

भारत सरकार  
वाणिज्य एवं उद्योग मंत्रालय, वाणिज्य विभाग  
विदेश व्यापार महानिदेशालय  
क्षेत्रीय प्राधिकरण : कोची



GOVERNMENT OF INDIA  
Ministry of Commerce & Industry, Department of Commerce  
DIRECTORATE GENERAL OF FOREIGN TRADE  
Regional Authority-Kochi

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**IEC No. 1009013114**

**आदेश(मूल)/ ORDER IN ORIGINAL DATE : 20.12.2021**

इस आदेश से किसी भी व्यक्ति/पार्टी को हानि हुई है तो वे यथासंशोधित विदेश व्यापार (विकास एवं विनिमय) अधिनियम 1992 के अंतर्गत इस न्याय निर्णय आदेश के जारी होने के 45 दिनों के अंदर अपील अधिकारी नामतः अपर महानिदेशक विदेश व्यापार, केन्द्रीय सदन, बैंगलोर को इस आदेश की प्रति एवं अपील के अनुबंध के रूप में अपील के समर्थन के लिए साक्ष्य के पूर्ण सेट के साथ इस के विरुद्ध अपील फाइल कर सकते हैं।

Any person/party aggrieved by this order may, under Section 15 of the Foreign Trade (Development and Regulation) Act 1992, as amended, file an appeal against the same to the Appellate Authority, viz., Additional Director General of Foreign Trade, Kendriya Sadan, Bangalore within 45 days from the date of serving of this Adjudication Order together with a copy of this order and a complete set of evidence relied upon in support of the appeal in the form of annexure to the appeal.

जो भी व्यक्ति/पार्टी इस आदेश के विरुद्ध अपील फाइल करना चाहता है वे दंड राशि जमा करना है तथा अपील अधिकारी को जुर्माना चुकाने के प्रमाण अपील के साथ प्रस्तुत करना है, ऐसा न करने पर अपील को यथा संशोधित विदेश व्यापार (विकास एवं विनिमय) अधिनियम 1992 के अनुभाग 15(1) के प्रावधानों के गैर-अनुपालन के लिए अस्वीकार किया जाएगा।

Any person/party desirous of filing an appeal against the order shall deposit the penalty amount and produce proof of payment of penalty amount along with appeal to the Appellate Authority, failing which the appeal will be liable to be rejected for non-compliance of the provisions of Section 15 (1) of the Foreign Trade (Development & Regulation) Act 1992, as amended.

दंड राशि को "1453- विदेश व्यापार एवं निर्यात संवर्धन-लघु शीर्ष 102-अन्य रसीदें, जुर्माना एवं दंड राशि आदि" नामक लेखा शीर्षक के तहत जमा किया जा सकता है। दंड राशि चुकाने के साक्ष्य को इस न्याय निर्णय जारी करने के तारीख से 45 दिन के अंदर न्याय-निर्णय प्राधिकारी को प्रस्तुत करना है, अन्यथा व्यापार नीति(विकास एवं विनिमय) अधिनियम 1992, 2010 में यथा संशोधित, के अनुच्छेद 11(4) के प्रावधानों के तहत निर्यातक के आयात निर्यात कोड संख्या को निलंबित किया जा सकता है।

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The penalty amount to be deposited under the Head of Account "1453-Foreign Trade and Export Promotion-Minor Head 102-other receipts, fines and penalties etc." Evidence of payment of penalty is required to be furnished to the Adjudicating Authority within 45 days from the date of service of this Adjudication Order, failing which the Importer Exporter Code Number of the exporter is liable to be suspended under the provisions of Section 11 (4) of the Foreign Trade (Development and Regulation) Act 1992, as amended in 2010.

Facts of the case

M/s. Steel Hawks, 2/94-A, Kadayiruppu P.O., Kolencherry, Ernakulam – 682 311, Kerala had obtained an EPCG Authorisation No. 1030001748 dated 03.06.2010 under 3% duty for a Duty Saved value of Rs.19,74,424/- for import of 'Precision Heavy duty Lathes' and Weijun Powerful Hydraulic Radial Drilling Machine' - (1 set each) with an obligation to earn foreign exchange worth USD.3,51,790.46 (Rs.1,57,95,392.00) by exporting 'Agitated Nutsche Filter, Industrial Drier and Liquid Extractor', within a period of eight years from the date of issuance of Authorisation.

At the time of preferring the EPCG application, the firm had given an undertaking agreeing to abide by the conditions of the EPCG Authorisation and the provisions of the Foreign Trade (Development & Regulation) Act, 1992, the Rules and Orders framed there under, the Export and Import Policy and the Hand Book of Procedures. They have also declared that they shall be liable to penal action in accordance with the Policy/Procedure/Foreign Trade (Development & Regulation) Act, 1992, the Rules and Orders framed there under and the Customs Act, 1962 in addition to forfeiture of Bank Guarantee or any other Bond/Guarantee given to Customs/Licensing Authority in the event of their failure to fulfill the export obligation as stipulated, within the export obligation period prescribed or subsequently extended to by the competent authority. These conditions were also duly attached with the said EPCG Authorisation. Export Obligation period of the Authorisation was over by 02.06.2018. Even after the expiry of export obligation period, the firm had not furnished any documents evidencing fulfillment of export obligation.

As per Para 5.22 (a) of HBP, they were required to submit redemption application in ANF-5B with documents prescribed therein as proof of EO fulfillment, on completion of EO period. As they have not furnished any export documents evidencing fulfillment of export obligation, Demand Notice was issued on 12.03.2019 directing the firm to submit EO documents within 15 days. As they have not responded to the notice, a Show Cause Notice was sent to the firm on 15.10.2019 with an opportunity for personal hearing on 11.11.2019. Name of the firm was put under Denied Entity List (DEL) also on 30.10.2020.

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Subsequently, the firm had submitted export documents on 06.11.2020. On scrutiny of documents, it was observed that they had fulfilled 59.66% of export obligation only. There is a shortfall of USD.1,18,811.69 (Rs.53,34,644.88). The proportionate Duty Saved amount comes to Rs.6,66,831/-. Hence, the firm was asked vide eMail dated 07.12.2020 to pay Customs Duty of Rs.6,66,831/- plus applicable interest to the Customs authority towards regularisation of export obligation shortfall. As they have not responded, a last and final reminder was sent on 08.10.2021 requesting them to pay the Customs Duty and interest, immediately. But, they have not regularized the case, till date.

### FINDINGS

I have carefully gone through the facts of the case. It is noticed that the Authorisation holder had imported capital goods availing duty exemption and failed to fulfill export obligation or to regularize the EPCG Authorisation by remitting Customs Duty and interest as per Para 5.23 of HBP. Hence, it is established that the Authorisation Holder has violated the conditions of the authorization and undertaking executed by them and therefore, I have reasons to believe that action under Para 5.26 of Hand Book of Procedures, is fully justified and the Authorisation Holder is liable for imposition of penalty as per Section 11 (2) of the Foreign Trade (Development and Regulation) Act 1992 as amended in 2010 for failure to fulfill export obligation and not regularizing the authorizations by payment of customs duty and interest.

### ORDER

In exercise of powers vested in me under Section 13 of the Foreign Trade (Development & Regulation) Act, 1992 as amended by Amendment Act, 2010, I hereby impose a fiscal penalty of **Rs.1,00,000/- ( Rupees One Lakh only)** under Section 11 (2) read with Section 11(5), 11(6) and 11(7) of the said Act for violation of Para 5.23 of HBP, 2015-20 and action under Para 5.26 of HBP upon M/s. Steel Hawks, 2/94-A, Kadayiruppu P.O.,Kolencherry, Ernakulam – 682 311, Kerala, and its Proprietor.

This fiscal penalty is apart from Customs Duty plus applicable interest which they have to pay to the Customs authorities.

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This order is issued without any prejudice to any other action that may be taken against the firm and its Proprietor under any other Law/Act/Rules for the time being in force.

(Issued from File No. 10/36/021/00024/AM11)

(K.M. HARILAL)

JOINT DIRECTOR GENERAL OF FOREIGN TRADE

To

M/s. Steel Hawks, 2/94-A, Kadayiruppu P.O., Kolencherry, Ernakulam – 682 311

Copy to :

1. Shri Poulouse George, Nechupadam, Kadayiruppu P.O., Kolencherry, Ernakulam Dt., PIN – 682 311
2. The Additional Director General of Foreign Trade, ECA Section, 6<sup>th</sup> Floor, Kendriya Sadan C & E Wing, Koramangala, 2<sup>nd</sup> Block, 17<sup>th</sup> Main Road, Bengaluru – 560 034.
3. The Commissioner of Customs, Custom House, Cochin Sea.
4. ECA Section.
5. Central Economic Intelligence Bureau, 1<sup>st</sup>, 6<sup>th</sup>, 8<sup>th</sup> Floor, B Wing, Janpath Bhawan, Janpath, New Delhi – 110 011
- ✓ 6. PA Section.