

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

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F.No. 01/92/171/15/AM-21/Policy 6 /44-45, TP.No.61

Date of Order: 20.09.2022  
Date of Dispatch: 20.09.2022

Name of the Appellant:

**IMBB**  
**185/186, Chinubhai Towers,**  
**Ashram Road,**  
**Ahmedabad-380009**

IEC Number:

**0815008791**

Order appealed against:

**Appeal filed against Order No. 12/2020-21 dated**  
**18.02.2021 passed by the Development**  
**Commissioner, Kandla Special Economic Zone**

Order passed by:

**Santosh Kumar Sarangi, DGFT**

**Order-in-Appeal**

IMBB (hereinafter referred to as "the Appellant") filed an appeal on 04.03.2021 (received on 08.03.2021) under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against the Order No. 12/2020-21 dated 18.02.2021 (issued from F.No. KASEZ/100%EOU/II/05/2015-16/7165) passed by the Development Commissioner, Kandla Special Economic Zone (hereinafter referred to as "the DC") imposing a penalty of Rs. 95,90,000/- (Rupees Ninety Five Lakh Ninety Thousand Only).

2.1 Vide Notification No. 101 (RE-2013)/2009-2014 dated 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 appeal is before me.

2.2 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.



### 3.0 Brief facts of the case:

3.1 IMBB (hereinafter referred to as "the Appellant"), was issued a Letter of Permission (LoP) by the DC, KASEZ on 13.10.2015 for manufacturing and exporting Woven Fabrics PP, FIBC, Container Liner, PP Film Sheet. Appellant commenced its commercial production under EOU Scheme with effect from 04.08.2016.

3.2 Appellant was required to achieve positive Net Foreign Exchange (NFE) Earnings as prescribed in the Foreign Trade Policy (FTP).

3.3 After examination of the Annual Performance Report (APR) for the period 2018-19 submitted by the Appellant, it was concluded that there was a pending Foreign Exchange Remittance amounting to Rs. 103.37 lakhs which was shown as pending beyond the prescribed period.

3.4 As per para 2.54(a) of FTP, 2015-2020, if an exporter failed to realize export proceeds within time specified by RBI it was, without prejudice to any liability or penalty under any law in force, liable to return all benefits/ incentives availed against such exports and action was to be taken in accordance with provisions of FT(D&R) Act, Rules and Orders made thereunder and in FTP.

3.5 DC, KASEZ observed that the Appellant failed to realize export proceeds amounting Rs. 103.37 lakhs as per APR for 2018-19, thereby contravening the provisions of the FTP, the relevant provisions of the HBP of the FTP in force and also the conditions of LoP.

3.6 DC issued a Show Cause Notice (SCN) dated 23.12.2020 to the Appellant to show-cause as to why action should not be taken against it for imposition of penalty under Section 11 read with Section 13 of FT(D&R) Act, 1992 as amended and also as per the para 2.54 of the FTP. DC granted Personal hearings on 07.01.2021 and 21.01.2021.

3.7 DC, KASEZ observed that the Appellant failed to realize export proceeds amounting to Rs 103.37 lakhs as per APR for 2018-19. Further, out of Rs. 103.37 lakhs, Appellant realized foreign exchange amounting to Rs. 35.99 lakhs only and remaining amount of Rs. 67.38 lakhs was pending realization.

3.8 DC, KASEZ vide Order-in-Original No. 12/2020-21 dated 18.02.2021 imposed a penalty of Rs. 95.90 Lakhs upon the Appellant under Sections 11 and 13 of the FT(D&R) Act, 1992, as amended, for failing to realize pending foreign exchange within the stipulated time.

4.0 Aggrieved by the Order-in-Original dated 18.02.2021, the Appellant has filed the present Appeal. Shri N.K. Tiwari appeared on behalf of the Appellant in the hearing held on 25.03.2022. Shri Satyadeep Mohapatra, Joint DC appeared on behalf of the DC, KASEZ. The Appellant in its written and oral submissions raised the following grounds :-

- (i) The para 2.54 of the FTP, 2015-20 provides if an exporter is unable to realize the export proceeds for reasons beyond his control, he may approach RBI for writing off the said unrealized amount. In the present case, Appellant had been pursuing



all along with the foreign buyer for remitting the unrealized amount and had been successful in pursuing the matter.

- (ii) Imposition of huge penalty on the Appellant is unwarranted and unjustified. For imposition of penalty, it has to be established that the Appellant had acted deliberately in defiance of law.
- (iii) RBI has issued directions that the AD Category I banks may permit settlement of import dues delayed due to disputes, financial difficulties etc. up to a period of three years. Accordingly, no penalty may be imposed on Appellant.
- (iv) There was a quality dispute, which was settled in December, 2018. The foreign buyer had promised that he would be sending 5000 Canadian dollars per month.
- (v) After passage of Order-in-Original, the entire amount has been received till 24.03.2022 except \$ 25,000 against one invoice. Considering the exchange rate, the total outstanding amount is Rs. 15,92,501/-. The balance amount is expected to be realized by July, 2022.

5.0 Comments on the Appeal were obtained from the office of the DC, KASEZ. The DC vide letter dated 30.09.2021 has stated as under: -

- (i) The contention of the Appellant that the issue of non-receipt of the export realization having been resolved is denied since para 2.54(a) of FTP, 2015-20 prescribes that if an exporter fails to realize export proceeds within time specified by RBI, he shall, without prejudice to any liability or penalty under any law in force, be liable to return all benefits / incentives availed against such exports and action in accordance with provisions of FT(D&R) Act, Rules and orders made there under and FTP.
- (ii) The penalty of Rs. 95.90 lakhs was imposed on the Appellant for failure on their part to realize export proceeds amounting to Rs. 103.37 lakhs at the end of year 2018-19 within prescribed period which rendered them liable to action under the provisions of the FT(D&R) Act, 1992.
- (iii) Appellant vide letter dated 19.01.2021 to DC informed that three invoices are pending as on 31.12.2020 for an amount of Rs. 67,38,477/-.
- (iv) In case an exporter is unable to realize the export proceeds for reasons beyond his control, he may approach RBI for writing off the unrealized amount as laid down in para 2.87 of HBP. As per RBI circular dated 04.12.2020, unit has to file an application with AD bank to 'Write off' the said outstanding foreign exchange. Appellant has admitted that they were pursuing with the foreign buyer and have not approached to RBI/AD bank.



6.0 An interim Order-in-Appeal was passed on 08.04.2022, the operative portion of which is reproduced below :-

*“Firm to make sincere efforts for realizing the balance export proceeds. DC, KASEZ to report the progress in the matter to the Appellate Authority by 30.09.2022.*

*Accordingly, Order-in-Original No. KASEZ/12/2020-21 dated 18.02.2021 by DC, KASEZ is kept in abeyance till 30.09.2022.”*

7.0 Appellant informed vide letter dated 07.06.2022 addressed to DC and DGFT that they have submitted the entire outstanding amount against invoice No. 54 dated 23.11.2017 as directed vide Interim Order-in-Appeal dated 08.04.2022.

8.0 DC, KASEZ has informed vide letter 14.07.2022 that Appellant has furnished e-BRC, which are verified from the statement of outstanding foreign exchange amount submitted by the unit and found to be correct.

9.0 I have considered the Order-in-Original dated 18.02.2021 passed by DC, KASEZ, Appeal and oral/written submissions preferred by the Appellant, comments given by the DC and all other aspects relevant to the case. It is noted that :-

- (i) Appellant was issued a LoP on 13.10.2015 by the DC, KASEZ for setting up a Unit in the KASEZ, subject to the conditions imposed therein. On the request of the Appellant, the validity of the LoA has been extended from time to time.
- (ii) The para 2.54 of the FTP, 2015-2020 stipulates for penal action in accordance with provisions of FT(D&R) Act, Rules and Orders made there under and FTP, if an exporter fails to realize export proceeds within the time specified by RBI.
- (iii) The action taken by the DC, KASEZ for imposition of penalty for contravening the provisions of the FTP is in accordance with the Act.
- (iv) As regards the quantum of penalty imposed, Adjudicating authority could not have imposed a penalty less than Rs. 10,000/- and not more than five times of the value of goods for which contravention has been made or is attempted to be made, whichever is more, as per the Section 11(2) of the FT(D&R) Act, 1992.
- (v) In the Order-in-Original, DC has recorded that the Appellant had unrealized foreign exchange amounting to Rs. 67.38 lakhs (approx.) against following three invoices as on 31.03.2020 :-

1. Invoice No. 7 dated 19.05.2017.
2. Invoice No. 26 dated 11.08.2017.
3. Invoice No. 54 dated 23.11.2017.



- (vi) In the Personal hearing held on 25.03.2022, Appellant submitted that out of the three invoices, there is unrealized foreign exchange amounting to Rs. 15,92,501/- against one invoice No. 54 dated 03.11.2017 only as on 24.03.2022.
- (vii) Vide interim Order-in-Appeal dated 08.04.2022, the Appellant was directed to make sincere efforts for realizing the balance export proceeds. Further DC, KASEZ was directed to report the progress in the matter to this Authority by 30.09.2022.
- (viii) Appellant has informed vide letter dated 07.06.2022 that they have realised the entire outstanding amount against invoice No. 54 dated 03.11.2017. DC vide letter dated 14.07.2022 has confirmed this assertion of the Appellant.
- (ix) Since the entire outstanding exports proceeds which were a subject matter of the Order-in-Original have already been realised by the Appellant, I am inclined to take a lenient view for deciding the quantum of penalty.

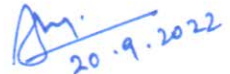
10.0 In view of the above, in the exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5<sup>th</sup> December 2014, I pass the following order :-

**Order**

F.No. 01/92/171/15/AM-21/Policy-6

Dated: 20.09.2022

Partial relief is granted. In view of the fact that the export proceeds have been realised in full, amount of penalty imposed vide Order-in-Original No. 12/2020-21 dated 18.02.2021 by the DC, KASEZ is reduced from Rs. 95,90,000 to Rs. 50,000 (Rupees Fifty Thousand Only).

  
20.9.2022

**(Santosh Kumar Sarangi)**  
**Director General of Foreign Trade**

Copy to:

1. IMBB, 185/186, Chinubhai Towers, Ashram Road, Ahmedabad-380009.
2. Development Commissioner, KASEZ for information and 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