

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

F. No. 01/92/171/08/AM-17/PC-VI /1,2

Date of Order: 24.05.2023

Date of Dispatch: 24.05.2023

Name of the Appellant:

**Balaji International, Plot No. 716-A, GIDC,
Phase-II, Dared, Jamnagar-361005
(Gujarat)**

IEC Number:

2403000281

Order appealed against:

**Appeal filed against Adjudication Order No.
06/2020-21 dated 21.10.2020 passed by DC,
KASEZ**

Order passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Appeal

Balaji International.(hereinafter referred to as 'the Appellant'), has filed an appeal under section 15 of Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as "the Act") against Adjudication Order No.06/2020-21 dated 21.10.2020, passed by the Development Commissioner (hereinafter referred to as 'DC'), Kandla Special Economic Zone (KASEZ) imposing a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on the Appellant.

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 Authorities. Hence, the present appeal is before me.



3. 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.

4. Brief History of the Case

4.1 The issue pertains to appeal filed by M/s. Balaji International against Order-in-Original No. 06/2020-21 dated 21.10.2020 passed by DC, KASEZ.

4.2 The Appellant was granted a Letter of Permission (LoP) by DC, KASEZ vide No. KASEZ/100%EOU/II/61/2002-03/18030 dated 20.12.2002, as amended, for setting up an EOU for manufacture and export of Brass Parts for Electrical and Electronic Apparatus for switching, etc., as amended. The unit started commercial production w.e.f. 14.05.2003. As per the terms and conditions of the LoP, the unit was required to achieve positive Net Foreign Exchange Earning (NFE) as prescribed in the Foreign Trade Policy (FTP).

4.3 It was observed that the Appellant failed to achieve positive NFE in the second block period as on 31.03.2013. Accordingly, a notice dated 21.12.2015 was issued to the Appellant by DC, KASEZ to show cause as to why action should not be taken against it under Section 9 of the Act read with Rule 10 of the Foreign Trade (Regulation) Rules, 1993 (here-in-after referred to as "the rules") for cancellation of LoP and under Section 11 of the Act for imposition of penalty.

4.4 In reply to the Show Cause Notice and during personal hearing before the DC, the Appellant stated that its cumulative NFE for the period from commencement of production i.e. 14.05.2003 to 31.03.2013 was positive by Rs. 130.75 lakhs as per the provisions of Para 6.5 of the FTP.

4.5 On examination of the Appellant's submissions, the DC found that the Appellant failed to fulfill the stipulated NFE for the second five-year block period, in contravention of the relevant provisions of FTP/HBP in force and also the conditions of the LoP.

4.6 Further, the Appellant was not carrying out any activity since 2009-10. Its LoP expired on 13.05.2013 and it neither applied for renewal of the LoP nor for exiting from the scheme.

4.7 Hence, the DC, vide Order-in-Original No. 01/2016-17 dated 04.04.2016 imposed a penalty of Rs 2 Lakhs for not achieving stipulated NFE in the second block of five year and Rs 1 Lakh for not applying for renewal of LoP or completing procedure for exiting from the scheme.

4.8 Aggrieved by the Order-in-Original dated 04.04.2016 passed by DC, KASEZ, the Appellant filed the appeal. The appellant in its written as well as oral submissions during the personal hearing held on 12.12.2019 reiterated the same/similar arguments made before the DC. It stated that:

- While calculating the NFE for the second block of five year, the DC did not consider the opening stock of Rs. 157.29 Lakhs as carried forward from the first block of five year. If it is considered, it has positive NFE. The appellant further stated that in the matter of M/S Agarwal Exports, Jamnagar, the Appellate Authority has accepted similar plea of the party.
- Imposing a penalty of Rs. One Lakh for not applying for renewal of LoP or completing procedure for exiting from the scheme is against the principals of Natural Justice as this allegation was not stated in the show cause notice.

4.9 In exercise of the powers vested in DGFT under section 15 of the FTDR Act, 1992 (as amended in 2010) read with Notification No. 101(RE-2013)/2009-2014, dated 05.12.2014, DGFT vide F. No. 01/92/ 171/08/ AM-17/PC-VI/307 dated 08.01.2020 passed the following order .-

- Partial relief was granted. Appeal against imposition of penalty of Rs.2,00,000 /- for not achieving positive NFE was dismissed. Appeal against imposition of penalty of Rs 1,00,000/- for not making request for renewal of LoP or for not exiting from the scheme was admitted.
- The Adjudicating Authority is at liberty to de-novo proceed against the appellant for taking action for not making request for renewal of LoP or for not exiting from the scheme.

5. The appellant vide letter dated 19.05.2020 had filed an appeal against the order dated 08.01.2020. The appeal of M/s Balji International was considered in DGFT (HQ) and a PH was granted to appellant on 10.06.2021. After, hearing the appellant it was decided that the appellant needs to deposit the penalty of Rs 1,00,000/- and after that appropriate order will be issued. KASEZ vide letter dated 04.01.2023 has confirmed that M/s Balaji International has deposited penalty amount of Rs 1,00,000/-.

6. I have considered the Order-in-Original dated 21.10.2020 passed by DC, KASEZ, Appeal, comments given by the DC and all other aspects relevant to the case. It is noted that the DC, KASEZ has confirmed that the Appellant has deposited the penalty of Rs 1,00,000/- imposed in Order-in-Original.

7. In view of the above and 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. 01/92/171/08/AM-17/PC-VI

Dated: 24.05.2023

In view of the fact that the Appellant has paid the penalty amount imposed on them, no further cause of action remains with the Appellate Authority and the case is sent back to DC, KASEZ for further actions as per rules.

Am
24.5.2023

(Santosh Kumar Sarangi)
Director-General of Foreign Trade

Copy To:

- ✓ (1) Balaji International, Plot No. 716-A, GIDC, Phase-II, Dared, Jamnagar-361005 (Gujarat)
- ✓ (2) Development Commissioner, Kandla SEZ for taking further necessary action.
- ✓ (3) DGFT's website.

Pr
24.5.2023

(Pradyumna Sahu)

Deputy Director General of Foreign Trade