

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

F.No. 01/92/171/24/AM 18/ PC-VI/2,3 Date of Order: 03.04.2019
Date of Dispatch: 03.04.2019

Name of the Appellant: Hemani Intermediates Pvt. Ltd.,
706, 710, Rena Complex, 7th floor,
Ramdev Nagar Road, Vidya Vihar (W),
Mumbai- 400 086

IEC Number 0395018544

Order appealed against: Order-in-Original No. 24/17-18 dated 06.09.17 passed
by the Development Commissioner, Kandla, Special
Economic Zone, Gandhidham

Order-in-Appeal passed by: Shri Alok Vardhan Chaturvedi, DGFT

Order-in-Appeal

Hemani Intermediates Pvt. Ltd., (hereinafter referred to as "the Appellant"), has filed an appeal on 16.11.2017 against Order-in-Original No. 24/17-18 dated 06.09.17 issued from F.No. KASEZ/ACCTS/CRA/01/13-14(Vol. III)/6217 passed by the Development Commissioner, Kandla Special Economic Zone.

2.0 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 orders passed by the Development Commissioner, Special Economic Zones as Adjudicating Authorities. Hence the present the appeal.

3.0 Brief facts of the case are as under:

3.1 During the Audit for the year 2007-11, the CAG, Ahmedabad observed that an amount of Rs. 182,574/- against the claim of Duty Drawback for Deemed Exports was erroneously paid to the appellant. According to Para 8.3.1(ii) of HBP(Vol.I), 2004-09, in case of supplies under paragraph 8.2(a),(b) & (c), the claim should have been filed against receipt of payment through normal banking channel in the form given in Appendix 22B. However, the appellant, being a DTA unit, claimed Deemed Export drawback of Rs. 233,208/- wherein Rs.182,574/- related to supply of goods to Micro Inks Ltd., an 100% EOU. On verification of the claim, it was found that the supplier had received the payment through Hundi whereas DBK claim is admissible only against receipt of payment through normal banking channel.

3.2 A Demand Notice was issued to the appellant on 28.10.2013 followed by a reminder dated 21.11.2014. However, the appellant vide letters dated 13.01.2014 and 15.12.2014 informed the DC that payment through Hundi can be considered as normal banking channel.

3.3 Since, the reply of the appellant was not found acceptable, a show cause notice dated 07.02.2017 was issued to the appellant by DC, KASEZ for recovery of the said amount as per para 2.15(a) of FTP and for imposition of penalty u/s 9,13 & 14 of FT(D&R) Act, 1992. The appellant was granted many opportunities of personal hearing on 22.02.2017, 14.03.2017, 19.04.2017, 15.05.2017 and 13.06.2017. However, nobody appeared before the adjudicating Authority on behalf of the appellant.

3.4 Hence, the Development Commissioner, KASEZ proceeded to adjudicate the matter and vide Order-in-Original No. 24/17-18 dated 06.09.17, imposed a penalty of Rs. 50,000/- on the appellant along with recovery of an amount of Rs. 182,574/- erroneously paid to the appellant.

4.0 Aggrieved by the Adjudication Order dated 06.09.2017, the appellant filed the present appeal. During the personal hearing on 03/01/2019, Mr. Sunil R. Thakre, the consultant appearing on behalf of the appellant asked for some more time to produce documentary evidence to the effect that the payment through Hundi is normal banking channel. Another personal hearing was granted on 31.01.2019. However the consultant could not produce any such document. The appellant in its oral and written submissions stated that :

- (i) It supplied the goods under invoices and accordingly it received the payment as per terms and conditions within 90 days.
- (ii) It cannot provide a copy of the said Hundi. If required, the department may ask the same from recipient of goods for verification,
- (iii) It received payment through Hundi which is also through Banking channel only.
- (iv) Since it was facing financial crises during that period, it requested the party that they need payment. The party suggested it to make Hundi.
- (v) It is not stated anywhere in para 8.3.1(ii) of FTP, 2004-09 that the payment cannot be accepted through Hundi (Bill of Exchange).
- (vi) The DC has passed the Order-in-Original dated 06.09.17 without giving personal hearing.

5.0 Comments from the office of the Development Commissioner, KASEZ have also been obtained on the appeal filed by the appellant which have been received vide their letter dated 12/15.10.2018. The DC has, inter alia, stated that :

- (i) the appellant was given sufficient time and opportunity for personal hearing;
- (ii) a Hundi being a part of the informal system have no legal status and is not covered under the Negotiable instruments Act, 1881. Hundi payment does not come under payment through normal banking channel;
- (iii) as per ANF8 of the relevant period, for claiming DBK/TED for supply to EOU, a certificate is required to be given regarding receipt of payment through normal banking channel in the form given in Appendix-22B. The certificate submitted by the appellant states that the payment has been received through Hundi.

6.0 I have considered the Adjudication Order dated 06.09.17 passed by DC, KASEZ, appeal preferred by the Unit and oral/written submissions made by the appellant, comments of office of the DC, KASEZ and all other aspects relevant to the case. It is noted that as per para 8.3.1(ii) of HBP(Vol.I), 2004-09, claim for deemed export benefits on supply of goods to EOUs can be filed only if the payment against such supplies have been received through normal banking channel. Further, ANF8 of the relevant period also prescribe a certificate regarding receipt of payment through normal banking channel in the form as given in Appendix-22B. In the present case, the payment was received by the supplier/appellant through Hundi and not through normal banking channel. The appellant has failed to produce any documentary evidence in support of its contention for treating the Hundi payment as having been made under the normal banking channel. Hence, no grounds of appeal are made out.

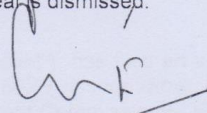
7.0 In view of the above, in exercise of the powers vested in us under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, I pass the following order:

Order

F.No. 01/92/171/24/AM 18/ PC-VI/

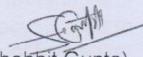
Dated: 03.04.2019

Order-in-Original No. 24/17-18 dated 06.09.2017 passed by the Development Commissioner, KASEZ, Gandhidham, Gujarat is upheld and the appeal is dismissed.


(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- ✓(1) Himani Intermediates Pvt. Ltd. 706,710, Reena Complex, 7th Floor, Ramdev Nagar Road, VidyaVihar(W), Mumbai-400086
- ✓(2) Development Commissioner, SEZ, Kandla with an advice to make recoveries.
- ✓(3) DGFT's website.


(Shobhit Gupta)

Dy. Director General of Foreign Trade