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GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE  
OFFICE OF THE JT. DIRECTOR GENERAL OF FOREIGN TRADE  
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ALS-G/02/24/40/00197/AM'07/136

Dated: 24/05/2013

ORDER - IN - ORIGINAL

Passed by:-

R. L. Meena, Joint Director General of Foreign Trade.

1. Any person aggrieved by the order may, under 15 of the Foreign Trade(Development and Regulation) Act,1992 file an appeal against the same to the appropriate authority i.e. the Additional Director General of Foreign Trade, Udyog Bhawan, New Delhi-110 107 within a period of 45 days from the date of serving of this Order together with a copy of this order and a complete set of evidence to be relied upon in support of the appeal in the form of an annexure.
2. 1 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(I) of the Foreign Trade(Development and Regulation)Act,1992.
3. The penalty amount is to be deposited within a period of 15 days from the date of issue of this order under the head of account "1453 Foreign Trade & Export Promotion", Minor Head - 102 other receipts, fines and penalties etc. failing which, the Importer Exporter Code Number 0205011497 allotted to the party may be suspended without any further notice, till payment of the full fiscal penalty amount under File No. 02/24/40/00197/AM'07.
4. I have gone through the facts and records of the case carefully. I find that M/s. Kuber Construction Pvt. Ltd.,( now known as M/S. Udyogi International Pvt. Ltd.) 294, B.B.Ganguly street, 2<sup>nd</sup> Floor, Kolkata-700012, W.B. had obtained Advance Authorisation bearing No. 0210094438 dt. 17.10.06 for duty free import of items as allowed on the authorisation for a CIF Value Rs. 1672215/- (US\$.36156.00) with the obligation to export of items as per condition sheet for a FOB Value of Rs.2300937.50/- (US\$.49750.00) mentioned in the authorisation which has not been fulfilled within the stipulated period as mentioned in the Condition sheet of the authorisation . E.O. period has already expired on Oct'2008.
5. As per para 2.10 of Foreign Trade policy, if an Authorisation holder violates any condition of such Authorisation or fails to fulfil export obligation, he shall be liable for action in accordance with FT (D &R) Act, the Rules and orders made there under, FTP and any law for time being in force.

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As per para 4.24 (b) of Hand Book of Procedures, Vol.1, 2009-2014, Authorisation holder shall submit requisite evidence in discharge of export obligation in accordance with paragraph 4.25 ibid.

7. As per para 4.24.1 of said Hand Book of procedures in case Authorisation holder fails to complete EO or fails to submit relevant information/documents, RA shall take action by refusing further Authorisations, enforce condition of Authorisation an Undertaking and also initiate penal action as per law.

8. Export obligation period expired on Oct'2008. The firm did not submit complete set of export documents. Therefore, a notice of even number dated 15/11/2010 was issued to M/s. Kuber Construction Pvt. Ltd. (now known as M/S.Udyogi International Pvt. Ltd.) 294, B.B.Ganguly street, 2<sup>nd</sup> Floor, Kolkata-700012 W.B. (hereinafter referred to as the "Noticee firm") under section 7(1)(K) of Foreign Trade (Development & Regulation) Act, 1992, calling upon the notice firm to show cause as to why they should not be issued order for denial grant of any licence or renewal of any licences as also for cancellation of the licence ab-initio. The firm was given 15 days time for submission of their reply and an opportunities for personal hearing was allowed. The reason for the notice arose from the fact that the firm had failed to fulfill the export obligation imposed against the above mentioned Advance Authorisation.

The firm neither submitted full set of export documents nor availed the opportunity of personal hearing. Therefore, the firm was placed under "denied Entity List" vide order of even number dated 06.01.2011. Thereafter, a Show Cause Notice of even number dated 03.03.2011 under section 11(2) of Foreign Trade (Development & Regulation) Act, 1992 was issued to the firm calling upon to show cause as to why fiscal penalty should not be imposed against them under section 11 (2) of the Act for violation of the condition of the Authorisation.

After expiry of the export obligation period, the firm have not produced complete documents prescribed as evidence for fulfillment of export obligation. The firm have imported to some extent of imported goods & value as allowed in the license, but export of full quantity is not established. Moreover, any documents in original towards realization of export proceeds has been furnished. Hence he has imported goods in violation of the provisions of the export-import policy. He has diverted duty free imported goods for purposes other than export.

Since the firm have not produced full set of documents in support of exports and not replied to our Demand Notices dated 10.01.2013 & 23.04.2013 as such, I am left with no option but to conclude that the firm have defaulted in fulfillment of the export obligation that was imposed upon them.

Further, in exercise of the powers vested upon me under section 13 of the Foreign Trade (Development & Regulation) Act, 1992 and section 11 of the said Act, I hereby impose penalty of Rs.16,72,215/- in addition to Customs Duty and applicable interest to be paid to customs authority for non compliance and non submission of full export documents for failing of fulfillment of the E.O.

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