

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

\*\*\*\*\*

F.No. 01/92/171/14/AM-19/PC-VI / 34-35, TR.No. 40

Date of Order: 01.08.2022

Date of Dispatch: 02.08.2022

Name of the Appellant: **Newvibe International,  
Shed No. 380, AS-IV Type,  
Sector-IV, KASEZ,  
Gandhidham.**

IEC Number: **3714001441**

Order appealed against: **Appeal filed against the Order-in-Original No.  
KASEZ/08/2018-19 dated 17.08.2018 passed by the  
Development Commissioner, Kandla Special  
Economic Zone**

Order passed by: **Santosh Kumar Sarangi, DGFT**

**Order-in-Appeal**

Newvibe International (hereinafter referred to as "the Appellant") filed an appeal on 26.09.2018 (received on 01.10.2018) under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against the Order No. KASEZ/08/2018-19 dated 17.08.2018 (issued from F.No. KASEZ/IA/11880/2002-03) passed by the Development Commissioner, Kandla Special Economic Zone (hereinafter referred to as "the DC") imposing a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs 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 Newvibe International was issued a Letter of Approval/ Permission (LoA) vide letter F.No. KASEZ/IA/Admn/11880/2002-03 dated 08.05.2002 by the DC, KASEZ for setting



up a unit to undertake manufacturing and trading activity in KASEZ subject to conditions imposed therein.

- 3.2 As per the Rule 53 of the SEZ Rules, 2006 read with condition No. 8 of Bond-cum-Legal undertaking, the Appellant was required to achieve positive Net Foreign Exchange (NFE) at the end of the five years block period.
- 3.3 Appellant commenced their authorized operation w.e.f. 24.05.2012 and completed its third five years block period on 23.05.2017. Appellant submitted its Annual Performance Report (APR) for 2012-13 to 2016-17. After review of the performance of the unit by the Unit Approval Committee (UAC) of DC, it was observed that the NFE of the unit in the "trading activity" at the end of the five years block period from 2012 to 2017 is negative by Rs. 697.67 lakhs. Therefore, UAC decided to take necessary action against the Appellant as per the provisions of the SEZ Act and Rules.
- 3.4 DC issued a Show-cause Notice (SCN) on 13.07.2018 to the Appellant asking it to show cause as to why
- (i) LoA should not be cancelled for non-fulfillment of conditions of LoP under Section 9(4) of the FT(D&R) Act read with Rule 10 of the FTR Rules, 1993.
  - (ii) Penalty should not be imposed for violation of provisions of the FTP under Section 11 of the FT(D&R) Act as applicable vide Rule 54(2) as well as proviso to Rule 25 of the SEZ Rules, 2006 for contravention of Rule 53 and condition of the LoA/ Bond-cum-LUT for failing to achieve NFE.
- 3.5 DC, KASEZ observed that the Appellant was guilty of non-achievement of positive NFE as required under Rule 53 of SEZ Rules, 2006 and condition no. 8 of the Bond-cum-LUT executed by it making it liable for penal action under Section 11(2) of the FT(D&R) Act.
- 3.6 DC, KASEZ vide Order-in-Original dated 17.08.2018 imposed a penalty of Rs. 25,00,000/- on the Appellant under Section 11(2) of the Act for non-achievement of positive NFE. However, the proceedings to cancel LoA of the Appellant were dropped.
- 4.0 Aggrieved by the Order-in-Original dated 17.08.2018, the Appellant has filed the present Appeal. Shri Shivam Amarnath Mishra, Consultant appeared on behalf of the Appellant in the hearing held on 04.07.2022. Shri Satyadeep Mohapatra, Joint DC was present on behalf of the DC, KASEZ. Appellant in its written/oral submissions has raised the following grounds :-
- (i) Appellant was earlier known as M/s. Rodex International which has been changed to M/s New Vibe International in the year 2014.
  - (ii) In the five year block periods prior to 2012-2017, Appellant has achieved positive NFE of over Rs.7 crores. Only in the period of five years block 2012-2017, Appellant has not been able to achieve positive NFE for the reasons of slackness in the market.





- (iii) Appellant had informed the DC that they have received orders worth over Rs. 8 crores and advance payment of \$ 50,300 was also received. It was expected that in a short time Appellant would convert the negative NFE into positive NFE.
- (iv) Appellant had made DTA sales on payment of full duty which was not considered for NFE calculation by the DC.
- (v) DC had accepted that Appellant are the bonafide manufacturers and exporters and appreciated their track record and noted that it was their first offence. However, DC did not consider request for extension of time to fulfill the positive NFE.

5.0 Comments on the Appeal were obtained from the office of the DC, KASEZ. The DC vide letter dated 07.10.2019 stated as under: -

- (i) DC, KASEZ observed that the Appellant failed to achieve positive NFE during 2012-2017 and had negative NFE to the tune of Rs. 697.67 lakhs in the period.
- (vi) Appellant failed to achieve positive NFE in terms of Rule 53 and 54 of SEZ Rules read with Bond-cum-LUT warranting imposition of penalty under the FTDR Act. Further, DTA sales on payment of duty is not eligible for NFE calculation.
- (ii) After grant of personal hearing, DC observed that the Appellant had failed to achieve cumulative positive NFE during 2012-17 in violation of SEZ Rules and terms and conditions of Bond-cum-LUT. Hence, DC imposed a penalty of Rs. 25,00,000/- vide Order-in-Original dated 17.08.2018 under Rule 54 of the SEZ Rules, 2006.

6.0. I have considered the Order-in-Original dated 17.08.2018 passed by DC, KASEZ, Appeal and oral submissions, comments given by the DC and all other aspects relevant to the case. It is noted that :-

- (i) DC, KASEZ has confirmed that for the five year block period from 2012 to 2017, Appellant has shortfall of NFE to the tune of Rs. 697.64 lakhs. Appellant has not denied that it had been unable to achieve positive NFE in the said period.
- (ii) As per the policy/procedure, the NFE is calculated cumulatively for a period of five years and the Appellant was found to have negative NFE for the five year block period from 2012 to 2017. Accordingly, it has failed to comply with the Rule 53 of the SEZ Rules, 2006 and the conditions mentioned in the LoA. Thus, it has rendered itself liable for imposing of the penalty as per the Rule 54(2) of the SEZ Rules. Hence, the action taken by the DC, KASEZ for imposition of penalty for contravening the provisions of the SEZ Act and conditions of the LoA is in accordance with the Act.



- (iii) DC has held the Appellant guilty of not achieving the cumulative positive NFE during the period from 2012 to 2017 by an amount of Rs. 697.64 lakhs and imposed a penalty of Rs. 25,00,000/-.
- (iv) 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.
- (v) Appellant could not maintain positive NFE during the period from 2012 to 2017 due to an adverse impact on working of its unit in KASEZ due to various reasons. Since the Appellant had maintained positive NFE in their previous five year block periods, I am inclined to take a lenient view for deciding the quantum of penalty.

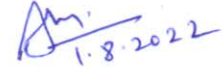
7.0. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5<sup>th</sup> December 2014, I pass the following order :-

**Order**

F.No. 01/92/171/14/AM-19/PCVI

Dated: 01.08.2022

Partial relief is granted. Amount of penalty imposed vide Order-in-Original Order No. KASEZ/08/2018-19 dated 17.08.2018 by DC, KASEZ is reduced from Rs. 25,00,000 to Rs. 1,00,000 (Rupees One lakh only).

  
1.8.2022

(Santosh Kumar Sarangi)  
Director General of Foreign Trade

Copy to:

1. ✓ Newvibe International, Shed No. 380, AS-IV Type, Sector-IV, Kandla Special Economic Zone, Gandhidham.
2. ✓ Development Commissioner, KASEZ for information and to make recoveries.
3. ✓ Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. ✓ DGFT's website.



(Randheep Thakur)  
Joint Director General of Foreign Trade