

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

F.No. 01/92/171/33/AM18/ PC-VI /197-198 Date of Order: 8.8.2019
Date of Dispatch: 8.8.2019

Name of the Noticee: Reliance Naval & Engineering Ltd.,
Pipavav Port, Post Ucchaiya, Via- Rajula, Amreli,
Gujarat- 365560.

IEC Number 0899003702

Order reviewed against: Order-in-Original No. 33/17-18 dated 05.12.2017
passed by the Development Commissioner,
Kandla Special Economic Zone, Ghandhidham

KASEZ File No. KASEZ/ACCTS/CRA/01/13-14(Vol.III)/9521

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

Order-in-Review

During the CRA review/ Audit conducted by CAG, Ahmadabad it was observed that an amount of Rs. 1,64,47,474/- against the claims as per following details were erroneously obtained by Reliance Naval & Engineering Ltd. (earlier known as Pipavav Defence & Offshore Eng. Company Ltd.) (for the sake of brevity here-in-after referred to as "RNEL"), a 100% EOU, from the office of Development Commissioner, Kandla Special Economic Zone, Kandla (DC, KASEZ):

- (i) Refund of CST of Rs. 33,79,986/- against inadmissible items.
- (ii) Refund of TED of Rs. 85,94,320/- on wrong calculation of duty on High Speed oil.
- (iii) Refund of TED of Rs. 28,53,357/- on HSD supplied to and paid by contactor.
- (iv) DEPB scrips for Rs. 15,95,503/- without submission of requisite documents.
- (v) Refund of CST of Rs. 24,308/- against inadmissible items.

2. DC KASEZ issued demand notices to RNEL asking it to return the above said benefits which were not due to them. As it did not give any reply to the said demand notices, a notice dated 01/03.11.2016 was issued to it by the DC, KASEZ to show cause as to why action for recovery of above said amounts and for imposition of penalty under section 1(2) of the Foreign Trade (Development & Regulation) Act, 1992 (FTDR Act) may not be taken against it.

3. In reply to the Show Cause Notice, RNEL made detailed submissions justifying the above said claims obtained by it.

4. On conclusion of adjudication proceedings, the Development Commissioner, Kandla SEZ vide Order-in-Original No. 33/17-18 dated 05.12.2017 ordered the following:


- (i) To drop proceedings in r/o the issue of CST refund on inadmissible items as mentioned in para 1(i) and 1(v) supra,
- (ii) Imposed a penalty of Rs. 10,00,000/- u/s 13 read with section 11 of FTDR Act 1992, as amended for obtaining undue benefits, with a direction to deposit an amount of Rs. 1,14,47,677 for the claims as mentioned in para 1(ii) and 1(iii) supra in the Government Account and Rs. 15,95,503 for the claim as mentioned in para 1(iv) in the appropriate Customs Duty account

5. RNEL filed before the undersigned an appeal u/s15 of the FTDR Act 1992 against Order-in-Original No. 33/17-18 dated 05.12.2017 passed by DC, KASEZ. While examining the appeal, it was observed that:

- (i) Only certain capital goods and raw materials for making capital goods are allowed to be procured as per para 6.5.1(b) and (c) of HBP, 2009-14.
- (ii) A Dry Dock is neither allowed for procurement under para 6.5.1 of HBP, 2009-14 nor it has been allowed specifically by the Board of Approvals in terms of para 6.5.1(f). Further, dry dock has not been allowed to it under the LOP obtained by it.

6. In view of the above observations, it appeared that the relief given by the Development Commissioner by dropping proceedings for the recoveries as mentioned in para 4(i) above was not appropriate. Therefore the matter was reviewed in terms of section 16 of the Foreign Trade (Development and Regulation) Act, 1992 by issuing a show cause dated 15/07/19 to RNEL as to why the proceedings dropped by the DC, KASEZ regarding recovery of CST of Rs. 33,79,986/- and Rs. 24,308/- obtained by it against inadmissible items mentioned in para 4(i) above should not be re-opened and why action as deem fit may not be taken against it regarding the above two demands.

7. RNEL, made written submissions vide letter dated 18.7.2019. A personal hearing in the matter was held on 24.7.2019. During the personal hearing, it reiterated the submissions made in writing. RNEL stated that:

- (i) On a plain reading of Para 6.5.1 (a) to (e) of HBP, it is clear that goods permitted to be imported/procured from DTA shall cover the goods enumerated under these para. In addition, the BoA can also allow goods for procurement from DTA which are not covered under the said paras.
 - (ii) Para 6.5.1(b) of HBP, which reads as "Capital goods, whether new or second-hand, including inter-alia following and their spares" makes a specific reference to Capital Goods in the very beginning. This means that all the items which are including within the definition of capital goods under para 9.12 of FTP are eligible to be procured by the EOU from DTA.
 - (iii) Dry dock is a capital good in accordance with the definition given in para 9.12 of FTP.
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In its reply, RNEL quoted many judgements pronounced by various authorities, including that by the Honourable High Courts and Supreme Court to plead that a dry dock is a capital good.

7. I have considered the contents of the show cause notice vis-a-vis oral/written submissions made by the noticee and all other aspects relevant to the case. The only point of contention in this case is whether or not a dry dock can be covered under the definition of Capital Goods as mentioned in para 9.12 of the FTP, especially in case of a ship repair dock yard. In the various judgements quoted by the noticee, a dry dock has specifically been classified under capital goods category. As the definition of capital goods given in the FTP also includes "plant", the noticee has quoted judgements where a plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business, not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as "plant", the article must have some degree of durability. The noticee is in the business of, inter-alia, manufacturing and repair of ships/boats/vessels etc. It needs to have a dry dock for carrying out such activities. Its dry dock functions as a plant in carrying out the activities and is a necessary facility without which the noticee would not be in a position to undertake ship building/repairs.

8. In view of the above, in exercise of the powers vested in me under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010), I pass the following order:

Order

F.No. 01/92/171/33/AM18/ PC-VI

Dated: 08.08.2019

The proceedings initiated vide Show Cause notice of even number dated 15-07-2019 stand withdrawn.



(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- (1) Reliance Naval & Engineering Ltd., Pipavav Port, Post Ucchaiya, Via- Rajula, Amreli, Gujarat- 365560.
- (2) Development Commissioner, SEZ, Kandla.
- (3) DGFT's website


(Shobhit Gupta)

Dy. Director General of Foreign Trade