

Government of India  
Ministry of Commerce & Industry  
Directorate General of Foreign Trade  
Udyog Bhawan, New Delhi -110011

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F.No. 18/56/2019-20/ECA-I

Date of Order: 26 .10.2021

Date of Dispatch: 26 .10.2021

Name of the Applicant:

Gangothri Textiles Limited, 35, Robertson Road,  
R.S. Puram, Coimbatore - 641 002

IEC No.

3292008654

Order reviewed against:

Order-in-Appeal No. I(37)/Addl. DGFT/  
ECA/Chen/AM17 dated 17.06.2019 passed by  
Zonal Additional DGFT, Chennai

Order-in-Review passed by:

Amit Yadav, DGFT

**Order-in-Review**

Gangothri Textiles Limited, Coimbatore (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 13.01.2020 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against consolidated Order-in-Appeal (OIA) passed by Zonal Additional DGFT, Chennai dismissing appeals filed against 45 Orders-in-Original (OIO) dated 19.01.2016 and 20.01.2016. The Adjudicating Authority imposed penalties on the Petitioner and its Directors/Partners/Proprietors for non-fulfilment of export obligation against duty free imports of machinery under Export Promotion Capital Goods (EPCG) scheme, the details of which are in the 'Annexure' to this Order - in - Review.

**Facts of the case:**

2.1 The Petitioner obtained 45 EPCG Authorisations under EPCG scheme from the office of the Joint DGFT, Coimbatore, as per provisions of the Foreign Trade Policy (FTP) prevalent during that period, for import of capital goods for duty saved values as indicated against each EPCG authorization in the Table with an obligation to export products manufactured with the same/similar machinery, for an FOB value indicated against each EPCG Authorization in the Table to be completed within a period of 8 years from the date of issue of the Authorizations. As per conditions of the Authorizations, the Petitioner was required to submit the prescribed documents showing fulfilment of export obligations within a time frame as mentioned in the FTP. The export obligation period expired in 2014 and 2015. The Petitioner did not furnish documents evidencing fulfilment of export obligations.

My



2.2 The Petitioner requested for extension of export obligation period for two years without composition fee by enhancing Export Obligation (EO) @ 10% per year in terms of Para 5.11 of Handbook of Procedure (HBP) 2009-2014. The same was allowed. Later on, it was reviewed and the Petitioner was directed to pay mandatory composition fee in terms of Para 5.8.3 of HBP 2009-2014. Since the Petitioner did not submit composition fee, extension of obligation period was cancelled and it was directed to pay customs duty plus interest for imports made against the EPCG Authorizations.

2.3 The Petitioner did not regularize the Authorizations by paying customs duty plus interest. Demand-cum-Show Cause Notices were issued to the Petitioner under Section 14 for action under Section 11(2) of the Act. The Petitioner was also granted personal hearing. The Petitioner neither replied to Show Cause Notices nor appeared for personal hearing. The Adjudicating Authority passed 45 OIO dated 19.01.2016 and 20.01.2016 imposing penalty as shown in the 'Annexure' on the Petitioner and its Directors/Proprietor/Partners. The Petitioner was also placed in Denied Entity List.

2.4 The Petitioner filed Appeals on 24.03.2016 before the Appellate Authority against the 45 OIOs. The Appellate Authority granted personal hearing to the Petitioner on 17.05.2019. The Appellate Authority observed that since the Petitioner's machineries had been confiscated and sold by the bankers, it was difficult to fulfil the export obligation. The Petitioner could not export their products due to global recession, labour unrest, financial crunch etc. As per the terms and conditions of the authorizations, it had to undertake export of blended yarn equivalent to eight times the duty saved value within a period of eight years besides maintaining the annual average exports. The firm had not furnished any details of fulfilment of obligations and has expressed its inability to fulfil the obligations citing the taking over of its assets by State Bank of India in 2012, which is about five to six years after the date of obtaining authorizations. In the event of any uncontrollable market conditions making it difficult/impossible for the Petitioner to fulfil the export obligations, it should have regularized by payment of applicable customs duty and interest. On failure to do so, the Adjudicating Authority rightly passed OIO as per the provisions of the Act. The Appellate Authority found no basis to interfere with the OIO.

3. The Petitioner submitted a Review petition dated 13.01.2020 stating :

- (i) that it imported and installed the machineries but could not achieve projected turnover due to global recession prevalent in the Textile Industry, severe power crisis prevalent in the State of Tamil Nadu, labour unrest, financial crunch and non-availability of working capital,
- (ii) that the corporate debt restructuring schemes failed to revive the company and inspite of the efforts taken, the company could not be run profitably and during 2012 entire net worth of the company had been eroded by the loss and the consortium of banks led by State Bank of India(SBI) issued notice under SARFESI Act demanding the outstanding payment,



- (iii) that SBI filed an application in Debts Recovery Tribunal for recovery of debts and obtained an interim direction restraining the appellant from encumbering or assigning the movable and immovable properties and also sold eight out of nine units in e-auction and recovered the dues,
- (iv) that a reference was made by the Petitioner to BIFR for registering the unit as a Sick company. The same was opposed by State Bank of India (SBI) by filing a miscellaneous application for abatement. The BIFR ultimately abated the proceedings and ordered that all stakeholders are at liberty to recover their dues as per law,
- (v) that SBI issued an e-auction notice for sale of assets and in response to it, Dy. Director General of Foreign Trade issued a Public Notice in a newspaper stating that the machineries could not be sold until the dues to the Government against the failure to fulfil the export obligation are settled and that the officers of Directorate of Revenue Intelligence (DRI) visited the premises of the appellant and after coming to know that eight out of nine units were sold by SBI, seized the machineries from the purchasers on the ground that non-duty paid goods cannot be sold in e-auction against which SBI filed a Writ Petition in which DRI impleaded itself as a party opposing the petition and at present the Writ Petition and the impleading petition are pending for orders,
- (vi) that its request for extension of export obligation period for two years without composition fee by enhancing EO @ 10% per year was allowed but subsequently was reviewed and the Petitioner was asked to pay mandatory composition fee and since it could not comply to deposit composition fee, extension of obligation period was cancelled and it was directed to pay customs duty plus interest for imports made against the EPCG Authorizations,
- (vii) that it did not act in a manner to defraud the revenue with any ulterior motive but was a victim of unforeseen and uncontrollable situation making it impossible to complete the exports,
- (viii) that it made serious and genuine attempts towards import of capital goods under the scheme and intended to export the products, but could not achieve the export obligation for the reasons beyond its control and the Adjudicating Authority and Appellate Authority failed to note that Section 11(2) of the Act would attract only in case of any contravention of the provisions.

4. The Petitioner was granted personal hearing on 12.08.2021 which was attended by its Advocate Ms. S. Yogalakshmi. The counsel, in her oral submissions, submitted the same already submitted in the written review petition dated 13.01.2020. The counsel was asked to file detailed affidavit/ written submission of details of present status of case before the



Chennai High Court and chronology of the case along with case law and citations. RA, Coimbatore was also asked to provide written submissions.

5. The Petitioner vide its letter dated 17.08.2021 filed its written submissions on the case pending before Chennai High Court. Chennai High Court vide its order dated 18.12.2015 in the WP No. 24864/2015 (titled SBI Vs. Joint DGFT & Gangothri Textiles Limited) and WP No. 32325/2015 (titled SBI Vs. DRI & Gangothri Textiles Limited) held that the petitioner bank being a secured creditor, the Respondents, both the Joint Director General of Foreign Trade and the Directorate of Revenue Intelligence cannot claim first charge over the properties put into auction by the petitioner bank for their dues payable under the SARFAESI Act. Where the debts, due to both the first charge holder and the second charge holder, are to be realized from the properties belonging to the borrower, the first charge holder will have to be repaid first. It was also further made clear that after clearance of the Petitioner's debt, the above referred Central Government Authorities are free to proceed further if any property is available, in accordance with law. In light of the above judgement, RA, Coimbatore issued recovery orders on 01.06.2016 under the Act through the State Government.

6. I have gone through the records carefully. It is observed the Petitioner imported capital goods under 45 EPCG Authorizations mentioned in the 'Annexure' but did not make any export citing various reasons. The Petitioner did not regularize the said EPCG Authorizations by payment of customs duty and interest thereon. The Petitioner pleaded that non-fulfillment of export obligation was unintentional. In case of bonafide default, para 5.23 of the Hand Book of Procedure (HBP) of Foreign Trade Policy (FTP) 2015-20 provides for regularization of bonafide default on payment of customs duty alongwith applicable interest which the Petitioner has failed to do so. Hence, the Petitioner has contravened the conditions of the Authorization and has violated the Foreign Trade Policy and is liable for penalty under provisions of Section 11 of Foreign Trade (Development and Regulation) Act, 1992, as amended.

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

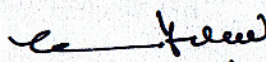
#### ORDER

F.No. 18/56/2019-20/ECA-I /291

Dated: 24.10.2021

The Review Petition dated 13.01.2020 is dismissed. Order-in-Appeal No. I (37)/ Addl. DGFT/ECA/Chen/AM17 dated 17.06.2019 and the Orders-in-Original mentioned in the 'Annexure' are upheld.



  
(Amit Yadav) 26/10/2021  
Director General of Foreign Trade

**Copy To:**

- (1) Gangotri Textiles Limited, 35, Robertson Road, R.S. Puram, Coimbatore - 641 002
- (2) Addl. DGFT, 5<sup>th</sup> Floor, Shastri Bhavan Annexe, No. 26, Haddows Road, Chennai- 600 006.
- (3) Jt. DGFT, 1544, India Life Building, (Annexe), 1<sup>st</sup> Floor, Trichy Road, Coimbatore - 641 018 with the directions to recover dues and penalty imposed on the Petitioner
- (4) CEIB, 8<sup>th</sup> Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi -110001
- ✓(5) DGFT Website.



*Dilip Kumar*

(Dilip Kumar)

Dy. Director General of Foreign Trade

S.No.	EPCG Authn. No. & Date	Duty Saved Value (in Rs.)	FOB Value (in \$)	Order in Original No. and date	Penalty imposed (in Rs.)
1.	3230007618 dt. 11.08.2006	11,51,7281	19,52,082	32/21/021/01065/AM07 dated 19.01.16	2,30,34,562
2.	3230009661 dt. 26.04.2007	66,545	12,127	32/21/021/00123/AM08 dated 19.01.16	1,33,090
3.	3230010161 dt. 03.07.2007	12,47,419	2,43,994	32/21/021/00591/AM08 dated 19.01.16	24,94,838
4.	3230007427 dt. 18.07.2006	3,75,70,195	65,12,710	32/21/021/00861/AM07 dated 19.01.16	7,51,40,390
5.	3230008190 dt. 26.10.2006	91,194	15,808	32/21/021/01628/AM07 /19.01.16	1,82,388
6.	3230007530 dt. 03.08.2006	1,03,13,402	17,48,034	32/21/021/00981/AM07 /20.01.16	2,06,26,804
7.	3230007872 dt. 15.09.2006	58,151,91	9,94,050	32/21/021/01314/AM07 /19.01.16	1,16,30,382
8.	3230007370 dt. 12.07.2006	16,89,616	2,90,374	32/21/021/00762/AM07 /19.01.16	33,79,232
9.	3230009895 dt. 28.05.2007	63,756	12,159	32/21/021/00401/AM08 /19.01.16	12,7512
10.	3230009384 dt. 20.03.2007	29,781	5,360	32/21/021/02795/AM07 /20.01.16	59,562
11.	3230008137 dt. 18.10.2006	6,62,053	1,14,765	32/21/021/01594/AM07 /19.01.16	13,24,106
12.	3230008543 dt. 06.12.2006	1,17,463	20,906	32/21/021/01989/AM07 /19.01.16	2,34,926
13.	3230007473 dt. 25.07.2006	52,31,456	8,99,069	32/21/021/00902/AM07 /19.01.16	1,04,62,912
14.	3230007371 dt. 12.07.2006	95,92,663	16,48,578	32/21/021/00815/AM07 /20.01.16	1,91,85,326
15.	3230007484 dt. 26.07.2006	75,68,913	13,00,780	32/21/021/00916/AM07 /20.01.16	1,51,37,826
16.	3230010064 dt. 21.06.2007	53,782	10,520	32/21/021/00430/AM08 /19.01.16	1,07,564
17.	3230007501 dt. 28.07.2006	61,59,529	10,58,566	32/21/021/00938/AM07 /20.01.16	1,23,19,058
18.	3230009543 dt. 11.04.2007	36,99,339	6,74,139	32/21/021/00031/AM08 /19.01.16	73,98,678
19.	3230009096 dt. 16.02.2007	43,165	7,769	32/21/021/02439/AM07 /19.01.16	86,330
20.	3230008191 dt.	9,58,491	16,61,52	32/21/021/01627/AM07	19,16,982



S.No.	EPCG Authn. No. & Date	Duty Saved Value (in Rs.)	FOB Value (in \$)	Order in Original No. and date	Penalty imposed (in Rs.)
	26.10.2006			/19.01.16	
21.	3230007576 dt. 08.08.2006	76,99,568	13,05,012	32/21/021/01029/AM07 /19.01.16	1,53,99,136
22.	3230007578 dt. 08.08.2006	4,95,80,420	84,03,461	32/21/021/01028/AM07 /19.01.16	9,91,60,840
23.	3230008300 dt.08.11.2006	40,07,016	7,03,757	32/21/021/01753/AM07 /19.01.16	80,14,032
24.	3230009025 dt. 07.02.2007	2,18,621	39,347	32/21/021/02450/AM07 /20.01.16	4,37,242
25.	3230007472 dt. 25.07.2006	3,49,65,592	60,09,124	32/21/021/00909/AM07 /19.01.16	6,99,31,184
26.	3230007996 dt. 28.09.2006	1,75,28,058	29,96,248	32/21/021/01445/AM07 /19.01.16	3,50,56,116
27.	3230009235 dt. 05.03.2007	14,65,785	2,63,808	32/21/021/02691/AM07 /19.01.16	29,31,570
28.	3230008559 dt. 07.12.2006	37,85,406	6,73,710	32/21/021/01999/AM07 /19.01.16	75,70,812
29.	3230008268 dt. 03.11.2006	28,71,336	5,04,296	32/21/021/01706/AM07 /19.01.16	57,42,672
30.	3230008267 dt. 03.11.2006	12,67,094	2,22,541	32/21/021/01705/AM07 /19.01.16	25,34,188
31.	3230009010 dt. 06.02.2007	15,05,966	2,71,040	32/21/021/02451/AM07 /19.01.16	30,11,932
32.	3230007441 dt. 20.07.2006	1,09,83,748	18,87,647	32/21/021/00882/AM07 /19.01.16	2,19,67,496
33.	3230007368 dt. 12.07.2006	70,12,642	12,05,180	32/21/021/00775/AM07 /19.01.16	1,40,25,284
34.	3230008776 dt. 05.01.2007	13,26,500	2,37,405	32/21/021/02207/AM07 /20.01.16	26,53,000
35.	3230009513 dt. 03.04.2007	1,36,678	24,599	32/21/021/02954/AM07 /19.01.16	2,73,356
36.	3230007440 dt. 20.07.2006	48,20,859	8,28,504	32/21/021/00877/AM07 /19.01.16	96,41,718
37.	3230007577 dt. 08.08.2006	5,72,267	96,994	32/21/021/01000/AM07 /19.01.16	11,44,534
38.	3230007660 dt. 22.08.2006	15,20,533	2,57,717	32/21/021/01110/AM07 /19.01.16	30,41,066
39.	3230009514 dt. 03.04.2007	1,94,331	35,413	32/21/021/00001/AM08 /19.01.16	3,88,662

Key



S.No.	EPCG Authn. No. & Date	Duty Saved Value (in Rs.)	FOB Value (in \$)	Order in Original No. and date	Penalty imposed (in Rs.)
40.	3230007950 dt. 25.09.2006	1,47,96,408	25,29,301	32/21/021/01398/AM07 /19.01.16	2,95,92,816
41.	3230009385 dt. 20.03.2007	1,62,612	29,267	32/21/021/02837/AM07 /19.01.16	3,25,224
42.	3230007378 dt. 13.07.2006	34,77,137	5,97,575	32/21/021/00837/AM07 /20.01.16	69,54,274
43.	3230010141 dt. 29.06.2007	38,38,221	7,50,752	32/21/021/00643/AM07 /19.01.16	76,76,442
44.	3230008545 dt. 06.12.2006	13,22,702	2,35,409	32/21/021/01990/AM07 /19.01.16	26,45,404
45.	3230007951 dt. 25.09.2006	24,55,160	4,19,686	32/21/021/01386/AM07 /20.01.16	49,10,320

