

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

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F.No. 01/92/171/49/AM-20/PC-VI /55-56/TR.No.61 Date of Order : 06.01.2021  
Date of Dispatch: 06.01.2021

Name of the Appellant: **M/s. Agarwal Exports,**  
**Plot No. 493, GIDC,**  
**Phase-II, Near Dared,**  
**Jamnagar- 361 005**

IEC No.: **3706001144**

Order appealed against: **Order-in-Original No. 14/2019-20 dated 28.10.2019**  
**(issued from F.No. KASEZ/100%EOU/II/100/2001-**  
**02/8630) passed by the Joint Development**  
**Commissioner, KASEZ**

Order-in-Appeal passed by: **Amit Yadav, DGFT**

**Order-in-Appeal**

M/s. Agarwal Exports, Jamnagar- 361 005 (hereinafter referred to as "Appellant") filed an appeal dated 23.11.2019 under the section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as "Act") against the Order-in-Original (O-i-O) No. 14/2019-20 dated 28.10.2019 issued from F.No. KASEZ/100%EOU/II/100/2001-02/8630 passed by the Joint Development Commissioner, KASEZ (here-in-after referred to as "JDC, KASEZ").

2. Vide Notification No. 101 (RE-2013/2009-14) dated 5.12.2014, Central Government has authorized the Director General of Foreign Trade aided by one Additional 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.



### 3.0 Brief facts of the case:

3.1 The Appellant, M/s. Agarwal Exports was granted a Letter of Permission (LoP) by the Development Commissioner (hereinafter referred to as "DC"), KASEZ, Gandhidham vide LoP No. KFTZ/100%EOU/II/100/2001-02/7107 dated 09.08.2001 as amended, for setting up a unit under the EOU Scheme at Plot Number 120, Sector 2, Gandhidham, Kutch for manufacture and export of ingot, metal alloys, brass parts of electrical and electronic apparatus of switching etc. as amended. Subsequently, vide DC, KASEZ's Letter No. KASEZ/100%EOU/II/100/2001-02/848 dated 26.04.2004, the unit's location was changed to Plot No. 493, GIDC, Phase II, Dared, Jamnagar.

3.2 Apart from other conditions regulating conduct of the business, the Appellant was required to achieve Positive Net Foreign Exchange Earning (here-in-after referred to as "NFE") as prescribed under the EOU scheme. The Appellant did not undertake any import and export activity during the third five-year block (2014-15 to 2018-19).

3.3 JDC, KASEZ, vide O-i-O dated 28.10.2019, observed that the Appellant has not achieved positive NFE during the third block period of five years and accordingly imposed a penalty of Rs. 10,000/- (Rupees Ten Thousand only) under the Section 11 of the Act.

4. Aggrieved by the O-i-O dated 28.10.2019 of the JDC, KASEZ, the Appellant filed the present appeal. The Appellant in its written submissions and personal hearing on 27.11.2020 has stated that: -

- (i) The Appellant did not undertake any operations during the third block period of five years.
- (ii) JDC, KASEZ imposed a penalty of Rs. 10,000 for achieving zero NFE and not doing any business.
- (iii) The Appellate Committee, Department of Commerce, vide Order dated 14.03.2018 (issued from F.No. 12013/02/2017-ADJ/AC), waived off penalty imposed on a unit for the same very reason.

5. Comments from the Office of DC, KASEZ were also obtained on the present appeal. JDC, KASEZ vide letter dated 14.01.2020 stated that the Appellant did not make any export and import activities in the third five-year block, resulting into zero NFE and as per para 6.04 of FTP 2015-20, an EOU unit needs to achieve positive NFE.

6. I have considered the Order-in-Original passed by the JDC, KASEZ, appeal filed by the Appellant, written/oral submissions made by the representative(s) of the Appellant, report/comments of the JDC, KASEZ and all other relevant aspects related to the case. However, before going into merits of the case, it is observed that as per para 6.34(11) of HBP, 2015-20, in respect of EOUs as mentioned in Gazette Notification No. SO. 194(E)



dated 6.3.2000, it is the DC who shall exercise powers of adjudication under Section 13 read with Section 11 of the Act. Such powers cannot be delegated. However, in the present case, quasi-judicial powers vested in the DC have been exercised by a lower/subordinate authority. Hence, the Order-in-Original passed by the JDC, KASEZ is bad in law.

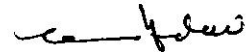
7. In view of the above, in exercise of the powers vested under us under the section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013/2009-14) dated 5.12.2014, I hereby pass the following order: -

**ORDER**

F.No. 01/92/171/49/AM20/PC-VI

Date of Order: 06.01.2021

The appeal filed by the Appellant is admitted. Order-in-Original dated 28.10.2019 passed by the JDC, KASEZ is set aside. The case is remanded back to the Adjudicating Authority i.e. DC, KASEZ for de-novo consideration.

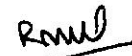


(Amit Yadav)

**Directorate General of Foreign Trade**

Copy to:

1. M/s. Agarwal Exports, Plot No. 493, GIDC, Phase-II, Near Dared, Jamnagar- 361 005.
2. Development Commissioner, Kandla SEZ for compliance.
3. Addl. Secretary, (SEZ Division), DoC, Udyog Bhavan, New Delhi for information.
4. DGFT's web site.



(Randheep Thakur)

**Joint Director General of Foreign Trade**

