

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

F.No. 01/92/171/15/AM-17/PC-VI

Date of Order: 09.12.2021

Date of Dispatch: 09.12.2021

Name of the Appellant: **Marvel Metal Corporation,
Plot No. 771, GIDC,
Phase-11, Dared,
Jamnagar- 361005**

IEC No. : **2402000589**

Order appealed against: **Order-in-Original No. 04/2020-21 dated
21.10.2020 passed by the Development
Commissioner, Kandla Special Economic Zone**

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

Order-in-Appeal

Marvel Metal Corporation (hereinafter referred to as "the Appellant") filed an Appeal dated 06.12.2020 (received on 06.12.2020) under section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against the Order-in-Original dated 21.10.2020 (issued from F.No. KASEZ/100%EOU/II/210/2001-02/3181) passed by the Development Commissioner (hereinafter referred to as "DC"), Kandla Special Economic Zone (KASEZ) imposing a penalty of Rs. 1,00,000 (Rupees One Lakh only).

2.1. Vide Notification No. 101 (RE-2013)/2009-2014 dated 5th December 2014, the Central Government has authorized the DirectorGeneral 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 reviewpetition 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 Appellant was issued a Letter of Permission (LoP) on 27.03.2002 by the DC, KASEZ, as amended/extended from time to time, to set up an undertaking under the EOU Scheme at Plot No. 49, GIDC, Phase-II, Near Dared, Jamnagar – 361 005 for manufacture and export of parts and accessories of Brass including Cable Glands, Battery terminals of Brass etc..
- 3.2. DC, KASEZ vide Order-in-Original dated 04.04.2016 (issued from F.No. KASEZ/100%EOU/II/210/2001-02/250) imposed a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on the Appellant for not achieving stipulated Net Foreign Exchange earnings in the block of five years (2007-08 to 2011-12) and penalty of Rs. 1,00,000/- (Rupees One lakh only) for not applying for renewal of LoP or completing procedure for exit from the EOU scheme.
- 3.3 Aggrieved by the Order-in-Original dated 04.04.2016, the Appellant had filed an appeal before this Authority.
- 3.4 Appeal was adjudicated vide order dated 15.01.2020 (issued from F.No. 01/92/171/15/AM-17/PC-VI) as under :-

- “ 1. Partial relief is granted. Appeal against imposition of penalty of Rs 10,00,000/- for not achieving positive Net Foreign Exchange is dismissed. Appeal against imposition of penalty of Rs. 1,00,000/- for not making request for renewal of LoP or for not exiting from the scheme is admitted.*
- 2. The Adjudicating Authority is at liberty to de-novo proceed against the appellant for taking action for not making request for renewal of LoP or for not exiting from the scheme.”*

- 3.5 In view of the aforesaid order dated 15.01.2020, DC gave the appellant opportunities to be heard in person on 16.03.2020 and 27.05.2020. Appellant made the following submissions before the DC :-

- (i) In the Show cause Notice issued by DC it is held that the unit is liable for imposition of penalty under the Section 11 of the FT(D&R) Act, 1992.
- (ii) Since the Appellant had no Import-Export activity since 2011 it was not liable to pay any penalty. Hence, the penalty of Rs. 1,00,000/- was not proper and legal and the same was liable to be set aside.

- (iii) Taking into consideration the current circumstances, it was not viable for the Appellant to work under the EOU Scheme and hence it had started the process to exit from the Scheme.

3.6 DC proceeded to adjudicate the matter vide Order-in-Original dated 21.10.2020 and, inter-alia, imposed a penalty of Rs. 1,00,000/- (Rupees One lakh only) on the Appellant under Section 11(2) of the FT(D&R) Act, 1992 read with Rule 20(2) of Act for not making a request for renewal of LoP within prescribed time frame nor completing procedure for exit from the 100% EOU Scheme. While passing the said Order, DC made the following observations :-

- (i) Appellant failed to fulfill the stipulated positive NFE for the second five year block period in contravention of the relevant provisions of Foreign Trade Policy (FTP)/Handbook of Procedures (HBP) in force and also the conditions of the LoP.
- (ii) Appellant was not carrying out any activity since 2009-10. It's LoP expired on 26.06.2012 and it had neither applied for renewal of the LoP nor for exiting from the scheme.
- (iii) The para 6.05(c) of FTP, 2015-20 prescribes that failure to achieve positive NFE or failure to abide by any of the terms and conditions of LoP shall render the unit liable to penal action under provisions of the FT (D&R) Act.

4.0. Aggrieved by the Order-in-Original dated 21.10.2020, the Appellant has filed the present Appeal. The following grounds have been raised in the written submissions and oral submissions made by Shri Subhash Bordia, CA on behalf of the Appellant in the Personal hearing held on 13.08.2021 :-

- (i) No-Export-import shall be made by any person except in accordance with the provisions of this Act/Rules of the FTP for the time being in force.
- (ii) If any person makes/abets/attempts to make any import-export in contravention of any provisions of this Act/Rules, then only such huge amount of penalty was required to be imposed.
- (iii) As their business is closed, the unit had no Import-Export activity since 2011 which does not make noticee liable to pay any penalty. The penalty of Rs. 1,00,000/- imposed is not proper and legal.

My

5.0. Comments on the Appeal were obtained from the office of the DC, KASEZ. The DC vide letter dated 12.05.2021, inter-alia, stated as under :-

- (i) Appellant had achieved negative NFE during the second five year block (2007-08 to 2011-12).
- (ii) DC, KASEZ passed an Order in Original dated 04.04.2016 and imposed a penalty of Rs. 10,00,000/- under the Section 11 of the Act on the Appellant for not achieving of NFE by Rs. 245.97 lakhs during the second block period and Rs. 1,00,000/- for not applying for renewal of LOP or completing procedure for exit from the Scheme.
- (iii) Considering the overall situation, the adjudicating authority has taken a lenient view while imposing penalty on the Appellant.

6.0. I have considered the Order-in-Original dated 21.10.2020 passed by the DC, KASEZ, Appeal preferred by the Appellant, oral/written submissions made by the Appellant, comments given by the DC on the appeal and all other aspects relevant to the case. It is noted that :-

- (i) Appellant was issued a LoP on 27.03.2002 by the DC, KASEZ for setting up a EOU Unit, subject to the conditions imposed therein. On the request of the Appellant, the validity of the LoP has been extended from time to time.
- (ii) One of the main objective of the EOU Scheme is to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.
- (iii) The para 6.05(c) of the FTP 2015-20 provides as under :-

“Unit shall execute an LUT with DC concerned. Failure to ensure positive NFE or to abide by any of the terms and conditions of LoP /LoI / IL / LUT shall render the unit liable to penal action under provisions of the FT (D&R) Act, as amended, and Rules and Orders made there under, without prejudice to action under any other law /rules and cancellation or revocation of LoP / LoI / IL.

- (iv) Appellant has availed of the incentives/benefits available to the Units operating under the EOU Scheme since the date of LoP i.e. 27.03.2002. It was well aware that it was required to achieve the prescribed level of exports and fulfill the conditions of the LoP.

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- (v) Appellant has admitted that it has not undertaken any export and imports from 2009-10 till date. It has neither submitted any request before the DC for extension of LoP nor completed the procedure to exit from the EOU Scheme. Hence, the Appellant is liable for penal action for violation of the provisions of LoP, LUT, FTP and FT(D&R) Act, 1992.
- (vi) Imposition of penalty is necessary to instill a sense of discipline in the units operating under the EOU Scheme.
- (vii) DC has imposed a penalty of Rs. 1,00,000/- which is a reasonable amount and does not deserve any intervention.

7.0. 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. 01/92/171/15/AM-17/ PC-VI/

Dated: 09.12.2021

The Appeal is dismissed.



(Amit Yadav)

Director General of Foreign Trade

Copy to :-

1. Marvel Metal Corporation, Plot No. 771, GIDC, Phase-11, Jamnagar- 361005.
2. Development Commissioner, KASEZ with an advice 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