

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

F. No. 01/92/171/19/AM-17/PC-VI/01,02, 016 Date of Order: 28.08.2020

Date of Dispatch: 28.08.2020

Name of the Appellant: Ellenbarrie Exim Limited,
P-17, Kalakar Street, 3rd Floor,
Kolkata-700007.

IEC Number: 0202011305

Order appealed against: Order-in-Original No.FSEZ/LIC/E-
30/2006/883 dated 06.05.2016
passed by the Development
Commissioner, FSEZ.

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

Order-in-Appeal

Ellenbarrie Exim Limited, Kolkata (hereinafter referred to as 'the Appellant'), an SEZ Unit, filed an appeal dated 19.07.2016 u/s 15 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as "the Act") against Order-in-Original No. FSEZ/LIC/E-30/2006/883 dated 06.05.2016, issued from file no. FSEZ/LIC/E-30/2006/883, passed by the Development Commissioner (here-in-after referred to as 'DC'), Falta Special Economic Zone (FSEZ).

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 the appeal is before me.



3. Brief facts of the case:
- 3.1. The Appellant was granted a Letter of Approval (LoA) by DC, FSEZ vide No. FSEZ/LIC/E-30/2006/4190 dated 27.10.2006, as amended, for manufacture and international trading of sorted and blended diamonds, as amended. The unit started commercial production w.e.f. 29.11.2006. Subsequently, on request of the appellant, DC vide letter No. FSEZ/LIC/E-30/2006/4840 dated 06.12.2006 converted the status from manufacture to Trading.
- 3.2. Reserve Bank of India (herein after referred to as 'RBI') vide letter No. KOL.FED/2608/14.03.006/2011-2012 dated 07.02.2012 informed DC, FSEZ that that an amount of Rs. 92,93,30,408.01 was outstanding against the unit for the half year ended on 31.12.2011. Accordingly, a Memorandum dated 09.03.12 was issued to the Appellant by DC, FSEZ to show cause as to why action should not be taken against it under the SEZ Act, 2005 & Rules made thereunder for non realisation of the export proceeds.
- 3.3 RBI vide letter dated 01.08.2013, further informed that the said amount was still pending for realization. It was further noticed that the appellant's unit was lying closed without any activity for the last five years and it had accumulated dues upto September 2013, on account of rent etc; to the tune of Rs. 700119/-. Accordingly, a show cause notice was issued to the appellant on 16.09.2013 u/s 9 and 11 of the Foreign Trade (Development & Regulation), Act, 1992 in terms of Section 16 of SEZ Act, 2005 read with para 8(xi) & (xii) of the SEZ Authority Rules 2009 to show Cause as to why the LOA issued to it along with space allotted to it should not be cancelled and why penalty should not be imposed on it.
- 3.4 The issue of renewal of LOA beyond 23.02.2008 was dealt by DC who cancelled the same. The matter of cancellation of LOA was appealed by the Appellant in Board of Approval and thereafter the appellant went to Hon'ble High Court against cancellation of its LOA.
- 3.6 DC adjudicated the matter and imposed a penalty of Rs. 46.50 Crore on the appellant u/s 13 read with section 11 of the Act vide Order-in-Original dated 06.05.2016 for non-realization of export proceeds.
- 4.0 Aggrieved by the Order-in-Original dated 06.05.2016, the Appellant filed the present appeal. An opportunity of personal hearing was granted to the Appellant on 20.02.2020 when advocate of the appellant, Mr. Mukeshwar Nath appeared before the undersigned. The matter was heard.



5.0 The appellant in its written as well as oral submissions during the personal hearing made the following submissions:

- (i) due to global recession and general commercial slow down the sale proceeds for a number of exports bills were not realized. They were in regular touch with its foreign buyer for realization of the export proceeds. The matter was also discussed by the AGM of the Export Credit Guarantee Corporation of India Limited with foreign buyer and the discussion with the buyer revealed his willingness to settle the appellant's dues. Apart from the communication with its foreign buyer, the appellant has also kept the RBI duly informed about the delay in realization of export proceeds.
- (ii) Neither any Show Cause Notice nor any personal hearing was given to the appellant in r/o Order-in-Original dated 06.05.2016, imposing a penalty of Rs. 46.50 crores under Section 11 of the Act on the appellant for non-realization of export proceeds. The said impugned order was passed ex-parte and without affording any opportunity of personal hearing.
- (iii) Imposing a penalty of Rs. 46.50 crores under Section 11 of the Act on the appellant for non-realization of export proceeds is against the principles of natural justice.
- (iv) The stipulation of period of realization and repatriation to India of full export value of goods or software under the first proviso to Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulation, 2000 does not apply to goods exported by units in SEZ.

6.0 Comments on the appeal were also obtained from the office of the DC, FSEZ. The DC, vide letter dated 09.09.2016, stated that the appellant has failed to realize the export proceeds inspite of many opportunities granted to it.

7.0 I have carefully gone through the Adjudication Order dated 06.05.2016 passed by DC, FSEZ, oral/written submissions made by the appellant, comments of the office of DC, FSEZ and all other aspects relevant to the case. It is noted that huge export proceeds are still pending realisation for last several years. The appellant has failed to establish his bonafide efforts to realise such a huge foreign exchange over the last number of years. The appellant has not only obtained duty benefits on import of materials for crores of rupees but has also spent precious foreign exchange without contributing any net foreign exchange earning which is one of the main aims of granting facilities to an SEZ unit. It is a fit case to be investigated by DRI as well as Enforcement Directorate.



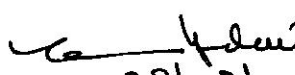
8.0 In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, I pass the following order:

Order

F.No. 01/92/171/19/AM-17/ PC-VI

Dated: 28.08. 2020

The appeal is dismissed.


28/08/2020
(Amit Yadav)
Director General of Foreign Trade

Copy To:

- (1) Ellenbarrie Exim Limited, P-17, Kalakar Street, 3rd Floor, Kolkata-700007.
- (2) Development Commissioner, Falta SEZ with an advice to make recoveries.
- (3) Director, Enforcement Directorate.
- (4) DG, DRI.
- (5) DGFT's web site


28/8/2020
(Shobhit Gupta)
Dy. Director General of Foreign Trade