

F.No. 18/24//HQ/99-2000/ECA II
Directorate General Of Foreign Trade
Ministry of Commerce & Industry
Udyog Bhavan ,New Delhi

Enforcement Division

To
All Port Offices

Date: December 31, 2003

Sub: GUIDELINES FOR MAINTAINING THE DENIED ENTITIES LIST(DEL)

The Denied Entities List (earlier called 'Black List') is drawn under the provision of Rule 7 of Foreign Trade(Regulation) Rules 1993(hereinafter referred to as 'the Rules'). A total of 14 conditions have been described for invocation under sub-Rule 7 (1) before a firm can be refused a license. The licensing authorities may deny license to a person if any one or more of the above referred conditions are satisfied. Besides under sub-Rule 7(2) of the Rules, the refusal of a license under sub-Rule 7(1) shall be without prejudice to any action that may be taken against an applicant by the licensing authority under the Foreign Trade(Development & Regulation) Act, 1992(hereinafter referred to as 'the Act'). The word 'license' has been defined under sub-Section 2(g) of the Act. These conditions cover a vast variety of offences/contraventions leading to refusal of license to an entity. Guidelines in this regard were last issued vide enforcement guidelines no. 5/99-2000 dated 3.7.2000. With these guidelines, the said circular as well as the standing instructions issued earlier, if any, stand repealed.

A. General instances leading to refusal of license

Even though the conditions prescribed under Rule 7 of the Rules are comprehensive and will constitute the basis of any denial of license, a brief description of most common instances has been given below:

1. Generally most common instance of action leading to refusal of license occurs when firms default in Export Obligation(e.o) fulfillment committed under various export promotion schemes. The licensing authorities in such cases will place the firm in DEL after serving a demand notice to the entity to submit evidence of e.o fulfillment within a reasonable time. This demand notice shall indicate that the firms' inability to submit documents within prescribed duration will lead to refusal of license under Rule 7 of the Rules and the firm's name will be placed in the DEL. Subsequent to the action of placing the firm in the DEL, file will be transferred to the enforcement division for investigations/adjudications.
2. Instances have come to notice when external agencies such as DRI, CBI, ED etc request for information in connection with some investigations or sometimes recommend licensing authorities to withhold further licensing facilities to the firms under investigation. In such cases if routine information has been called for, the same should be provided. If recommendations to suspend/cancel licenses are also contained in the

communication then the information supplied should be adequately examined from the point of view denial of benefits under the Rules/Act. If evidence is found to be insufficient, agencies may be informed that more evidence will be needed before denial of the benefits can be pronounced under the Rules/Acts and will mention the reasons why the licensing authority thinks that there is no sufficient evidence to invoke rules relating to the refusal of license. If external agencies have supplied evidence to the satisfaction of the licensing authority, he shall place the firm in the DEL after issuing a speaking order against the erring firm without disclosing the source of information in the denial order.

3. Sub-rule 7(1) (c) of the Rules deals with cases of fraud and mis-declaration. Whenever it comes to the notice of the licensing authority that a license has been obtained by fraud, forgery, mis-declaration etc, the firm shall be immediately placed in the DEL by issuing an order and licensing authority shall also suspend the IE Code of the firm. The head of the office will thereafter enquire into the case and submit the report within 15 days to the Headquarters to indicate if connivance of any officials was found in perpetrating the fraud. Simultaneously complaint under the Indian Penal Code for fraud/forgery will be lodged with the local police. In cases where head of the office was a party to the decision to grant the license, the file shall immediately be sent to Headquarters.

B. Suspension, cancellation of a license

The procedure and policy leading to suspension and cancellation of licenses shall be governed by Section 9 of the Act read with Rule 9 (suspension) and Rule 10 (cancellation) of the Rules.

C. Right to be heard before passing an order

The powers related to refusal, suspension or cancellation of licenses will also require, as is the case while exercising any executive authority under the statute, strict adherence to the principle of natural justice. Implying thereby that licensing authority will refuse, suspend or cancel any license after giving the holder of license a reasonable opportunity of being heard and thereafter by passing a reasoned order to be recorded in writing.

D. DEL management procedures:

1. The DEL order will explicitly mention that an appeal against the refusal of license will lie under Section 15 of the Act.
2. The DEL maintained by port offices will contain names of the firms, their registered office address including those of branch offices, names of their partners, proprietor, directors and their residential addresses along with IEC No. of the firm and will be maintained as a computerized database. Licensing benefits will not

only be denied to the firms as legal entities but also to the individuals/persons owning/controlling these entities.

3. A centralized computerized data is being prepared at the Headquarters and port offices shall be required to manage the respective DEL components as per the authorization protocol to be announced separately.
4. The order removing any entity from the DEL will likewise be a speaking order by the listening authority mentioning the grounds of removal.

This issues with the approval of the DGFT.

(P.C.Tripathi)
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