

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

F. No. 01/92/171/14/AM-21/PC-VI/40

Date of Order: 09.09.2022

Date of Dispatch: 09.09.2022

Name of the Appellant:

**Sameer Industries,
Plot No. 204-207,
Sector – IV, KASEZ,
Gandhidham**

IEC Number:

0896000681

Order appealed against:

Appeal filed against the Order-in-Original No. KASEZ/136/2020-21 dated 11.12.2020 passed by the Development Commissioner, Kandla Special Economic Zone

Order-in-Appeal passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Appeal

Sameer Industries, KASEZ, Gandhidham (hereinafter referred to as “the Appellant”) has filed an appeal dated 20.01.2021 (received on 28.01.2021) under section 15 of Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as “the Act”) against Order-in-Original No. KASEZ/136/2020-21 dated 11.12.2020 passed by the Development Commissioner (hereinafter referred to as “DC”), Kandla Special Economic Zone (KASEZ) imposing a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on the Appellant.

2.1 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.

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 Sameer Industries was issued a Letter of Approval (“LoA”) by the DC, KASEZ vide letter No. FTZ/IA/1587/95/7670 dated 23.09.1995 to set up a new manufacturing unit in KASEZ of recycled items from imported scrap such as M.S. Scrap, H.M. Scrap, C.I. Scrap, Copper, Brass, Aluminum and other Minor metal scraps, etc., subject to the conditions imposed therein.



3.2 Appellant confirmed and accepted all the terms and conditions specified in the LoA and executed a Bond-cum-Legal undertaking under Rule 22 of SEZ Rules, 2006. As per the terms and conditions of the LoA, the unit was to achieve positive Net Foreign Exchange (“NFE”) as per the Rule 53 of the SEZ Rules, 2006.

3.3 Appellant commenced commercial production in 1995. The unit completed the second five years block period on 31.10.2010.

3.4 Appellant submitted Annual Performance Reports (APRs) for the period 2006-07 to 2010-11. During the scrutiny of the APRs, it was noticed that unit at the end of five years block had a negative NFE of Rs. 24.50 lakhs. Later, Chartered Accountants appointed by KASEZ for auditing the APR of the units in KASEZ found that the Appellant had furnished false information in their APRs. Unit Approval Committee (UAC) decided to take necessary action against the unit for giving false information in their APRs and having negative NFE earnings in block period 2006-11.

3.5 DC issued a Show-Cause Notice (SCN) dated 03.07.2017 to the Appellant asking it to show cause as to why their LoA should not be canceled and a penalty should not be imposed under Rules 25 and 54(2) of the SEZ Rules read with provisions of FT(D&R) Act, 1992.

3.6 DC, KASEZ observed that the Appellant was guilty of non-achievement of positive NFE as required under Rule 53 of SEZ Rules, 2006 and submitting incorrect APR for the year 2006-07. Therefore, it is liable for penal action under Section 11 of the FT(D&R) Act.

3.7 DC vide Order-in-Original No. KASEZ/136/2020-21 dated 11.12.2020 imposed a penalty of Rs. 10,00,000/- on the Appellant under Section 11(2) of the Act for contravention of provisions of Rule 53 of SEZ Rules, 2006.

4. Aggrieved by the Order-in-Original dated 11.12.2020, the Appellant filed the present Appeal. The opportunities for personal hearing were given on 29.04.2021, 24.06.2021, 26.08.2021, 12.11.2021, 10.03.2022 and 18.05.2022. The hearing on 10.03.2022 could not take place due to administrative reasons. Nobody appeared on behalf of the Appellant in the remaining Personal hearings.

5. Appellant in its written submissions has raised the following grounds :-

- (i) In 2005, Customs office in Kandla confiscated their goods for want of no-objection from Central Pollution Control Board (CPCB). The unit was permitted to operate from 26.06.2009 to 31.10.2010 i.e. only for a period of 15 months. Since the Appellant was not permitted to operate from 01.11.2005 to 25.06.2009, it is not bound to submit any APR and achieve positive NFE.
- (ii) After expiry on 01.11.2005, the LoA was renewed only on 26.06.2009. The APR filed by the concerned staff took the confiscated goods also in respective APR.



6. Comments on the Appeal were obtained from the office of DC, KASEZ. The DC vide letter dated 26.02.2021 stated as under :-

- (i) The renewal of LoA of the Appellant was not considered due to failure to obtain authorization from Gujarat Pollution Control Board (GPCB). After issue of NOC by GPCB on 24.10.2008 and approval of BoA in its meeting held on 02.06.2009, LoA was renewed vide letter dated 26.06.2009 for a period of 5 years i.e. 01.11.2005 to 31.10.2010. Thus, the Appellant was under the obligation to achieve positive NFE for the block period of 2006-11.
- (ii) LoA was renewed from retrospective effect i.e. from 01.11.2005 and therefore the Appellant was also under obligation to file APR for the respective financial years.
- (iii) In the APR for 2006-07, the unit reported the value of imported raw materials consumed as Nil instead of actual figures of Rs. 24.50 lakhs. In the period 2006-07, the unit has reported NFE earnings as "achieved" instead of negative NFE of Rs. 24.50 lakhs and thus the unit furnished false information in their APR.

7. I have considered the Order-in-Original dated 11.12.2020 passed by DC, KASEZ, Appeal, Comments of DC, KASEZ and all other aspects relevant to the case. It is noted that opportunities of personal hearings were granted on 29.04.2021, 24.06.2021, 26.08.2021, 12.11.2021, 10.03.2022 and 18.05.2022 but nobody appeared on behalf of the Appellant. Accordingly, the Appeal is being decided ex-parte.

- (i) DC, KASEZ has confirmed that for the five year block period from 2006 to 2011, Appellant has shortfall of NFE to the tune of Rs. 24.50 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 2006 to 2011. 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) As per the Section 11(2) of the Act, the Adjudicating authority could have imposed penalty upto five times of the value of goods for which contravention has been made. In the present case, the shortfall in NFE is Rs. 24.50 lakhs. Therefore, the penalty amount could have been upto Rs. 122.50 lakhs whereas the Adjudicating Authority imposed a penalty of Rs. 10 lakhs only. By any stretch of imagination, such a penalty cannot be termed as harsh or unreasonable and is upheld.



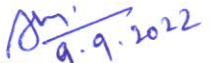
8. In view of the above, in the exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, I pass the following order:

Order

F. No. 01/92/171/14/AM-21/PC-VI


Dated: 09.09.2022

The Appeal is dismissed.


(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:

1. Sameer Industries, Plot No. 204-207, Sector-IV, KASEZ, Gandhidham, Gujarat.
2. Development Commissioner, Kandla SEZ for information and compliance.
3. Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. DGFT's website.


(Randheep Thakur)
Joint Director General of Foreign Trade