

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

F.No. 01/92/171/16/AM-19/ PC-VI/

Date of Order: 13 .09.2019

Date of Dispatch: 17 .09.2019

Name of the Appellant:

Siyaram Impex Pvt. Ltd.,
Plot No. 06 & 07, Naghedi,
Khodiyar Colony, Lakhavavad,
Dared, Jamnagar - 3610006

Order appealed against:

Order-in-Original No. 11/2018-19 dated
20.08.2018 passed by the Development
Commissioner, Kandla, Special Economic Zone

IEC No.

2407001338

Order-in-Appeal passed by:

Shri Alok Vardhan Chaturvedi, DGFT

Order-in-Appeal

Siyaram Impex Pvt. Ltd., (hereinafter referred to as 'the appellant'), an EOU unit, filed an appeal on 17.10.2018 against Order-in-Original No. 11/2018-19 dated 20.08.2018 passed by the Development Commissioner (here-in-after referred to as "DC"), Kandla, Special Economic Zone issued from File No. KASEZ/100%EOU/II/03/2007-08/5795.

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 orders passed by the Development Commissioner, Special Economic Zones as Adjudicating Authority. Hence, the present the appeal is before me.

3.0 Brief facts of the case:

3.1 The appellant was granted Letter of Permission (LOP) No. KASEZ/100%EOU/II/03/2007-08/1717 dated 22.05.2007, as amended, for manufacture & export of Brass/Copper Ingots/Billets, Brass/Copper Bars, Rods Section and Profiles etc.

3.2 As per para 2.54(a) of Foreign Trade Policy (FTP), 2015-20, if an exporter fails to realize export proceeds within time specified by RBI, he shall, without prejudice to any liability or penalty under any law in force, be liable to return all benefits/incentives availed against such exports and action in accordance with provisions of the Foreign Trade (Development and Regulation) Act, 1992, here-in-after referred to as "the act", Rules and Orders made there under and FTP. Further para 6.05(C) of the FTP stipulates that failure to ensure positive NFE or to abide by any of the terms and conditions of LOP/LOI/IL/LUT shall render the unit liable to penal action under the provisions of the Act, Rules and Orders made there under.

3.3 At the time of monitoring of EOUs on 29.03.2017, it was noticed from the Annual Performance Report submitted by the appellant that foreign exchange amounting to Rs. 1334.65 lakhs was pending for remittance as on 31.03.2016 for which the appellant had not taken any action for realization.

3.4 As a result, the appellant failed to achieve the stipulated NFE for the third Five Year Block period by Rs. 1008.89 lakhs, as value of foreign exchange not realized is deducted from NFE earned.

3.5 Accordingly, a Notice No. KASEZ/100%EOU/II/03/2007-08/2859 dated 14.06.2017 was issued to the appellant to show Cause as to why action should not be taken against it for cancellation of LOP under section of the Act, read with Rule 10 of Foreign Trade (Regulation) Rules, 1993 and imposition of penalty u/s 11 of the act.

3.6 During personal hearing before the DC on 25.09.2017, the appellant sought six months time for realization of the outstanding amount. However, no documentary evidences were submitted by the appellant during this period. Further, the appellant vide letter dated 24.04.2018 requested for three months but the appellant did not submit any document showing realization of the foreign exchange amount. One more opportunity of personal hearing was given to the appellant on 10.07.2018 which was not availed by it.

3.7 Hence, the DC proceeded to adjudicate the matter and imposed a penalty of Rs. Thirty Lakhs u/s 11 of the Act, vide order-in-original dated 20.08.2018.

4. Aggrieved by the adjudication order dated 20.08.2018, the appellant filed the present appeal. The appellant, in its written and oral submissions during the personal hearing held on 29.07.2019, stated that:

(i) it is not only exporting goods to the foreign buyers, but also importing the raw materials from the same entities. Due to quality issues in goods, it has withheld the payment to be made to them for the goods imported by it and therefore, they have also

withheld its payment. The issue will be settled only when the issue regarding the quality of goods is resolved and the payment is released from both the ends.

(ii) Its sister concern namely Siyaram Metal udyog Pvt. Ltd. is also dealing with the said foreign buyer. It has also withheld the payment to the said buyer due to the issue of quality. If accounts of both the firms are taken together, the total outstanding amount would be Rs. 7,54,08,304/- only.

(iii) It has requested to the RBI to allow adjusting the receivable and payable balance between these two companies for which it is expecting reply from the RBI.

5. Comments from the office of the Development Commissioner, KASEZ were also obtained on the appeal. The DC, inter-alia, stated that the appellant company is registered under EOU scheme which is different entity from Siyaram Metal Udyog Pvt. Ltd. The appellant was granted enough time and several opportunities, on its own request, to realize the outstanding amount. However, it failed to do so.

6. I have considered the Order-in-Original dated 20.8.2018 passed by DC, KASEZ, appeal preferred by the appellant and oral/written submissions made by its representatives, report/comments of office of the DC, KASEZ and all other aspects relevant to the case. I observed that

- (i) a unit under the EOU scheme is required to achieve net foreign exchange as well as it is required to realise the export proceeds within the time limit prescribed by RBI. However, the appellant failed to realise the export proceeds within the prescribed time limit.
- (ii) The unit working under the EOU scheme is required to maintain separate accounts of authorised operations being undertaken by it. The accounts can not be adjusted with the accounts of any other unit or firm and amount receivable/payable by any entity can not be adjusted with that of other entity. Hence, the contention of the appellant to adjust its account with the account of its sister concern is not acceptable.
- (iii) Even if, for a moment, it is allowed to adjust the accounts of its sister concern, it would still have a huge outstanding receivable.
- (iv) The appellant has been given several opportunities and enough time to realise the said amount. However, it failed to do so. Even till date, the appellant could not produce any document which can show the realisation of the said amount. No serious effort has been noted on the part of the appellant for realisation of the said amount. The appellant still trying to misguide the authority to adjust the receivable with the payables of its sister concern.

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. 01/92/171/16/AM-19/PC-VII

Dated: 13 .09. 2019

The appeal filed by the appellant is dismissed.



(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- (1) Siyaram Impex Pvt. Ltd., Plot No. 06 & 07, Naghedi, Khodiyar Colony, Lakhavavad, Dared, Jamnagar - 3610006
- (2) Development Commissioner, SEZ, Kandla.
- (3) DGFT Website.



(Shobhit Gupta)
Dy. Director General of Foreign Trade