

O/F

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

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F.No. 01/92/171/20/AM 18/ PC-VI/

Date of Order: 01.02.2019

Date of Dispatch: 05.02.2019

Name of the Appellant:

Lubrizol Advance Materials India Pvt. Ltd.,  
6<sup>th</sup> & 7<sup>th</sup> Floor, Jaswanti Landmark,  
Mehra Industrial Estate, L.B.S. Marg,  
Vikhroli (West), Mumbai -- 400079, India

Order appealed against:

Order-in-Original No. KASEZ/ACCTS/CRA/01/13-14  
(Vol. III) dated 06.09.2017 passed by the Development  
Commissioner, Kandla SEZ, Gujarat

Order-in-Appeal passed by:

Shri Alok Vardhan Chaturvedi, DGFT  
Shri R.P. Göyal, Addl. DGFT

Order-in-Appeal

Lubrizol Advance Materials India Pvt. Ltd, (hereinafter referred to as 'the appellant'), a 100% EOU unit at P.O. Manjusar, Tal-Salvi, Dist.- Vadodara, Gujarat -- 391 775 has filed an appeal dated 27.10.2017 against Order-in-Original No. KASEZ/ACCTS/CRA/01/13-14(Vol III) dated 06.09.2017 passed by the Development Commissioner, Kandla, SEZ, Gujarat.

2. Vide Notification No. 101 (RE-2013)/2009-2014, dated the 5<sup>th</sup> 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 orders passed by the Development Commissioner, Special Economic Zones as Adjudicating Authorities. Hence, the present the appeal is before us.

3.0 Brief facts of the case are as under:

3.1 The appellant is engaged in the business of manufacture and export of Cassia Gum Power.

3.2 During the Audit conducted by the CAG, Ahmedabad for the year 2007-2011, it was observed that an amount of Rs. 409,937/- against the CST claims was erroneously paid to the Appellant. The audit pointed out that the Appellant had procured goods from DTA suppliers i.e., (M/s Bharat Agro Industries and M/s Mahesh Agro Industries) during January 2007 to April 2008 and claimed the CST reimbursement. It was noticed that the Appellant had

initially procured goods from these two suppliers against "H" Form and the invoice value of the goods was paid at the same time. Then after a lapse of more than one year, the same supplies were converted into "C" Form and then CST @ 2% was paid by the Appellant on the basis of debit note raised by the suppliers and the same has been claimed from the DC, KASEZ after delay ranging between 1 to 2 years from the date of supplies. The Audit further pointed out that :

- (i) For supplies made between January to March, 2007, last date of application without late cut was 30.09.2007. As the application was made on 23.03.2010 i.e. after a lapse of 2 years from last date to make application, the claim of Rs. 2,08,800/- is time barred.
- (ii) For supplies made between April to June, 2007, last date of application without late cut was 31.12.2007. As the application was made on 23.03.2010 i.e. after a lapse of 2 years from last date to make application, the claim of Rs. 1,65,438/- is time barred.
- (iii) For supplies made between July to September, 2007, last date of application without late cut was 31.03.2008. As the application was made on 23.03.2010 i.e. after a lapse of 1 year from last date to make application, late cut @ 10% (i.e. Rs. 18524/-) should have been levied.
- (iv) For supplies made between October to December, 2007, last date of application without late cut was 30.06.2008. As the application was made on 23.03.2010 i.e. after a lapse of 1 year from last date to make application, late cut @ 10% (i.e. Rs. 15032/-) should have been levied.
- (v) For supplies made between April to June, 2008, last date of application without late cut was 31.12.2008. As the application was made on 23.03.2010 i.e. after a lapse of 1 year from last date to make application, late cut @ 10% (i.e. Rs. 2143/-) should have been levied.

3.3 Therefore the Audit concluded that late cut was to be levied in some claims for delay in filing the application, while the other supplies were time barred. This resulted in excess payment of Rs. 409,937/-.

3.3 The appellant was issued a show cause notice dated 7/14.03.2017 by the Development Commissioner. The Appellant was given several opportunities of personal hearing by the DC on 22.03.2017, 22.04.2017, 25.04.2017 and 13.06.2017. However, the Appellant vide its email/letter dated 20.03.17/18:05.17 requested for extension of hearing. The letters to appear on 22.04.2017/25.04.2017 were returned by the postal authorities with no remarks. Hence, the DC proceeded to adjudicate the matter and imposed a penalty of Rs. 1,00,000/- (One lakhs Rupees only) on the Appellant vide Order-in-original dated 06.09.2017 for non-refund of the said amount alongwith recovery of Rs. 409,937/-.

4.0 Aggrieved by the Adjudication Order dated 06.09.2017, the Appellant filed the present appeal. An opportunity of personal hearing was granted to the Appellant on 03.01.2019 in

which Mr. Sadiq G. Hathiyari, Chartered Accountant, appeared and represented the Appellant before us. The appellant in its submissions and during personal hearing stated that:

- i) It procured the goods Cassia Splits (seeds) under purchase order wherein declaration Form 'H' was mentioned. However, the procured goods were not finished products but intermediate for final manufacture of Cassia Gum Powder. Hence, the goods were not eligible for procurement against Declaration Form 'H'. During internal verification of records, it was realized that the Company should have procured goods from DTA under declaration Form 'C' with 2% CST and not under declaration Form 'H'. Hence it immediately intimated the DTA suppliers and called for CST @ 2% Debit Notes on 16.4.2009 and issued declaration Form 'C'. Payments against these Debit Notes were made in July/August 2009.
- ii) It claimed reimbursement of CST following the procedure as laid down in para 3(viii) of Appendix 14-I-I for refunds by making applications within the 'last date for application without late cut'. The DC, KASEZ accepted the claims and refunds were given to it.
- iii) As per para 3(viii) of Appendix 14-I-I, the last date of application without late cut should be determined based on the quarter in which the claims have materialized considering date of payment of CST by it to the suppliers. As such there is not delay in claim submission.
- iv) The observation made by CAG is not in accordance with law and the correct procedure as laid down for claiming reimbursement of CST 2%, the payment of CST amount to the supplier is the prime consideration for application of refund as certified by Chartered Accountants. All CST payments were made during the Quarter July to September, 2009 for which the last date for application without late cut would be 31.03.2010. Since the application for reimbursement of CST was made on 23.03.2010, it was well within time.
- v) The appellant's EOU had applied for NOC for exit from EOU scheme and obtained Exit Order dated 04.03.2015. The issuance of Exit Order confirms that all clearances internally at KASEZ were in order and there was nil liability against the Appellant.
- vi) No communication from DC, KASEZ on this subject was received by it as the EOU was closed.

4.0 Comments from the office of the Development Commissioner, Kandla, SEZ, have also been obtained on the appeal filed by the appellant Unit. The DC has, interalia, stated that :

- (i) The unit itself admitted that by mistake, the goods were procured under purchased order wherein Declaration Form "H" was mentioned whereas the correct declaration form should be Form "C" with 2% CST. After the lapse of more than one year, the same supplies were converted into "C" Form and then CST was paid by the EOU on the basis of Debit Notes raised by the suppliers and the same has been claimed from the DC, KASEZ after delay ranging between 1 and 2 years from the date of supplies. There is no such provision the FTP/HBP of the relevant period

to reimburse CST on such supplies. Thus, as the unit accepted the mistake, on this ground alone, the appeal should be dismissed.

- (ii) The appellant gave undertakings and declarations in all its claim applications, as mentioned in the Appendix 14-I-I, that in case excess CST amount is paid, the same will be refunded after receipt of demand notice from the DC. Any payment made by Government in any case is subject to Audit.

5.0 We have considered the Adjudication Order dated 06.09.2017 passed by DC, KASEZ, appeal preferred by the Appellant, oral/written submissions made by its representatives, comments of office of the DC, KASEZ and all other aspects relevant to the case. It is noted that as per para 3(viii) of Appendix 14-I-I, the application for claiming reimbursement is required to be filed by the claimant within a period of 6 months from completion of the quarter in which the claim has arisen. In case of procurement of goods against payment in installments, the CST reimbursement may be made in the quarter in which the full payment has been effected against the invoice/bill. In this case, the final payment of CST amount has been made during the Quarter July to September, 2009. Hence, the claim for reimbursement would arise in that quarter only i.e. July to September, 2009. Since, the applications for claim of reimbursement of CST have been made on 23.03.2010, these applications should have been processed with the applicable late cut.

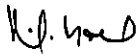
6.0 In view of the above, in exercise of the powers vested in us under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5<sup>th</sup> December 2014, we pass the following order:

Order

F.No. 01/92/171/20/AM 18/ PC-VI/ 173

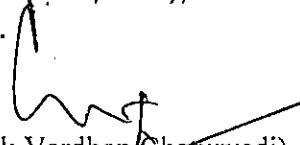
Dated: 01.02.2019

Order-in-Original No. KASEZ/ACCTS/CRA/01/13-14(Vol III) dated 06.09.2017 passed by the Development Commissioner, Kandla SEZ is set aside and the case is remanded back to the DC for de-novo consideration. The appellant may make submissions, if any, in this regard to the adjudicating authority within 30 day of the date of this order.



(R.P. Goyal)

Addl. Director General of Foreign Trade



(Alok Vardhan Chaturvedi)

Director General of Foreign Trade

Copy To:

- (1) Lubrizol Advance Materials India Pvt. Ltd., Salvi, Dist- Vadodara , Gujarat.
- (2) Development Commissioner, Kandla SEZ.
- (3) DGFT Website.

  
(Shobhit Gupta)

Dy. Director General of Foreign Trade