

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

F.No. 01/92/171/29/AM 18/ PC-VI/97-98 Date of Order: 5.09.2018

Date of Dispatch: 5.09.2018

Name of the Appellant: M/s Geetanjali Woollens Pvt. Ltd., Village Ramesara,
Taluka – Halol Dist. Panchmahal, Gujarat.

Order appealed against: Order-in-Original No.15/2017-18 (issued from file
No.KASEZ/100% EOU/II/441/97-98/Vol.III/8032 dated
08.11.2017 passed by the Development Commissioner,
Kandla SEZ, Kutch, Gujarat.

Order-in-Appeal passed by: Shri Alok Vardhan Chaturvedi, DGFT
Shri J.V. Patil, Addl.. DGFT

Order-in-Appeal

M/s. Geetanjali Woollen Pvt Ltd, Gujarat a DTA unit has filed an appeal under Section 15 of FT(D&R) Act 1992 against the Order-in-Original passed by the Development Commissioner, Kandla as Regional Authority to DTA Unit.

2. Vide Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, the Central Government has authorized the Director General of Foreign Trade aided by one Addl. DGFT in the Directorate General of Foreign Trade to function as Appellate Authority against the adjudication orders passed by the Development Commissioner, Special Economic Zones as Adjudicating Authorities. Hence, the present the appeal is before us.

3. Brief Facts of the Case are that:

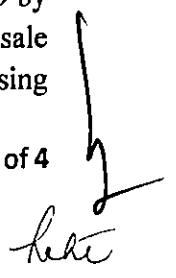
3.1 M/s Geetanjali Woollens Pvt. Ltd. Village Ramesara, Taluka – Halol Dist. Panchmahal, Gujarat were granted a Letter of Permission bearing No. LoP No. PER 276 (1997) / EOM /289/97 dated 01.10.1997 by the Development Commissioner, Kandla Special Economic Zone, for manufacture and export of Non Wooven Blankets, Wipers & Clippings and Shoddy Wool Blends, as amended.

3.2 The said noticee, after accepting all the terms and conditions of the Letter of Permission aforesaid executed a Legal Undertaking with the Development Commissioner, Kandla Special Economic Zone. The said notice was under an obligation to observe all conditions and procedures prescribed under customs law and any other law in force. Subsequently the Development Commissioner, KASEZ, had issued a Green Card Bearing No.



KASEZ/36/2005-06 dated 25.10.2005 to the said notice for facilitating him to carry out the import-export activities.

- 3.3 The DC office conducted the detailed audit/ inspection of the firm focusing on Deemed Exports and Foreign Exchange Realisation for the year 2015-16 and previous Five year Block 2010-15, as the firm had shown DTA sale as deemed exports by the EOU unit in terms of Para 6.9 of the FTP. As per provisions of Para 6.9(b) of the Foreign Trade Policy 2005-06 it was stated, "Supplies effected in DTA against payment from the Exchange Earners Foreign Currency (EEFC) Account of the buyer in the DTA or against foreign exchange remittance received from overseas". As per notification No. 1 (RE -2006)/2004-2009, dated 7th April, 2006 Para 6.9(b) was deleted. Subsequently, vide Notification no. 31 (RE-2006)/2004-2009, dated 08.09.2006, sub para (b) was added in Para 6.9 as " (b) Supplies effected in DTA against foreign exchange remittance received from overseas".
- 3.4 However, the noticee firm has received payment from EEFC account of their DTA unit against the supplies made to their DTA unit which cannot be counted for NFE. Thus position shown by the firm/unit in its APRs to the extent of payment received from EEFC A/c was wrong as found after conduct of special Audit by a team of officers in the month of March, 2017. Accordingly, NFE of the unit gone to negative side to the tune of Rs.316.99 Lakhs.
- 3.5 As per Para 3(ii) of the Appendix 14-I-G of Handbook of Procedures (Vol. I), for failure to achieve NFE, after completion of block period as per para 6.5 of FTP, Development Commissioner would initiate penal action under the FT (D&R) Act, 1992.
- 3.6 DC observed that the firm failed to fulfill the stipulated Net Foreign Exchange Earnings (NFE) as prescribed in the Letter of the Permission dated 01.10.1997 thus contravening the provisions of the Foreign Trade Policy relating to EOUs, the relevant provisions in the Handbook of Procedures of the Foreign Trade Policy in force and for this violation they are liable for penal action under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992, as amended. The DC after issue of SCN in this regard and after granting an opportunity of personal hearing adjudicated the matter imposing a penalty of Rs.75 lakhs.
4. Against the Order of Development Commissioner the firm has filed an appeal. Shri Surender Goel Chairman of the company appeared in the person for personal hearing on 09.08.2018 before the Appellate Authority and pleaded in defence. In the appeal following grounds have been made:
- i. The allegation is that we did not achieve NFE in the Block Period of 2010-11/2014-15, reason being that our Deemed Export sale is not counted in NFE calculation by the authority. Our entire Deemed Export sale is to our own DTA unit operating under the same company/name.
 - ii. Our total sale of DTA unit is also for Exports only which is evident from the fact that out of our total sale of 128.61 crore by our DTA unit, domestic sale is only 7.59 crore, thus almost 94% is exports only.
 - iii. All our revenue earning in DTA is only in Foreign Exchange from Overseas.
 - iv. The payment received from overseas is credited by our bankers in DTA's EEFC account and then transferred to EOU's EEFC account according to invoices.
 - v. Our supplies under Deemed Export in DTA is in fact against Foreign Exchange received from overseas as provided in para6.9(b). The amendment of Para 6.09 by the notifications does not import does not impact our DTA deemed export sale and we continued to supply the DTA unit with material for further processing



- against payment received by them directly from the overseas and not by means of purchasing Foreign Exchange from the local market.
- vi. Our imports of Capital Goods in the subject block period were commissioned in the next block period is also calculated for NFE earning, which we feel should have been taken into subsequent block period. Further Para 6.10(d) of FTP allows amortization of CG imported @10% over a 10 year period.
 - vii. We have not taken any undue benefit of FTP provisions and made supplies in DTA in true compliance of the provisions of the FTP.
 - viii. We have not taken any Undue benefit of FTP provisions and made supplies in DTA in true compliance of the provisions of FTP.

5. The Applicant's submissions are considered taking into the Development Commissioner Order and policy provisions as applicable:

- a) The Appellant is an EOU's engaged in manufacturing of Non woven Blankets, Wipers & Clippings etc. The Para 6.9 of the FTP 2004-09 covered different categories of supplies affected by EOU to DTA that will be counted for fulfillment of NFE. The supply under 6.9 (b) was one of the category. Para 6.9(b) of the FTP 2005-06 stated "Supplies effected by EOU in DTA against payment from the Exchange Earners Foreign Currency (EEFC) Account of the buyer in the DTA or against foreign exchange remittance received from overseas". Vide Notification No. 1 (RE -2006)/2004-2009, dated 7th April, 2006, annual supplement of FTP 2004-09 was issued. Under this annual supplement of FTP, Para 6.9(b) was deleted. Subsequently, vide Notification no. 31 (RE-2006)/2004-2009, dated 08.09.2006, sub Para (b) was added as Para 6.9(b) which stated "Supplies effected in DTA against Foreign Exchange Remittance received from overseas". The DC office conducted the detailed audit/inspection of the firm focusing on deemed export and FE realizations for the year 2015-16 and the provisions of year block 2010-15. The unit received payment from EEFC account of their DTA unit against supplies made to the DTA unit which cannot be counted for calculation of NFE. Thus submissions shown by the firm/ unit in its APRs to the extent of payment from EEFC account was wrong and audit found that NFE of the unit has gone negative to the tune of Rs.316.99 lakhs. This is in Order as per policy provisions.
- b) The contention of the Appellant is that he is not aware of the amendment of Para 6.9(b) by notification is not sustainable. The EOU should be aware of the policy provisions under which it is operating. Not knowing about the notification cannot be accepted as ignorance of law is no excuse.
- c) The another contention is that they made the supplies to their own unit in DTA and the DTA Unit has received the foreign Exchange from the overseas and the said payment is credited by the bankers in the EEFC A/c. The payment received in Foreign Exchange by the EOU from the overseas against the suppliers made to DTA only is to be counted. However the unit received payment from EEFC account of the DTA unit against the supplies made to their DTA unit which cannot be counted for NFE, The payment received by the DTA unit for their exports is independent of EOUs DTA sale. That will not satisfy the condition of



receiving the FE from overseas by the EOU unit as laid down by the Notification 31 dated 8.9.2006. The notification is very clear in this regard. Thus it cannot count its DTA sale towards the NFE calculation and accordingly was found NFE negative by the DC office.

- d) They also stated that capital goods imported in the subject period were commissioned in the next block period. Hence they feel should be taken in the next block period for the purpose of NFE and further Para 6.10(d) of the FTP allows amortization of CG imported @ 10% over a 10 year period. The comments from for the DC office in this regard has stated that even if the CG of worth Rs.216 lakhs imported by them is amortized in the next block years or amortized @10% over a 10 year period it will not affect NFE provision of the unit of being negative.
- e) The DC has accordingly imposed penalty as per Para 6.6(c) of the FTP 2004-09 under FTDR Act 1992 for being negative in NFE earnings during the relevant period.

Order

F.No. 01/92/171/29/AM-18/PC-VI/

Dated: 5.09.2018

Order-in-Original No.15/2017-18(issued from file No.KASEZ/100% EOU/II/441/97-98/Vol.III/8032 dated 07.11.2017) passed by the Development Commissioner, Kandla SEZ, Kutch, Gujarat is upheld and the Appeal stands rejected.



(J.V. Patil)

Addl. Director General of Foreign Trade



(Alok Vardhan Chaturvedi)

Director General of Foreign Trade

Copy To:

- (1) M/s Geetanjali Woollens Pvt. Ltd., Village Ramesara, Taluka – Halol Dist. Panchmahal, Gujarat.
- (2) Development Commissioner, SEZ, Kandla.



(Shobhit Gupta)

Dy. Director General of Foreign Trade

