

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

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F.No. 01/92/171/0069/AM-16/ PC-VI/244 Date of Order: 13 .09.2019  
245 Date of Dispatch: 12 .09.2019

Name of the Appellant: Lodha Jewellery Exports India Pvt. Ltd.  
Door No. 3192, Gali No. 31, Beadon Pura,  
4<sup>th</sup> Floor, Karol Bagh, New Delhi - 110005

Order appealed against: Order-in-Original No. 10-87/04-100%EOU  
dated 05.06.2015 passed by the Development  
Commissioner, Noida, Special Economic Zone

IEC No. 0404003656

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

**Order-in-Appeal**

Lodha Jewellery Exports India Pvt. Ltd., (here-in-after referred to as 'the appellant'), an EOU unit, filed an appeal on 15.07.2015 against Order-in-Original No. 10-87/04-100%EOU dated 05.06.2015 passed by the Development Commissioner, Noida, Special Economic Zone.

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 me.

3.0 Brief facts of the case:

3.1 The appellant was granted an LOP No. 10/87/2004-100%EOU/85 dated 07.02.2005 for manufacture & export of "Handmade Gold Jewellery".

3.2 In terms of para 6.5.2 of Handbook of Procedures (HBP), an EOU can undertake repair/re-making provided it obtains prior permission from the jurisdictional Development

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Commissioner (SEZ). As per para 6.16 of the Foreign Trade Policy (FTP) 2009-2014, a unit is required to obtain prior permission from Board of Approval (BoA) to carry out repair/remaking activity along with licensed manufacturing activity. Further, as per para 6.2(f) of the FTP 2009-14, it can import duty free goods only for authorized activity.

3.3 It was noticed from the QPRs submitted by the unit that the appellant had imported 6681.420 gms gold jewellery valued US\$ 233397.00 vide BE No. 7537365 dated 31.07.2012 for repair/remarking and availed benefit of Customs Duty foregone of Rs. 13,47,556/-.

3.4 However, the appellant neither sought prior permission of BoA under para 6.16 of FTP, 2009-14 for repair/remaking of gold jewellery nor it was listed in the approved list of manufacturing as per LOP. Further, the gold jewellery was not allowed to the appellant for seeking exemption from Customs and Central Excise as per Annexure-I to the Letter of Undertaking (LUT).

3.5 Since the appellant did not have the requisite permission to either repair/ re-make old jewellery or import old jewellery, a show Cause Notice (SCN) No. 10-87/04-100%EOU/4171 dated 23.04.2013 was issued under section 11(2) of the Foreign Trade (Development and Regulation) Act 1992, here-in-after referred to as "the act", for undertaking unauthorized and unapproved manufacturing activity and undertaking unauthorized import.

3.6 The appellant, vide letter dated 22.05.2013 and during personal hearing before the DC on 12.07.2013 stated that it had exported 3482.24 Kgs of Handmade jewellery and its repair/remaking activity was confined to damaged export consignments which were rejected by its buyer/customer. It had kept Superintendent of Central Excise informed regarding procurement and movement of imported goods and other activities. It was unaware of the provisions of the EOU scheme. It was a minor procedural lapse which might be regularized.

3.7 The DC in its findings has recorded that the applicant could not furnish adequate proof to corroborate its claim that the repair/remaking activity was confined to export shipments which were damaged. Hence, the DC proceeded to adjudicate the matter and held the activity of repair/remaking as unauthorized and imposed a penalty of Rs. One Lakh u/s 11 of FTDR Act, 1992 read with para 6.6.1(c) of FTP 2009-14 vide order-in-original dated 5.6.2015.

4. Aggrieved by the adjudication order dated 5.6.2015, the appellant filed the present appeal. An opportunity of personal hearing was granted to the appellant on 12.03.2019 in which Mr. Anil Kumar, Manager appeared. The appellant, in its oral and written submissions, stated that as per para 6.31 of HBP, the Jurisdictional Commissioner of Customs and Excise is a member of UAC for EOU which is authorized

to supervise and monitor permission, clearances etc. in terms of para 6.31.1 of HBP read with Appendix 14-I-G of HBP. O/o Central Excise granted it a Procurement Certificate dated 25.07.2012 for import of 6681.420 gms gold jewellery for export after repair/remaking. It was under impression that permission given by CE (being member of UAC) was adequate and no other permission was required to be obtained.

5. Comments from the office of the Development Commissioner, KASEZ were also obtained on the appeal. The DC has, inter-alia, stated that for import of gold jewellery for remaking/repair purpose, the appellant was required to apply the DC office for inclusion of remaking/repair activity in the LOP and also for inclusion of import of gold jewellery in the list of exemption material and then it should have applied to Central Excise Authorities for procurement certificate. But the appellant failed to do so. The plea of the appellant that it obtained the permission of Jurisdictional Central Excise Authority (a member of UAC) is not tenable and cannot be accepted.

6. I have considered the Order-in-Original dated 5.6.2015 passed by DC, NSEZ, appeal preferred by the appellant and oral/written submissions made by its representatives, report/comments of office of the DC, NSEZ and all other aspects relevant to the case. I observe the following:

- (i) As per the relevant provisions of FTP, BoA is the governing body to grant permission to EOUs to undertake authorised activity. The appellant was granted permission by the BoA to manufacture & export of "Handmade Gold Jewellery" only which did not include repair/remaking of gold jewellery.
- (ii) UAC is the authority under FTP/HBP to monitor day to day affairs and performances of EOU. As per the provisions of FTP/HBP, the appellant was required to obtain prior permission of the DC/UAC for import of gold for the purpose of repair/remaking of gold jewellery. However, it failed to do so. Obtaining procurement Certificate from Central Excise cannot be considered as permission given by UAC.
- (iii) The appellant failed to produce adequate proof to corroborate its claim that the repair/remaking activity was confined to export shipments which were damaged.
- (iv) It is noted that the appellant was a star house and was enjoying benefits of status holder since 2007. Hence it had additional responsibility of ensuring compliance of Policy/Procedure. The contention of the appellant that it was not aware of the provisions of the EOU scheme is not tenable.
- (v) The appellant has already deposited the penalty amount of Rs. One Lakh. The appellant has already de-bonded from EOU scheme vide order of NSEZ dated 08.08.2016.

7. 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. 01/92/171/0069/AM-16/ PC-VI/

Dated: 13 .09. 2019

The appeal filed by the appellant is dismissed.



(Alok Vardhan Chaturvedi)  
Director General of Foreign Trade

**Copy To:**

- (1) Lodha Jewellery Exports India Pvt. Ltd. Door No. 3192, Gali No. 31, Beadon Pura, 4<sup>th</sup> Floor, Karol Bagh, New Delhi - 110005
- (2) Development Commissioner, NSEZ, Noida.
- (3) DGFT Website.



(Shobhit Gupta)  
Dy. Director General of Foreign Trade