

Government of India  
Ministry of Commerce & Industry  
Directorate General of Foreign Trade  
Udyog Bhawan, New Delhi

F.No. 18/35/2021-22/ECA.I/

Date of Order : 01.06.2023

Date of Despatch: 02.06.2023

Name of the Petitioner:

M/s Sunsafe Agrotexiles Pvt.Ltd.  
Survey No. 44/45, Plot No. 7/8,Nr. National  
Ginning, Shapar Main Road, Shapar  
(Veraval),Rajkot-360024.

IEC No.

2410003346

Order Reviewed against:

Order-in Appeal  
No.08/01/144/00006/AM22 dated  
12.11.2021 passed by Addl. DGFT,  
Ahmedabad

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

**Order-in-Review**

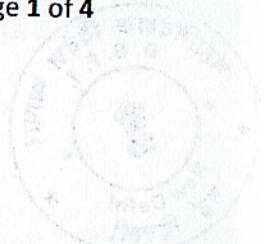
M/s Sunsafe Agrotexiles Pvt. Ltd. Rajkot (here-in-after referred to as the 'Petitioner') having IEC No. 2410003346 had filed a Review Petition dated 23.12.2021 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Appeal No. 08/01/144/00006/AM22 dated 12.11.2021 passed by Addl. DGFT, Ahmedabad upholding Order-in-Original No. 24/21/021/00167/AM11 dated 09.07.2021 imposing a fiscal penalty of Rs. 40,00,000/- (forty lacs rupees) on the Petitioner and a penalty of Rs. 1,00,000/- on the Directors namely Shri Vipul Donga and Shri Bhavesh Donga in addition to payment of customs duty and applicable interest.

**Brief of the Case**

2. M/s Sunsafe Agrotexiles Pvt. Ltd. Rajkot obtained an EPCG Authorization No. 2430001321 dated 10.03.2011 (under zero duty EPCG Scheme) with duty saved amount of Rs.38,26,898/- with an obligation to fulfill export obligation of EURO 3,65,627.19, equivalent to six times of total duty saved amount, within a period of six years in two blocks.



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3.1 The EOP expired on 09.03.2017. The Petitioner did not submit the documents evidencing fulfillment of export obligation. The Petitioner was placed under Denied Entity List (DEL) on 12.05.2016. A Show Cause Notice dated 11.12.2019 was issued to the Petitioner for initiating action under Section 11(2) of FT (D&R) Act, 1992 with an opportunity of personal hearing (PH) on 19.12.2020 followed by reminder dated 16.07.2020 with PH on 05.08.2020. Shri Vipul Donga, Director of the Petitioner appeared for PH and informed that there were some merchant shipments, which were undertaken but the shipping bills do not have endorsement of authorization number. He was informed that third party shipments not having EPCG number cannot be considered towards fulfillment of export obligation (EO). He informed that no other exports were made. He was advised to regularize the case by paying customs duty with applicable interest thereon and next PH was granted on 08.09.2020.

3.2 However, the Petitioner neither submitted any document nor attended the PH. Therefore, the Petitioner was issued a reminder dated 11.12.2020 with PH on 28.12.2020. Its Director attended the PH on 28.12.2020 and informed that it was still looking for documents and sought one month time to submit the same. However, it was noted that during personal hearing on 05.08.2020 the Petitioner had informed that no exports were undertaken and only duty payment was pending. It was again advised to deposit custom duty with interest and submit evidence by 15.01.2021 and was granted another Personal Hearing on 15.01.2021. The Petitioner sought 15 days time and another PH was fixed on 25.02.2021 but the Petitioner did not turn up for PH and also on the next PH on 15.04.2021. The Petitioner informed his inability to appear due to medical reason.

3.3 As the Petitioner neither submitted the documents towards fulfillment of export obligation nor regularized the case by paying of customs duty and applicable interest thereon, the Adjudicating Authority passed an Order-in-Original (OIO) dated 09.07.2021 imposing a fiscal penalty of Rs. 40,00,000/- (forty lacs rupees) on the Petitioner and penalty of Rs. 1,00,000/- on the directors namely Shri Vipul Donga and Shri Bhavesh Donga in addition to payment of customs duty and applicable interest. The IEC of the Petitioner was put under DEL till further orders. The Adjudicating Authority also ordered that if the Petitioner failed to submit evidence of payment of penalty amount and the amount of custom duty and interest thereon to the Adjudicating Authority within 60 days of issue of this order, the IEC of the Petitioner shall be suspended.

4. Aggrieved by the OIO dated 09.07.2021, the Petitioner filed an appeal on 21.09.2021 u/s 15 of FTDR Act, 1992, before the Additional DGFT, Ahmedabad who is the Appellate Authority. The Appellate Authority observed that the Petitioner had admitted that it did not fulfil the export obligation. The Appellate Authority dismissed the appeal vide OIA dated 12.11.2021.



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5.1 Now, the Petitioner has filed the present review petition dated 23.12.2021 on the following grounds:-

- i. It availed EPCG authorization to import world class machine from Germany. All the activities relating to import of machine, customs, DGFT, EPCG were done by Late Shri Shaileshbhai Donga who died due to cardiac arrest in 2014. After his death, its overseas sales was dropped down due to new taxation policies in raw materials.
- ii. It tried to start new business but due to pandemic its company closed and not able to do any business during the period.
- iii. It was not aware of the matter related to EPCG authorization or any fulfillment of export obligation against it.
- iv. Three years extension of export obligation to complete the export obligation to waive off the penalty and interest.

5.2 The Reviewing Authority granted the personal hearing to the Petitioner on 08.05.2023. Shri Vipul Donga, Director attended the PH on behalf of the firm. Petitioner informed that earlier the work was looking after by his late elder brother and he took up the matter only after his elder brother's demise. Therefore, he did not know anything about the work nature. He informed the banks had declared their accounts as NPA and the firm was also admitted into NCLT. Shri Abhimanyu Sharma, JDG, RA, Rajkot also attended the meeting. He intimated that at the time of adjudication and appellate proceedings the Petitioner had not submitted any documents intimating that their accounts was declared as NPA and the firm was admitted in NCLT. During the personal hearing firm was directed to furnish information in this regard.

5.3 The Petitioner vide mail dated 19.05.2023 furnished its reply. It intimated that their company account was declared NPA on 11.06.2013 and IDBI bank took possession on 13.10.2014. IDBI bank had filed insolvency application (C.P(IB) - 465/2019 in Hon'ble NCLT Ahmedabad on 01.07.2019 and same was disposed of as withdrawn on 01.11.2021. The insolvency application was at the stage of admission and their company would have gone under Corporate Insolvency Resolution Plan but the firm sold their fixed assets (Land) and paid the dues to the bank and hence application was disposed off by withdrawal by the applicant bank. His late elder brother (late Shri Shaileshbhai) had established Sunsafe Agrotexiles Pvt. Ltd., and imported Karl Mayer's warp knitting machine. He was looking after the project implementation, but unfortunately he expired on 04.09.2014.

6. I have gone through the facts and records of the case carefully. The Petitioner had obtained the EPCG Authorization No.2430001321 dated 10.03.2011 with an obligation to fulfill export obligation within a period of six years (in two blocks). The Petitioner did not submit the documents evidencing fulfillment of export obligation. A



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fiscal penalty of Rs.40,00,000/- (forty lacs rupees) was imposed on the Petitioner and penalty of Rs.1,00,000/- on the director vide Order-in-Original dated 09.07.2021. Public Notice No.2/2023 dated 01.04.2023 issued by DGFT provides an amnesty scheme for one time settlement of default in export obligation by Advance and EPCG Authorisation holders. It covers authorizations issued under Foreign Trade Policy till 31.03.2015 and authorizations issued under Foreign Trade Policy 2004-2009 whose export obligations period was valid beyond 12.08.2013. The authorization holder can avail this benefit under the scheme by depositing the customs duty and interest at the rate of 100% of such duties exempted with the jurisdictional customs authorities by 30.09.2023. The EPCG authorization of the Petitioner was issued on 10.03.2011 i.e. during FTP 2009-2014 and is therefore covered under the scheme and the Petitioner is eligible to claim the benefit under the amenity scheme.

7. I therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:-

**ORDER**

F.No. 18/35/2021-22/ECA.I/76

Dated: 01.05.2023

The Petitioner is advised to pay the customs duty and interest under the amnesty scheme issued vide Public Notice 2/2023 dt. 01.04.2023 by 30.09.2023 and submit the documentary evidence to RA, Rajkot. The penalty imposed by the Adjudicating Authority will be waived off subject to payment of Custom duty and interest under the scheme. Failure to pay the necessary duty and interest under the scheme by 30.09.2023 shall lead to re-imposition of the penalty and further action under the Act.



*[Signature]*  
1.6.2023

(Santosh Kumar Sarangi)  
Director General of Foreign Trade

Copy to:-

1. M/s Sunsafe Agrotexiles Pvt. Ltd., Survey No. 44/45, Plot No. 7/8, Nr. National Ginning, Shapar Main Road, Shapar (Veraval), Rajkot - 360024.
2. The Addl. Director General of Foreign Trade, Mumbai.
3. Central Economic Intelligence Bureau, 1<sup>st</sup>, 6<sup>th</sup>& 8<sup>th</sup> Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi - 110001.
- ✓ 4. DGFT Website.

*[Signature]*

(A.S. Lungreishang)  
Dy. Director General of Foreign Trade