



COMPETITION COMMISSION OF INDIA

Case No. 34 of 2017

In Re:

XYZ

Informant

And

**1. Hyundai Motor India Limited
H-1, SIPCOT Industrial Park
Irungattukottai, Sriperumbudur Taluk
Kanchipuram District
Tamil Nadu-602105**

Opposite Party No. 1

**2. Director General of Foreign Trade
Ministry of Commerce
Udhyog Bhawan
New Delhi-110011**

Opposite Party No. 2

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U.C. Nahta
Member**

**Justice G. P. Mittal
Member**



Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed under Section 19(1) (a) of the Competition Act, 2002 ('the Act') by the Informant - XYZ (confidentiality claimed over name) - against Hyundai Motor India Limited ('OP-1'/ 'HMIL') and Director General of Foreign Trade (OP-2/ 'DGFT') (collectively called as the 'OPs') alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. HMIL is a manufacturer of cars of various models and is catering to both domestic and export markets. For this purpose, HMIL avails various schemes such as Export Promotion Capital Goods (EPCG), Target Plus, Focus Product Scheme (FPS), *etc.*, announced by DGFT, Ministry of Commerce, Government of India (GOI).
3. EPCG scheme is an initiative of DGFT to promote exports out of India. The details of EPCG scheme are brought out in the Export Import Policy (EXIM Policy) of the GOI announced from time to time. It is stated in the information that the conditions and process for availing the EPCG scheme is defined more clearly in the Foreign Trade Policy (FTP) and the Hand Book of Procedures (HBP) for a given period. Apart from this, the Central Board of Excise and Customs (CBEC) also issues customs notification from time to time in accordance with the changes made in the FTP or EXIM Policy by DGFT. According to this Scheme, the importer is permitted to import capital goods, tools, jigs, fixtures, moulds, dies *etc.* (Capital Goods/ CG) on which customs duty is levied at a reduced rate or at zero rate and in turn, the importer obligates to export up to 8 times of the duty saved over a period of 8 years (Export Obligation). It is stated in the information that the Export Obligation (EO) has to be met with by manufacturing products for exports only using the CG imported under the EPCG scheme. This condition is known as the "Nexus Condition".



4. The Informant has stated that DGFT had initially intended to permit only export of those goods that were manufactured using the CG imported under the EPCG scheme towards the EO requirement. It was only from 28.01.2004 till 17.04.2013 that 'other goods' manufactured by the EPCG License holders were permitted to be counted towards the EO to a limited extent of 50% of the total obligation - with a condition that additional quantum of obligation would be fixed by DGFT if one intends to avail this concession. It is reiterated for the sake of clarity that 50% of the EO was still to be fulfilled only by using the CG imported under the said EPCG License.
5. The Informant has alleged that in order to avail this relaxation, HMIL, at the time of applying for EPCG License, declared its intention to export 'other products' and accordingly got a higher EO fixed. However, HMIL imports the CG used for the manufacture of different models of cars meant for domestic markets under the general description of 'passenger cars' without declaring the same to the EPCG License issuing authority, which is a clear violation of the Nexus Condition. It is further alleged that HMIL applied for EPCG License (an "agreement" as per Section 2(b) (ii) of the Act) to DGFT with a fraudulent intent to evade customs and hence, determined both purchase price as well as sale price which is in violation of the provisions of the Act.
6. HMIL, while importing all CG for manufacture of domestic market intended models under EPCG scheme directly determines both purchase price as well as sale price in violation of Section 3(3)(a) of the Act and thereby has been also evading customs duty.



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7. The Informant is also aggrieved of the fact that HMIL has vitiated the passenger car market in the country by importing all the CG under EPCG scheme and diverting the same for manufacture of passenger cars intended for domestic market. HMIL unduly gained an upper hand than its competitors in India since the amortisation cost of the CG would be less by virtue of paying lesser customs duty than actually ought to be paid, whereas the competitors of HMIL while importing CG meant for manufacturing domestic market intended models would have paid full and correct customs duty. This is a violation of Section 4 (1) of the Act.

8. The Informant is aggrieved by the role played by DGFT as well. While DGFT is expected to create a level playing field, it is submitted that the DGFT has failed to – i) verify the export products that HMIL intended to export while issuing EPCG license and fix the corresponding HSN code for export of the respective model/s of passenger cars ii) verify if the passenger cars exported were manufactured using the CG imported under the corresponding EPCG Licenses; iii) re-fix the enhanced quantum of EO if “other products” were intended to be exported and counted towards EO; iv) verify if the products declared while applying for the EPCG License were indeed manufactured using the CG imported under the corresponding EPCG license; v) verify various ANFs’ and Appendixes filed by HMIL in the process of EPCG application and redemption, diligently; vi) initiate action against HMIL in terms of the applicable provisions of Foreign Trade (Development and Regulation) Act, 1992 [FT (D&R) Act, 1992]; vii) create a fair level playing field to the passenger car manufacturers in India as explained in this information; viii) initiate action against the officers and the staff for various omissions and commissions which were in violation of FTP/HBP; and ix) maintain equality before law as enshrined in the Constitution of India by adopting different yardstick for identical/ similar situation while deciding through its EPCG Committee and has thus, violated various provisions of the Act.



9. It is also stated that when this EPCG License scam was brought to the notice of DGFT *vide* the Informant's complaint dated 24.01.2017, DGFT brushed aside the specific and precise complaint without citing any plausible reason. Thus, DGFT has failed to create healthy market conditions in regulation of EPCG scheme.
10. Based on the above averments and allegations, the present information has been filed by the Informant against the Opposite Parties seeking following relief:
- a) Direct DGFT to revoke all the EPCG Licenses issued to HMIL wherein it has wrongly claimed that CG imported were used to manufacture the exported products. Also, direct DGFT to initiate action against HMIL in terms of FT (D&R) Act, 1992.
 - b) Invoke Section 27(d) of the Act in order to revoke the "agreement (EPCG License)" issued by DGFT to HMIL;
 - c) Impose penalty on both HMIL as well as DGFT, in terms of Section 27(b) of the Act.
 - d) In terms of Section 27(g) of the Act, order DRI to complete investigation on all scams perpetrated by HMIL in a time bound manner and direct DRI to initiate action under Customs Act, 1962.
 - e) Order revocation of regularisation of certain other FTP requirements made *vide* EPCG Committee meeting held after a Writ Petition was filed by HMIL, and after the case was registered at DRI and during the pendency of the Writ Petition at Hon'ble High Court of Madras.
 - f) Undertake all other actions as deemed fit by the Commission against both HMIL and DGFT in terms of the applicable provisions of the Act.
11. Subsequent to the filing of information, the Informant also filed additional submissions on 01.07.2017 again raising the same issues besides seeking to argue that the Commission has the jurisdiction to examine the anti-competitive conduct if it flows from any policy of the Government. The



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Informant has sought to bring DGFT within the purview of the Act by pointing out that DGFT had failed to regulate its policy. It is averred that this had led to an anti-competitive product flow from the improper regulation of policy pertaining to EPCG scheme.

12. The Commission has perused the information/ additional submissions and the documents filed therewith.
13. From the facts and circumstances of the case as narrated hereinabove, it is apparent that the Informant is aggrieved by the fact that HMIL is allegedly misusing the EPCG Policy framed by DGFT for promotion of exports out of India. HMIL is alleged to be importing the CG for manufacture of different models of cars that are meant for exports but selling them domestically. As the CG imported under the EPCG scheme are exempted from customs duty, it is alleged that the same are purchased by HMIL at cheaper rates – reducing its cost of production *viz-a-viz* its competitors. As per the allegations, HMIL is in fact not using the imported CG to meet even 50% of the Export Obligation, which is mandatory for it to do.
14. The allegations made by the Informant raise issues relating to the Foreign Trade (Development and Regulation) Act, 1992 and the Customs Act, 1962. No competition issue arises out of the information presented or is otherwise made out. The reliefs sought by the Informant (including seeking investigation into the impugned conduct through direction to DRI) do not fall within the ambit of the Commission as provided under the Act.
15. In the result, the Commission is of considered opinion that no case of contravention of the provisions of either Section 3 or Section 4 of the Act is made out against OPs in the instant case.



सत्यमेव जयते



16. The Informant has sought protection from disclosure of his/ her identity in terms of Regulation 35(1) of the General Regulations, 2009. The Commission is of opinion that identity of the Informant may be protected from disclosure, as prayed for.
17. In view of the above, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the Opposite Parties and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
18. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-
(Devender Kumar Sikri)
Chairperson**

**Sd/-
(S. L. Bunker)
Member**

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(Augustine Peter)
Member**

**Sd/-
(U. C. Nahta)
Member**

**Sd/-
(Justice G. P. Mittal)
Member**

New Delhi
Date: 17/08/2017