in support of exports made, or non utilisation of authorisation by them.

FINDINGS

11. On going through the facts and records available, it is observed that the noticee firm has failed to fulfill the export obligation and that they have not responded to the letters and show cause notice issued to them. Therefore, the undersigned hold the noticee firm guilty to that extent for contravening the provisions of Foreign Trade Policy, which attracts provisions of Sections 11(2) & 11(3) of Foreign Trade (Development & Regulation) Act, 1992.

12. In consideration of above and in exercise of the powers as conferred on me under Section 13 of the Foreign Trade (Development & Regulation) Act, 1992 as amended, I make the following order:

ORDER

3. I do hereby impose a fiscal penalty of **Rs 1,00,000/- (Rupees One lakh only)** on the above firm M/s Naptha Resins & Chemicals Ltd, and its directors under Section 11 (2) of the said Act for failure to fulfil the export obligation against all the eight advance authorisations shown at Para 5 above.. The noticee firm shall be liable to pay the penalty amount. The noticee firm hereby directed to pay the above said penalty amount and produce the requisite evidence to this office within a period of **30** days from the date of this Adjudication Order.

The penalty imposed above is in addition to the duty saved value and its applicable interest in respect of all the eight advance authorisation which shall be paid to the concerned Customs Authorities in terms of para 4.49 of Hand Book of Procedures 2015-20

18. This order is issued without prejudice to any other action that may be taken under any other Act, Rules or Regulations in force.

(P.R. Madhusoodanan)
Joint Director General of Foreign Trade

To

NAPTHA RESINS & CHEMICALS PVT LTD.,
491 IV PHASE PEENYA INDL ESTATE
BANGALORE ,KARNATAKA PIN-560058

Directors:

1. NARINDER MALIK
S.L.MALIK
SAI KRUPA,NO.188, IST BLOCK, IIIRD
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Copy to :

1. Central Economic Intelligence Bureau (CEIB),
1st, 6th&8th floor, B wing, Janpath Bhawan, New Delhi 110001
2. Collector of Customs, Chennai Sea Port, Chennai.
3. PS Section, O/O. Addl.DGFT, Bangaluru

