

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

F. No. 01/92/171/13/AM-19/PCVI/61-62

Date of Order: 12.01.2021
Date of Dispatch: 12.01.2021

Name of the Appellant: Gem Granites Pvt. Ltd.,
No. 145, Injambakkam,
Chennai-600041

IEC No.: 0498048144

Order appealed against: Order-in-Original Number A/2004(044)/ EOU-TN/2747 dated 16.05.2018 passed by the Development Commissioner, MEPZ-SEZ.

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

Order-in-Appeal

Gem Granites Pvt. Ltd., Chennai (hereinafter referred to as 'the Appellant'), an 100% Export Oriented Unit (EOU), filed an appeal on 11.07.2018 under section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original dated 16.05.2018 (File Number A/2004(044)/EOU-TN/2747) passed by the Development Commissioner (hereinafter referred to as "DC"), MEPZ-SEZ, Chennai imposing on it a penalty of Rs. 9.62 Lakh.

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 the appeal is before me.

3. Brief facts of the case:

3.1. The Appellant was granted a Letter of Permission (LoP) No. A/2004(044)/EOU/TN dated 21.12.2004 for the manufacture and export of Dimensional Granite Blocks, Processed, Dressed, Cut (in all assorted Dimensions) and Granite Slabs from its unit at 145,



Injambakkam, Chennai. The company commenced its commercial production on 23.11.2006.

3.2. Vide letter dated 24.11.2011, the LOP was renewed for the period from 23.11.2011 to 22.11.2016. A Green card No. 2175 dated 23.11.2011 was also issued to the Appellant wherein the location of the factory was mentioned as "145, Injambakkam, Chennai-41".

4.1 DC observed that the Appellant made exports to the value of Rs. 961.79 lakh during 2011-12 to 2015-16 from quarry i.e., the premises other than the licensed one, without the approval of DC. Hence, it contravened the provisions of Section 11(2) read with Section 11 of the Act. DC issued of a show-cause Notice dated 24.03.2017.

4.2 After a reply was sent by the Appellant on 24.05.2017. The Appellant, in its written submissions dated 24.05.2017 pleaded the following:

- i. According to para 6.1 of the Foreign Trade Policy (FTP) 2009-2014, units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme. Hence, they acted in accordance with the provisions of the FTDR Act, the rules made thereunder or any of the FTP provisions and hence cannot be held liable.
- ii. The Appellant exported the entire production and the same was acknowledged by the DC.
- iii. According to Para 7 of the Notification 52/2003-Cus dated 31.3.2003 issued by the Ministry of Finance, it permits the EOU to remove the bonded capital goods to the quarries for purposes of quarrying subject to the condition, inter-alia, that the goods so quarried shall be removed from the quarry site only for supply to units' own processing unit or for supply to another EOU or the unit in the special economic zone engaged in processing or production or manufacture of articles and export thereof and shall not be allowed to be exported as such or to be cleared in Domestic Tariff Area (DTA).
- iv. The granite blocks exported, by the Appellant from the quarries, were only after subjecting them to a process of trimming and dressing and exporting them as trimmed and dressed dimensional blocks and not exported as such. Hence, not prohibited under the above-mentioned notification.
- v. The goods exported, namely, trimmed and dressed dimensional blocks are permitted for export under the LOP. In terms of Para 6.2(a) (i) of the FTP 2009-14 as amended, an EOU may export all kinds of goods and services except items that are prohibited in ITC(HS) and the Appellant's export of trimmed, dressed dimensional blocks are not in the prohibited list.
- vi. The Appellant was supposed to achieve positive NFE, file Annual Performance Report and Quarterly Performance Report, Fulfillment of export obligation and to see that the goods are not cleared for home consumption. The Appellant complied with all these requirements.



- vii. The trimmed and dressed dimensional blocks were exported directly from the quarries to save handling and transportation cost as no further processing was required.
- viii. The Appellant, vide letter dated 09.04.2018, informed that they exported the processed Granite Dimensional Blocks and slabs from the 100% EOU unit for the period 2016-17 and 2017-18.

After considering the reply, a Personal Hearing was granted before the DC on 6.09.2017.

4.3 DC, MEPZ-SEZ, in its findings, recorded that the LOP has been issued to the Appellant to set up an EOU at a specific place i.e., 145, Injambakkam, Chennai. The Appellant, vide letter dated 24.11.2016, stated that they have exported products worth Rs. 961.79 lakhs during the period 2011-12 to 2015-16 from their quarry. This fact was admitted by the representatives of the Appellant during the Personal hearing. Hence, the Appellant was held to have made exports to the tune of Rs. 961.79 lakhs during the period 2011-12 to 2015-16 in contravention of the FTP and thereby violating the provisions of the section 11(2) read with section 11 of the Act. It was also noted that the Appellant confirmed that they have not exported the processed granite dimensional blocks as well Granite slabs directly from the quarry site but from the processing EOU unit only for the period 2016-17 to 2017-18.

4.4 Accordingly, DC, MEPZ-SEZ imposed a penalty of Rs. 9.62 lakhs on the Appellant vide Order-in-original dated 16.05.2018.

5. Aggrieved by the above stated Adjudication Order, the Appellant filed the present Appeal. The Appellant was granted opportunity of Personal hearing on 20.11.2020. The Appellant in its written and oral submissions stated that:-

- (i) They have acted in strict compliance with the provisions of the FTDR Act, the rules made thereunder or any of the FTP provisions and hence cannot be held liable to pay penalty
- (ii) Customs Notification No. 52/2003-Cus dated 31.3.2003 permits the EOU to remove the bonded capital goods to the quarries for purposes of quarrying subject to the condition inter-alia that the goods so quarried shall be removed from the quarry site only for supply to units' own processing unit or for supply to another export oriented unit or the unit in the special economic zone engaged in processing or production or manufacture of articles and export thereof and shall not be allowed to be exported as such or to be cleared in DTA.
- (iii) The exports of granite blocks under question have been made from the quarries only after subjecting them to a process of trimming and dressing and exporting them as trimmed and dressed dimensional blocks. They have not been exported "as such" and hence are not prohibited under the above Customs notification.



- (iv) The goods exported, namely, trimmed and dressed dimensional blocks are permitted for export under the LOP. In terms of the para 6.2(a)(i) as amended, an EOU may export all kinds of goods and services except items that are prohibited in ITC(HS) and the Appellant's export of trimmed, dressed dimensional blocks are not in the prohibited list.
- (v) The Appellant was under a bonafide belief that as long as products exported were products approved under LOP and are not prohibited in ITC(HS), they can be counted as EOU exports.
- (vi) Assuming but not admitting, that the trimmed and dressed dimensional blocks exported directly from quarries are to be excluded from EOU exports, it will still achieve positive NFE.
- (vii) The activities of trimming and dressing of the dimensional blocks are undertaken at the quarry itself as bringing the same to the factory for the said activity would involve unnecessary handling and transportation cost, especially when the gateway port and the unit are in opposite directions. Further, this is commercially sensible and bringing the same to the factory for these operations and transporting them to the port would lead to wastage of resources such as fuel, etc. It is also submitted that the trimmed and dressed blocks are freely exportable and are not subject to any prohibition.
- (i) The company was exporting blocks from quarry after processing/dressing during the period from 2011-12 to 2015-16 as it was their bonafide belief that such exports were allowed. During this period, Rs 9.62 crore worth of goods were exported from the quarry site and even if this amount is not counted than also the firm still will be able to fulfill its export commitments. The firm did not bring blocks to the unit as the quarry was 200 kms away due to huge transportation cost and time for period of supply as demanded by customers. He informed that as per SC judgement any action done under a bonafide belief should not be penalised.

6. Comments on the appeal were obtained from DC, MEPZ-SEZ. The DC, vide letter F. No. A/2004(044)/EOU/TN/5201 dated 01.11.2019, inter-alia, stated that:

- i. LOP was granted on 21.12.2004 to the Appellant for manufacture and export of dimensional granite blocks, processed, dressed, cut granite slabs. LOP was issued with a condition that the unit had to export the entire production/service, excluding rejects and sales in the DTA as per provisions of EOU scheme for a period of 5 years from the date of commencement of production.
- ii. An e-mail dated 24.11.2016 was sent to the Appellant seeking details of export and the Appellant vide letter dated 24.11.2016 furnished the details of exports wherein it was observed that exports to the tune of Rs 961.79 lakhs was made directly from the quarry.
- iii. The exports made directly from the quarry were manufactured or produced from duty paid capital goods and the blocks/slabs exported were manufactured from



- the exempted machineries procured under the EOU scheme and the same was admitted by the Appellant.
- iv. The para 6 of the FTP 2009-14 states that any exports carried outside the EOU premises would be treated as DTA exports and cannot be carried out on the strength of LOP and Green Card issued to an EOU and the same cannot be treated as EOU exports.
 - v. While bonding 4 quarries as additional locations, the Appellant did not declare the quarry at Panchapally and Sulakonda. It did the same in order to subvert the jurisdiction of the DC and Customs.
 - vi. Condition 7 of Notification No. 52/2003 of Customs dated 31.03.2003 was to stop any pilferage of goods (in this case, Granites) into DTA but the Appellant has done the same.
 - vii. Appellant contravened the Provisions of FTP and exported directly from unauthorized premises and accounted it as EOU exports. Furthermore, the Appellant violated several provisions of LUT and Customs notification. It also submitted incorrect quarterly performance reports and annual performance reports and was hence liable to pay penalty as per paras 7 and 8 of the LUT.

7. I have considered the Adjudication Order dated 11.07.2018 passed by the DC, MEPZ-SEZ, oral/written submissions made by the Appellant, comments received from DC, MEPZ-SEZ and all other aspects relevant to the case. I find that:

- (i) The LOP was issued to the Appellant for manufacturing and exporting Dimensional Granite Blocks, Processed, Dressed, Cut (in all assorted Dimensions) and Granite Slabs from the location/unit at 145, Injambakkam, Chennai.
- (ii) The Appellant has not denied that it was exporting blocks from quarry after processing/dressing during the period from 2011-12 to 2015-16. During the period from 2011-12 to 2015-16, goods worth Rs 961.79 lakhs were exported from the quarry site. The reason given is that the firm did not bring blocks from the quarry to the unit due to logistic constraints. This justification is not acceptable.
- (iii) The exports made directly from the quarry were manufactured or produced from duty paid capital goods and the blocks/slabs exported were manufactured from the exempted machineries procured under the EOU scheme and the same was admitted by the Appellant.
- (iv) The Appellant was aware of the policy provisions of the para 6 of the FTP 2009-14 which stipulates that any exports carried outside the EOU premises would be treated as DTA exports and cannot be carried out on the strength of LOP and Green Card issued to an EOU. In spite of knowing this, the Appellant exported blocks from the quarry instead from the unit mentioned in the LOP issued by the DC.



- (v) Moreover, the appellant failed to declare two additional quarries to the DC and also submitted incorrect QPRs and APRs. Through its actions, Appellant has committed violation of the conditions mentioned in the LOP and relevant policy provisions.
- (vi) Any condonation of the irregularities/violations committed by the Appellant will give encouragement to other EOUs for exporting from any unauthorized place at their convenience and later including such exports in the exports purported to be have been made by them from the EOU.
- (vii) DC has held that the Appellant has illegally exported goods worth Rs. 961.79 lakhs and imposed a penalty of Rs. 9.62 lakhs. It is observed that the quantum of penalty is reasonable and requires no interference.


7. 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 hereby pass the following order:

Order

F. No. 01/92/171/13/AM-19/ PC-VI

Dated: 12.01.2021

The Appeal is dismissed.

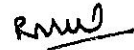


(Amit Yadav)

Director General of Foreign Trade

Copy to:

- (1) M/s. Gem Granites Pvt. Ltd., No.145, Injambakkam, Chennai-600041.
- (2) Development Commissioner, MEPZ-SEZ, Chennai with an advice to make recoveries.
- (3) Addl. Secy, (SEZ Division), DoC, Udyog Bhavan, New Delhi for information.
- (4) DGFT's web site.



(Randheep Thakur)

Joint Director General of Foreign Trade