

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

F. No. 01/92/171/47/AM-16/PC-VI/4

Date of Order: 25.07.2023

Date of Dispatch: 25.07.2023

Name of the Appellant:

**M/s. AshwinGold Pvt. Ltd, CSEZ,
Kakkanad, Kochi-682037**

IEC No. of the Applicant:

3911000103

Order Appealed against:

Appeal against Adjudication Order No.
09/16/2011/CSEZ/1628-A dated 27.03.2015
passed by DC, CSEZ

Order passed by:

Shri. Santosh Kumar Sarangi
Director General of Foreign Trade

Order-in-Appeal

1. M/s Ashwin Gold Pvt Ltd, Kochi (hereinafter referred to as 'the appellant), an SEZ unit, had filed an appeal dated 21.5.2016 against Order-in-Original No. 09/16/2011/CSEZ/1628-A dated 27.03.2015 passed by the Development Commissioner, Cochin Special Economic Zone (CSEZ).
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 Authority. 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 M/s. Ashwin Gold Pvt. Ltd was issued LoA No. 9/16/2011 dated 04.10.2011 (as amended from time to time) **for carrying out manufacture and export of Gold Ornaments in CSEZ**. Specified Officer on 14.02.2013 accorded permission to the unit for job work which was valid for one year allowing the unit to take out 50 Kg of gold to DTA. **Job work permission expired on 13.02.2014.**

4.2 On 11.08.2014 Customs (Preventive) Commissionerate, after obtaining permission from DC, searched the unit at CSEZ. Customs vide letter dated 12.08.2014 informed DC that 10.5 Kg of gold imported by the unit on 08.08.2014 was not available in the unit premises. On 19.08.2014, Customs (Preventive) had seized 4kg of Gold belonging to the unit, from Air Cargo Complex, Cochin Airport. On the basis of report from Commissioner of Customs (Preventive), Kochi, the import & export documents of the unit were verified and found that unit had imported gold bar for total of 385.51 Kgs and exported 336.72 Kgs during the period from 27.04.2012 to 06.08.2014. DC, CSEZ vide letter dated 19.08.2014 suspended the activities of the unit till finalization of the case.

4.3 The unit approached Hon'ble High Court of Kerala and Court disposed off the case with the direction that suspension order dated 19.08.2014 shall be treated as SCN and directed the petitioner to raise their objection before the Appropriate Authority. UAC meeting, held on 22.12.2014, decided that DC may grant Personal Hearing (PH) as per provisos of FTDR, Act. PH was held on 06.01.2015. The statement submitted by the unit was found to be contrary to the statement made by the firm to the Customs, regarding the stock of gold. The unit was asked to submit Foreign Inward Remittance Certificate (FIRC) to verify the veracity of export realization but the unit failed to comply with the same.

4.4 An Order-in-Original No.9/16/2011/CSEZ dated 27.3.2015 was passed by DC, CSEZ thereby imposing a penalty of Rs 10.04 crore (Rupees Ten Crore and four lakh only) for loss of foreign exchange by way of import of Gold bullion and non-realization of export proceeds in respect of Gold Ornaments exported from Cochin SEZ. The said Order was issued to the firm as per provisions under Section 11(2) of FT (D&R) Act 1992. A penalty of Rs. 1.28 crore (Rupees One Crore and Twenty Eight Lakh) was also imposed for violation of the terms and conditions of the Letter of Approval and Bond-cum-Legal undertaking executed with the DC, CSEZ. This fine was imposed on account of illegal removal of imported gold after availing of duty exemptions. A personal penalty of Rs 11.30 Lakh (Rupees Eleven Lakh and thirty thousand only) was also imposed on Shri Sanjay Subrao Nikam, Managing Director for the illegal activities.

4.5 Instead of approaching the Appellate Authority, the firm filed a WP No.13474/2015 before the Hon'ble HC of Kerala challenging the Order passed by the DC, CSEZ. The High Court of Kerala vide their Judgment dated 08.05.2015 directed the petitioner to approach the Appellate Authority on or before 12.05.2015.

4.6 DGFT vide Order dated 07.07.2015 dismissed the appeal filed by the unit, since the appeal was time barred on the preliminary ground alone. Against the Order dated 07.07.2015, the unit filed an IA No.10558/2015 in WP(C) No.13474/2015 before the Hon'ble HC, Kerala and the Court vide Order dated 29.7.2015 allowed the inter locutory application and issued direction to the Appellate Authority to condone the delay of nine days. As per directions of Hon'ble Court, this Directorate considered the appeal dated 21.05.2016 preferred by the firm and the firm was requested to appear before DGFT for a personal hearing on 31.03.2017 vide this Directorate's letter dated 20.03.2017 and e-mail dated 21.03.2017.

4.7 After hearing the appellant, the Appellate Authority vide Order No. 01/92/171/47/AM-16/PC-VI/126 dated 07.09.2018 rejected the appeal. The appellant filed review application against the Order dated 07.09.2018 before the Appellate Committee of DoC. The Appellate Committee had also rejected the review appeal of the firm vide Order No. 12013/04/2019-ADJ/AC dated 19.06.2020.

4.8 The Appellant approached the High Court against the Order of the Appellate Committee rejecting his review appeal. After detailed hearing, the Hon'ble High Court recalled the connected file from CSEZ and found that the vital facts submitted by the firm has not been considered by the Appellate Authority. The Hon'ble High Court vide judgment date 22.12.2022 set aside the orders of Appellate Authority with following observations:

“Hence, the orders of Appellate authority 07.09.2018 and 19.06.2020 are set aside. The matter is remitted to the Appellate authority for consideration and decision afresh”.

5. Baby M.A advocate of M/s Ashwin Gold Pvt Ltd vide letter dated 16.03.2023 has requested DGFT for compliance of the judgment of Hon'ble High Court of Kerala passed on 22.12.2022. Based on that a PH was held on 19.06.2023 in which the appellant firm has submitted the following points:

5.1 The petitioner is aggrieved by the legal order issued by adjudication authority. In this regard, it is submitted that adjudication authority Dr. Safina A.M, Development Commissioner of Cochin Special Economic Zone who had issued impugned order is not an adjudication authority as per section 13 of Foreign Trade (Development and regulation) Act, 1992(FTDR). Thus the impugned order is prima facie unsustainable.

5.2 As per Section 21 of SEZ Act 2005, investigation regarding any violation can be investigated only by a notified agency and Customs Authority is included as notified agency only vide S.O No. 2665(E) dated 05.08.16. The entire proceedings initiated based on the report of the Commissioner of Customs (Preventive), Cochin who was not an authorized agency for investigating such offence in August, 2014.

5.3 Regarding penalty of Rs. 10,04,00,000/- and Rs. 1,28,00,000/- on M/s Ashwin Gold Pvt Ltd and 11,30,000/- on Managing Director Shri. Sanjay Subrao Nikam imposed under 11 (2) of FTDR, 1992 are without any authority of law and unsustainable.

6. DDC, CSEZ has mentioned that the adjudication order was passed by DC, CSEZ as per prevailing rules and regulations of FT(D&R) Act, 1992.


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: 25.07.2023

Order-in-Original No. 09/16/2011/CSEZ/1628-A dated 27.03.2015 passed by the Development Commissioner, Cochin Special Economic Zone is set aside. The case is remanded back to DC, CSEZ with the direction to examine the case de-novo and pass appropriate speaking order as per extant law after taking into account the Appellant's submissions.


25.7.2023
(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy To:

- (1) M/s. Ashwin Gold Pvt. Ltd, Plot No. 16, (SDF), Ground Floor, CSEZ, Kakkanad, Kochi-682037
- (2) Development Commissioner, CSEZ, Kochi.
- (3) DGFT's website.


(Nirmal Kumar)

Joint Director General of Foreign Trade