

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

F.No. 01/92/171/15/AM-18/ PC-VI/7475 Date of Order: 14 .06.2019
Date of Dispatch: 14 .06.2019

Name of the Appellant: Taurus Agile Technology Corporation Pvt. Ltd.,
Chandigarh

IEC No. 0506049655

Order appealed against: Order-in-Original No. 03-378/2006-
100%EOU/9637 dated 07.09.2017 passed by
the Development Commissioner, Noida SEZ,
Noida

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

Order-in-Appeal

Taurus Agile Technology Corporation Pvt. Ltd., Chandigarh (hereinafter referred to as 'the appellant'), a 100% EOU, filed an appeal on 01.11.2017 against Order-in-Original No. 03-378/2006-100%EOU/9637 dated 07.09.2017 passed by the Development Commissioner (DC), Noida SEZ imposing on it a penalty of Rs 53,00,000/-.

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 issued a letter of permission (LOP) No. 03-378/2006-100%EOU/160 dated 08.01.2007, as amended, to set up an EOU at Mohali, Punjab for manufacture and export of Turbine Components, Machine Components, Industrial Equipments and Automotive Components. It commenced commercial production on 27.10.2008.

3.2 On review of performance of the appellant during five year block of 27.10.2008 to 26.10.2013, it was observed that:

- (i) It did not achieve positive Net Foreign Exchange Earning (NFEE) during the said five year block period as required under para 6.05 of Foreign Trade Policy (FTP), 2009-14 read with para 6.9.1 of Hand Book of Procedures (HBP), 2009-14,
- (ii) It rendered 'Services' by means of Tool Development Charge of Rs. 974.17 lakh without disclosure/approval of such activity in the LOP in contravention of provisions of para 6.2.6 and 6.32(5) of HBP, 2009-14 read with para 6.7 of FTP, 2009-14.
- (iii) It undertook unauthorized sale of goods in the Domestic Tariff Area (DTA) worth Rs. 1,59,82,886/- on payment of concessional duty during June, 2012 to March, 2013 in contravention of provisions of para 6.8 of FTP read with para 6.17 of HBP, 2009-14 .

3.3 Hence, the appellant was issued a show Cause notice dated 31.01.2017 under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 (here in after referred to as "the act") read with para 6.6.1(c) of the FTP conveying above contraventions for imposition of penalty.

3.4 The appellant pleaded that

- (i) Its plant became operational in the year 2010. It has yet not started the commercial production as gestation period in aerospace sector is 5 to 7 years. Due to lack of working capital as well as sufficient orders, it could not achieve positive NFEE.
- (ii) It is not in the business of providing services and the amount of Rs. 974.17 lakhs earned is attributable to the core manufacturing activity viz. development and production of aircraft parts supplied to Pratt & Whitney.
- (iii) It did not make any DTA sale on concessional rate of duty. It paid total duties payable at the time of sale in DTA.

3.5 The DC in its findings recorded that the appellant vide its letter dated 20.11.2008 intimated commencement of Commercial production w.e.f. 27.10.2008. This fact was also mentioned in its quarterly/Annual Progress Reports(Q/APR) submitted by the appellant from time to time. It's admission about sale in DTA also indicate that it had commenced commercial production. The Board of Approval (BOA) in its meeting held on 20.02.2015 observed that it not only had negative NFEE but had also affected DTA sale at concessional rate of duty in contravention of the rules. In terms of para 6.8(h) of FTP, it was not entitled to make sale in the DTA as it had not achieved positive NFEE. Hence, the DC imposed a penalty of Rs. 53.00 lakh on the appellant along with recovery

of duty, interest etc. by Jurisdictional Customs/Central Excise Authorities vide Order-in-Original dated 07.09.2017.

4.0 Aggrieved by the Order-in-Original dated 07.09.2017; the appellant filed the present appeal. The appellant in its written/oral submissions during the personal hearing on 25.10.2018 stated that:

- (i) *As per the directions of BoA, its unit was visited by the officers of DC, Noida who in their report, confirmed that bulk production had not started.*
- (ii) *The DC ignored the fact that the goods cleared in DTA were only parts which were sold to test whether it could meet quality requirements and could be safely used for operations. Hence it should not be construed as commercial production.*
- (iii) *The impugned order is beyond show cause notice as intimation of commercial production stated to have been given vide letter dated 20.11.2008 was never mentioned in it.*
- (iv) *The impugned order is in violation of the principles of natural justice as it was not provided an opportunity of personal hearing before issuance of adjudication order nor it was provided a copy of said letter dated 20.11.2008 at the time of adjudication proceedings.*

5.0 Comments from the office of the Development Commissioner, Noida, SEZ, were also obtained on the appeal. The DC has, *inter-alia*, stated that

(i) Verification of the unit was done only to see whether it would be able to achieve NFEE if its block period is extended. The report speaks about bulk production only. It does not mean that that the unit had not commenced commercial production.

(ii) As per APRs, the appellant has made export of Rs. 1041.68 lakhs and DTA sale of Rs. 147.91 lakhs during the five year block which is not possible without commencement of commercial production.

6.0 I have gone through the facts, oral/written submissions made by the appellant, comments of DC, NSEZ and all other aspects relevant to the case. To summarize, while executing the LUT, the appellant was well aware of the policy provisions governing the EOU scheme, especially regarding achieving NFEE in the prescribed period. It is noted that it made substantial exports in each year during the five year block period of 27.10.2008 to 26.10.2013. In the year 2008-09 only, it has made export of Rs. 772.23 lakhs which is not possible without commencement of commercial production. I have also called for and perused letter dated 20.11.2008 of the appellant whereby it has intimated to have commenced commercial production w.e.f. 27.10.2008. This fact is also reflected in the QPRs/APRs submitted by it from time to time. It is further observed that, it was categorically mentioned in the show Cause Notice dated 31.01.2017 that the unit intimated commencement of commercial production w.e.f. 27.10.2008. Further, as recorded in Order-in-Original dated 07.09.2017; the appellant

was provided several opportunities of personal hearing during the adjudication proceedings. All documents sought by it were provided to it during the Personal Hearing held on 07.06.2017. Hence, the plea of the appellant that the adjudication order is beyond show cause notice or against the principles of natural justice is not tenable. As per policy, it was under obligation to achieve positive NFE in the given five year block period. Simultaneously, it was also not authorized to sale the goods in DTA. Hence, it contravened the legal provisions of the act; relevant provisions of FTP/HBP and conditions mentioned in the LOP/LUT. I, therefore, find no reason to interfere in the adjudication order dated 07.09.2017 as passed by DC, NSEZ.

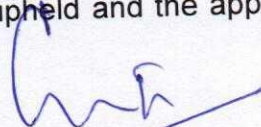
7.0 In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, I pass the following order:

Order

F.No. 01/92/171/15/AM-18/ PC-VI/


Dated: 14.06.2019

Order Order-in-original No. 03-378/2006-100%EOU/9637 dated 07.09.2017 passed by the Development Commissioner, Noida, SEZ is upheld and the appeal is dismissed.


(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- (1) Taurus Agile Technology Corporation Pvt. Ltd., 7/1, 2nd Floor, Block 41, Singh Sabha Road, Shakti Nagar, New Delhi - 110007
- (2) Development Commissioner, NSEZ with an advice to make recoveries.
- (3) DGFT's website


(Shobhit Gupta)
Dy. Director General of Foreign Trade