

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

F.No. 01/92/171/01/AM-21/ PC-VI/22-23 Date of Order: 01.12.2020  
Date of Dispatch: 01.12.2020

Name of the Appellant: Radiant Solar Pvt. Ltd., Plot No. 15, Fabcity,  
Raviryal Village, Maheshwaram(M),  
Ranga Reddy Distt., Hyderabad - 501 510

IEC No. 0507090098

Order appealed against: O-i-O No.9/080/SEZ/HYD/2010  
dated 20.12.2019 passed by  
the Development Commissioner, VSEZ

Order-in-Appeal passed by: Amit Yadav, DGFT

**Order-in-Appeal**

Radiant Solar Pvt. Ltd. (hereinafter referred to as 'the Appellant'), an SEZ unit, filed an appeal on 27.12.2019 against Order-in-Original No. 9/080/SEZ/HYD/2010 dated 20.12.2019 passed by the Development Commissioner (DC), Visakhapatnam SEZ imposing on it a penalty of Rs 4.28 Lakhs.

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 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 Approval (LOA) No. 9/080/SEZ/HYD/2010 dated 5.7.2010, as amended, for setting up a unit for manufacture and export of 1) Solar PV Module, 2) Solar Lantern, 3) Solar Home Lighting System, 4) Solar Street Lighting System, 5) Solar Water Heating System and 6) Solar Inverter in FAB City SPV (India) Pvt. Ltd, an SEZ for Semiconductors at Raviryala Village, Maheshwaram Mandal, RangaReddy District, Telangana. It commenced operations on 16.8.2013 and the LOA was valid



upto 15.8.2018. This LOA was subject to the prescribed conditions. As per one of such conditions, the Appellant was required to have positive Net Foreign Exchange (NFE) earning in the block of 5 years co-terminus with the validity of LOA.

3.2 It was found that the Appellant had negative net foreign exchange (NFE) to the tune of Rs. 428.36 Lakhs for its operations during 2013-14 to 2017-18. It was also observed that there was no activity in the unit for the past 20 months. Accordingly, a notice dated 3.12.2019 was issued to it by DC, VSEZ to Show Cause as to why penalty should not be imposed on it.

3.3 The Appellant in its reply dated 9.12.2019 and during personal hearing held on 10.12.2019 stated that it was NFE negative during the period due to competition from China. It requested to consider its sales of Solar Photovoltaic Panels in the Domestic Tariff Area (DTA) for calculation of NFE in terms of Rule 53A of the SEZ Rules and take a lenient view in imposing the penalty for non-achievement of positive NFE.

3.4 The DC, in its findings, recorded that the Appellant resorted to DTA sale of Rs. 21.13 Crore against the spirit of SEZ Act/Rules and also did not realize the sale proceeds in foreign exchange. The DC has further found that the Appellant has contravened the provisions of LOA/LUT and the provisions of SEZ Act and Rules made there under by not achieving the positive NFE. Hence, the DC imposed a penalty of Rs. 4.28 lakh vide Order-in-Original dated 20.12.2019.

4.0 Aggrieved by the Order-in-Original dated 20.12.2019, the Appellant filed the present appeal. The Appellant in its written as well as oral submissions during the personal hearing on 30.07.2020 stated that:

- (i) The DC did not consider full 5 year period which ended in August 2018. The APR of 5th year 2018-19 is positive NFE of Rs. 7,29, 25,874.
- (ii) During the year 2017-18, it exported solar products worth Rs. 2,03,28,636 (US \$ 317,635) to International Crops Research Institute for the Semi -Arid tropics (ICRISAT) a UN Agricultural Research Unit in Hyderabad. ICRISAT was ready to pay in US\$. However, it preferred to take in Indian Rupees to avoid conversion expenses.
- (iii) Invoice No. EXPO/01/14-15 dated 25-04-2014 realized US\$ 1,44,000.
- (iv) The DC did not consider the investment Rs 6.5 crores which came in Foreign Exchange from USA and Australia from NRI Technocrats.
- (v) The DC did not take into consideration the physical exports of Rs. 1.4 crore to Australia in 2013-14.
- (vi) Policy changes made in April 2018 were not taken into consideration.



5.0 Comments from the office of the Development Commissioner, VSEZ, were obtained on the appeal. The DC in its letters dated 7.7.2020, 7.10.2020, email dated 9.10.2020 and 27.11.2020, *inter-alia*, stated that:

(i) Though the period of LOA is for 5 years, NFE is calculated on the basis of CA certified APRs from 16.8.2013 to 31.3.2018 (55 months). The modified return for 2018-19 was submitted to VSEZ on 21.11.2019 which was not taken into account for NFE calculations as it falls in the next block of five years.

(ii) As per data for 2018-19, no direct exports were made by the unit but only DTA sales to the tune of Rs.41.86 Lakhs were reported.

(iii) The Appellant did not mention in the APR for 2017-18 that it had exported Rs. 203.28 Lakhs worth of Solar products to ICRISAT, an UN Agricultural Research Unit in Hyderabad). Moreover, the Appellant has realized such export proceeds in INR and hence cannot be recognized. As per Rule 53(A)(n) of SEZ Rules, 2006 during the period under review, Supply of goods to Domestic Tariff Area against payment in foreign exchange from the Exchange Earners Foreign Currency (EEFC) account of the Domestic Tariff Area buyer or Free Foreign Exchange received from overseas could only be considered for calculation of NFE. The Rule, modified on 19.09.2018 (w.e.f. 21.09.2018), is not applicable.

(iv) Invoice for Rs. 91 Lakhs (\$ 1,44,000/-) for 2014-15 was taken into consideration for NFE calculation.

(v) Policy changes made in 2018 were not taken into consideration as the same were to be considered in the next block of five years.

(vi) Investment received from any of the source either from internal or foreign is not considered for NFE calculation.

(vii) As per the relevant APR, there is no export of Rs. 1.4 Cr. to Australia as claimed by the Appellant. Nor the Appellant has submitted any revised APR till date, showing the said exports.

6.0 I have gone through the facts, oral/written submissions made by the Appellant, comments of DC, VSEZ and all other aspects relevant to the case. To summarise, the Appellant was under obligation to achieve Positive Net Foreign Exchange within a period of five years from the commencement of production in accordance with Rule 53 of the SEZ Rules, 2006, as amended. The contentions of the appellant are not tenable due to the following reasons:

- (i) The unit commenced production on 16.8.2013. Hence NFE should have been calculated up to 15.8.2018. DC has intimated that the Appellant has not made any direct exports during FY 2018-19 except some DTA sale which cannot be counted for NFE calculations. Hence, even if NFE is calculated up to 15.8.2018, it would remain negative.

*by*

- (ii) During the 2017-18, sales worth Rs. 2,03,28,636 (US \$ 317,635) to ICRISAT cannot be taken into account for NFE calculations as the payments were received in INR whereas as per Rule 53(A)(n) of SEZ Rules, 2006 applicable during the relevant period, supply of goods to DTA against payment in foreign exchange from the EEFC account of DTA buyer can only be counted towards NFE calculations. The Rule modified on 19.09.2018 is not applicable in the present case.
- (iii) As per SEZ Act and Rules made thereunder, Investment received from any of the source either from internal or foreign is not considered for NFE calculation.


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 5<sup>th</sup> December 2014, I pass the following order:

**Order**

F.No. 01/92/171/01/AM-21/ PC-VI

Dated: 01.12.2020

Order-in-original No. 9/080/SEZ/HYD/2010 dated 20.12.2019 passed by the Development Commissioner, VSEZ is upheld and the appeal is dismissed.

  
11/12/2020  
(Amit Yadav)

Director General of Foreign Trade

**Copy To:**

- ✓(1) Radiant Solar Pvt. Ltd, Plot No. 15, Fabcity, Raviryal Village, Maheshwaram(M), Ranga Reddy Distt., Hyderabad - 501 510
- ✓(2) Development Commissioner, VSEZ with an advice to make recoveries.
- ✓(3) DGFT's website.

  
11/12/2020  
(Shobhit Gupta)

Dy. Director General of Foreign Trade