

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

F.No. 01/92/171/03/AM-22/PCVI/38

Date of Order: 6.09.2022
Date of Dispatch: 7.09.2022

Name of the Appellant:

Airtech Private Limited
Unit- II 50A & 50 B, Site 4,
Sahibabad Industrial Area,
Ghaziabad- 201010

IEC Number:

0588076520

Order appealed against:

Appeal filed against the Order-in-Original dated
24.02.2021 passed by the Development
Commissioner, Noida Special Economic Zone

Order passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Appeal

Airtech Pvt. Ltd (hereinafter referred to as "the Appellant") filed an appeal on 15.04.2021 (received on 11.06.2021) under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against the Order dated 24.02.2021 (issued from F.No. 12-45/2012-100%EOU/1781) passed by the Development Commissioner, Noida Special Economic Zone (hereinafter referred to as "the DC") imposing a penalty of Rs. 37,000/- (Rupees Thirty Seven Thousand Only) on the Appellant.

2.1 Vide Notification No. 101 (RE-2013)/2009-2014 dated 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 Authorities. Hence, the present appeal is before me.

2.2 Any person/party deeming himself/itself aggrieved by this order, may file a review petition under the provisions of Section 16 of the FT(D&R) Act, 1992 before the Appellate Committee, Department of Commerce, New Delhi.

3.0 Brief facts of the case:

3.1 Airtech Pvt. Ltd. was issued a Letter of Permission (LoP) No. 12-45/2012-100%EOU/10404 dated 19.12.2012 for conversion of existing DTA unit into 100% EOU for manufacture and export of Wooden Bed Steads, Wooden Bed Side Tables and Wooden Shelves/Chest of Drawers subject to conditions imposed therein. Appellant commenced production w.e.f. 27.08.2014.



3.2 Appellant executed Legal undertaking ("LUT") to abide by the terms and conditions of LoP and provisions of Foreign Trade Policy ("FTP"). LoP of the Appellant was broad-banded by the DC vide letter dated 05.05.2017 for the manufacture and export of following additional items:-

- Steel furniture and Parts, Brass furniture and Parts, Mattresses, Quilts, Side Rail Slats, Furnishing Articles and Corrugated Boxes

3.3 Appellant requested vide letter dated 18.05.2020 for exit from the EOU scheme. DC, NSEZ vide letter dated 02.06.2020 granted in-principle exit permission. Appellant submitted documents for final exit on 11.09.2020 along with a No Dues Certificate from the jurisdictional Customs office. On perusal of the APRs for 2018-19 and 2019-20 it was seen that Appellant had cleared goods in DTA to the tune of Rs. 363.15 lakhs, without any authorization from DC.

3.4 Appellant vide letter dated 06.11.2020 informed DC that all the clearances effected in DTA during 2018-19 and 2019-20 after payment of full duty without availing any concessional duty benefits or any duty exemption benefits. They were not aware of the requirement of obtaining prior permission from DC for affecting DTA sale. Since their export orders were depleting, Appellant had no alternative but to sell in DTA to keep the industry running and to save employment.

3.5 DC issued a Show-cause notice (SCN) dated 29.12.2020 to the Appellant stating that as the unit has contravened provisions of para 6.08(a)(i), 6.08(a)(ii) and Appendix 6G of FTP by effecting DTA sale during 2018-19 and 2019-20 without obtaining approval of the DC, the SCN was being issued as to why:-

(i) Finished goods sold in DTA between 2018-19 to 2019-20, without taking prior permission from Office of DC should not be treated as 'unauthorized';

(ii) A penalty should not be imposed under the provisions of the FT(D&R) Act, 1992 read with provisions of para 6.05(c) of the FTP 2015-2020.

4. Appellant in written submissions to DC stated that they were not aware of the fact that they had to obtain prior permission from DC prior to the DTA sale. The DTA sale they have effected were all done on payment of full taxes and duties and no concessional rate of duty benefit was ever availed. It was requested to condone the procedural error.

5. DC, NSEZ vide Order-in-Original dated 24.02.2021 imposed a penalty of Rs. 37000/- for unauthorized clearance of goods in DTA, under Section 11(2) FT(D&R) Act, 1992.

6. Aggrieved by the Order-in-Original dated 24.02.2021, the Appellant has filed the present Appeal. Nobody was present on behalf of the Appellant in the hearing held on 26.07.2022. In written submissions, Appellant has raised the following grounds :-

- (i) No penalty has been prescribed for DTA sale under FT(D&R) Act,
- (ii) DC did not inform the Appellant earlier about the requirement of obtaining prior permission for DTA sale.

7. Comments on the Appeal were obtained from the DC, NSEZ. The DC vide letter dated 8.7.2021 stated as under :-

- (i) Appellant in letter dated 6.11.2020 to DC had stated that all the clearances were effected in DTA during 2018-19 and 2019-20 after payment of full duty without availing any concessional duty benefits / duty exemption benefits.
- (ii) Since the unit contravened provision of Appendix 6G of HBP 2015-2020 by effecting DTA sale during 2018-19 and 2019-20, SCN was issued to the unit.
- (iii) In response to the SCN dated 29.12.2020, Appellant submitted its reply vide letter dated 7.1.2021 in which the Unit has submitted that they were not aware of the fact that they had to obtain prior permission from DC prior to the DTA sale.
- (iv) Appellant cleared finished goods in DTA to the tune of Rs. 363.15 lakhs during the period 2018-19 and 2020-21 without any authorization from DC in contravention of para 6.08 (a) (ii) of FTP.

8. I have considered the Order-in-Original dated 24.02.2021 passed by DC, NSEZ, Appeal, comments of DC, NSEZ and all other aspects relevant to the case. It is noted that opportunity of personal hearing was granted on 26.07.2022. Accordingly, the Appeal is being decided ex-parte.

- (i) The para 6.05(c) of FTP, 2015-20 stipulates as under :-

“Unit shall execute an LUT with DC concerned. 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 provisions of the FT(D&R) Act, as amended, and Rules and Orders made there under, without prejudice to action under any other law /rules and cancellation or revocation of LoP / LoI / IL.”

- (ii) For effecting DTA sale, the provision of para 6.08 of FTP (DTA Sale of Finished Products/Rejects/Waste/Scrap/Remnants and By-products) has to be complied with.
- (iii) As per Appendix 6G of FTP:-

“I. DTA SALE ENTITLEMENT FOR EOU UNITS:

(e) An application for sale of goods in DTA (as per EOU Scheme) by the EOUs shall be submitted to the Development Commissioner concerned in the application as given in ANF-6C. The application shall be certified by an



independent Chartered Accountant/Cost Accountant and endorsed by the Bond Officer of Customs/Central Excise having jurisdiction over the unit. The Development Commissioner concerned will determine the extent of the DTA sale admissible and issue authorization in terms of value....”

- (iv) As per the policy/procedure, the Appellant was required to submit an application to the DC for selling finished goods in the DTA. However, Appellant did not apply to the DC for permission for effecting DTA sale. Hence, the action taken by the DC, NSEZ for imposition of penalty for having sale in DTA for Rs.363.15lakhs during 2018-19 and 2019-20 for contravening the provisions of the FTP and conditions of the LoP is in accordance with the Act.
- (v) As regards the quantum of penalty imposed, Adjudicating authority could not have imposed a penalty less than Rs. 10,000/- and not more than five times of the value of goods for which contravention has been made or is attempted to be made, whichever is more, as per the Section 11(2) of the FT(D&R) Act, 1992. The penalty imposed could have been upto five times i.e. Rs.1,815.75 lakhs whereas the Adjudicating Authority imposed a penalty of Rs.37000/- only. By any stretch of imagination, such a penalty cannot be termed as harsh or unreasonable and is upheld.

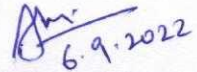
9. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5th December 2014, I pass the following order :-

Order

F.No. 01/92/171/03/AM-22/PCVI

Dated: 6 .09.2022

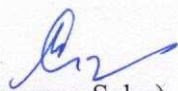
The Appeal is dismissed.


6.9.2022

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:

1. Airtech Private Limited, Unit II 50A and 50B, Site 4, Sahibabad Industrial Area, Ghaziabad -201010 (UP).
2. Development Commissioner, NSEZ for information and to make recoveries.
3. Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. DGFT's website.


(Pradyumna Sahu)
Dy. Director General of Foreign Trade