

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

F. No. 01/92/171/02/AM-24/PC-VI /11-12	Date of Order: 23. 11. 2023
	Date of Dispatch: 23. 11. 2023
Name and Address of the Appellant:	M/s NSE IFSC Ltd Unit No. 1201 & 1301, Brigade International Financial Center (BIFC) Building, GIFT SEZ, Ghandhinagar - 382355
IEC Number:	3716902888
Order appealed against:	Appeal filed against Adjudication GIFT- SEZ/03/2022-23 dated 22.05.2023 passed by the. Development Commissioner, GIFT SEZ.
Order passed by:	Santosh Kumar Sarangi, DGFT

Order-in-Appeal

M/s NSE IFSC Ltd (hereinafter referred to as 'the Appellant'), has filed an appeal dated 26.05.2023 under section 15 of Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as "the Act") against Adjudication Order No. GIFT-SEZ/03/2022-23 dated 22.05.2023, passed by the Development Commissioner (hereinafter referred to as 'DC'), GIFT Special Economic Zone imposing a penalty of Rs. 10,000/- (Rupees Ten Thousand 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.



4.0 Brief facts of the case:

4.1 M/s. NSE IFSC Limited (hereinafter referred to as "the appellant") was issued a Letter of Approval / Permission by the Development Commissioner, Kandla Special Economic Zone, Ahmedabad, vide F. No. KASEZ/DCO/GIFT-SEZ/II/13/2016-17 dated 23rd December, 2016 to set up a unit to provide financial services as a stock exchange in IFSC in accordance with the SEBI (IFSC) Guidelines, 2015, as amended from time to time in GIFT-Multi-Services-SEZ, Villages Phirozpur and Ratanpur, District Gandhinagar, subject to conditions imposed therein.

4.2 The unit had confirmed and accepted all the terms and conditions specified in the Letter of Approval (LOA) vide their letter dated January 17, 2017, and executed a written Bond-Cum-Legal undertaking in Form-H as required under Rule 22 of the Special Economic Zone Rules, 2006. Some of the terms and conditions of the aforesaid Letter of Approval are:

- 4.2.1 that the unit shall intimate the date of commencement of business/operations/services;
- 4.2.2 that the unit shall achieve positive Net Foreign Exchange (NFE) as prescribed in the SEZ scheme for the period they operate as a unit in the Special Economic Zone from the date of their commencement of business/operations/ services as required under Rule 53 of the SEZ Rules, 2006;
- 4.2.3 and that if the unit fails to comply with any conditions of the said LOA, their LOA shall be cancelled as per the provisions of the Special Economic Zone Act, 2005, and the rules and orders made thereunder.

4.3 The appellant commenced commercial operations w.e.f. June 2, 2017. The appellant, vide letter dated April 21, 2022, applied for the renewal of their Letter of Approval dated December 23, 2016. On scrutiny of the Annual Performance Report in Form-I, duly authenticated by the appellant and certified by a Chartered Accountant for the current block, it was observed that the export performance for the first block of five years shows a negative NFE. The performance of the unit was reviewed in the 103rd meeting of the Unit Approval Committee for GIFT-SEZ, Gandhinagar, held on May 27, 2022, and it was noticed that the Net Foreign Exchange (NFE) of the unit at the end of the 5th year was Rs. -5,624.79 Lacs. In view of the above, on the directions of the Unit Approval Committee for GIFT-SEZ, the Development Commissioner decided to take necessary action against the unit as per the provisions of the Special Economic Zone Act, 2005, and orders made thereunder.

4.4 As per Rule 54 of the SEZ Rules, 2006 and as per the conditions laid down in the Letter of Approval/Bond cum Legal Undertaking, if a unit in SEZ has not achieved a positive Net Foreign Exchange Earning or stipulated Value addition as specified in Rule 53 or failed to abide by any of the terms and conditions of the Letter of Approval or Bond cum Legal Undertaking, without prejudice to the action that may be taken under any other law for the time being in force, the said unit shall be liable for penal action under the provisions of the Foreign Trade (Development and Regulations) Act, 1992 and the rules made thereunder.



4.5 In view of the above-foregoing paras, the appellant has not fulfilled the conditions of the LoA and Bond-cum-Legal Undertaking. Further, it was observed that the Net Foreign Exchange was Rs. -5,624.79 lacs, i.e., negative till the end of the 5th year of the First block of five years and was liable for penal action under Rule 25 of the Special Economic Zone Rules, 2006, read with the Foreign Trade (Development & Regulations) Act, 1992.

4.6 Consequently, the appellant was issued a Show Cause Notice bearing F. No. KASEZ/DCO/GIFT/ SEZ/II/13/2016- 17 dated 21-10-2022 by the Development Commissioner, GIFT-Multi-Services-SEZ, Gandhinagar to show cause as to why action should not be taken against them under Section 11 of Foreign Trade (Development and Regulations) Act, 1992 read with Rule 25 of SEZ Rules, 2006 & Rules 54 of the SEZ Rules, 2006 read with the provisions of the Foreign Trade (Development and Regulations) Act, 1992, for contravention of Rule-53 of the SEZ Rules, 2006 as they failed to achieve Positive Net Foreign Exchange earnings (NFE) & contravening the necessary condition of the LOA.

4.7 Further, after taking consideration of the written submissions dated 04.11.2022 & 22.12.2022 made by the appellant and arguments made during the personal hearing dated 09.11.2022, an Order-in-Original bearing No. GIFT-SEZ/03/2022-23 dated 22.05.2023 (herein after referred to as "OIO") was issued to the appellant.

4.8 In the OIO dated 22.05.2023, it was mentioned that the appellant has not achieved Positive Net Foreign Exchange calculated cumulatively for first block of five years of their operations i.e. from 02.06.2017 to 01.06.2022 and has negative NFE in tune of Rs. 5624.79 lakhs and nominal penalty of Rs. 10,000/- (Rs. Ten Thousand only) was imposed to the appellant under provision of Section 11 of Foreign Trade (Development and Regulation) Act, 1992 read with Rule 25 & 54 of SEZ Rules, 2006 taking a lenient view.

5. M/s NSE IFSC has filed an appeal against Adjudication Order No. GIFT-SEZ/03/2022-23 dated 22.05.2023. An opportunity of Personal Hearing was granted to the Appellant and Mr. Balasubramaniam Venkataramani, Ms. Bhawika Wanchoo and Mr. Harshit Maniar appeared on behalf of the Appellant in the hearing held on 04.09.2023. The appellant in its written/oral submissions has raised the following points:

5.1 The Exchange business is a highly capital-intensive business having its core focus on technology which requires huge investments for running the markets and regular technology upgradation and enhancement to keep pace with the new technology. Exchange had incurred expenses on creating the technology infrastructure for smooth execution for dealing in securities and to comply with regulatory requirement like BCP facility etc. Since inception, the Exchange during this period has spent 111.33 Crores towards creation of technological infrastructure for smooth functioning of the market. The Exchange, owing to the international nature of the business, also has to keep the exchange open for 20 hours; it currently operates with a total workforce of approx. 60 headcounts in three shifts (on roll employees and contract staff). This is an added expense. (Total investment made by company).



5.2 Exchange has seen the increase in participation of trading members from 32 in 2017 to 55 in 2022. Further in 2017, Exchange had average daily volumes of USD 40.05 Million. In 2022, the Exchange has average daily volumes of USD 1,776.87 Million. NSE IFC's Debt Securities Market (DSM) platform has listed total aggregate Medium-Term Note (MTN) worth over USD 42.80 billion and listing of bonds more than USD 22.13 billion since the launch. The Exchanges in IFSC including NSE IFSC Limited are more as import substitution business and not an exporting entity as it facilitates the investors to trade in the products of our country in India itself rather than allowing them to be traded elsewhere.

5.3 The Government, Regulators and Company is taking various initiatives to develop the entire financial eco system in GIFT IFSC SEZ and it has seen a good development over a period of last few years. It is pertinent to note that Exchange is also continuously working on innovative capital market products to enhance active participations of market participants. Recently, the exchange has commenced trading of Unsponsored Depository Receipts (NSE IFSC Receipts) on US Stocks under the regulatory sandbox framework prescribed by the IFSCA.

5.4 Government of India recently, issued SEZ (Second Amendment) Rules, 2023 dated 27.04.2023 which has amended Rule 53A of the SEZ Rules 2006, which now states as under:

“53A. Exemption-Nothing contain in Rule 53 shall apply to a unit in an International Financial Services centre providing financial service and regulated by the International Financial Service Centers Authority.”

5.5 India International Exchange (IFSC) Limited which is also a stock exchange operating in GIFT SEZ could also not achieve a positive NFE for the similar reasons. Considering the facts and circumstances of the case, which are similar as that of NSE IFSC Limited, the Development Commissioner in case of India International Exchange (IFSC) Limited has passed an order vide reference no. KASEZ/DCO/GIFTSESZ/II/006/2026-17/Vol-I/325 dated 29th June, 2022 to drop the show cause and not levy any penalty.

6. I have considered the Order-in-Original dated 22.05.2023 passed by DC, GIFT SEZ and all other aspects relevant to the case. It is noted that as the penalty amount is very negligible but the penalty will tarnish the image of M/s NSE IFSC Ltd in the global market. Moreover, the penalty may also hamper the image of our country globally.

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:

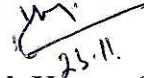


Order

F. No. 01/92/171/02/AM-24/PC-VI

Dated: 23 . 01 . 2023

The Appeal is upheld and the Order-in-Original dated 22.05.2023 passed by Development Commissioner, GIFT, SEZ is set-aside.



(Santosh Kumar Sarangi)
Director-General of Foreign Trade

Copy To:

- 1) ✓ M/s NSE IFSC Ltd Unit No. 1201 & 1301, Brigade International Financial Center (BIFC) Building, GIFT SEZ, Gandhinagar - 382355
- 2) ✓ Development Commissioner, Kandla SEZ for taking necessary action.
- 3) ✓ DGFT's website.



(Nirmal Kumar)
Joint Director General of Foreign Trade