

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

F. No. 01/92/171/05/AM-17/PC-VI / 22-23

Date of Order: 14 .06.2022

Date of Order: 15 .06.2022

Name of the Appellant:

United Brothers Stones & Mines Pvt. Ltd.
At Boriach Post-Ashtagam,
Tal. & Dist Navsari- 396433,
Gujarat

IEC Number:

3704002046

Order appealed against:

Appeal filed against Order-in-Original No.
KASEZ/100%/EOU/II/137/04-05/142 dated 25.01.2016
passed by the Development Commissioner, Kandla
Special Economic Zone

Order-in-Appeal passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Appeal

United Brothers Stones & Mines Pvt. Ltd. (hereinafter referred to as "the Appellant"), an EOU unit, has filed an appeal dated 09.04.2016 (received on 11.05.2016) under Section 15 of Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original No. 32/2015-16 dated 25.01.2016 (issued under F.No. KASEZ/100%EOU/II/137/04-05), passed by the Development Commissioner (hereinafter referred to as "DC"), Kandla Special Economic Zone (KASEZ).

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. Brief facts of the case:

3.1 United Brothers Stones & Mines Pvt. Ltd. was issued a Letter of Permission (LoP) dated 08.02.2005 by the DC, KASEZ to set up an EOU Unit at Pipaldhara, Gujarat to manufacture and export Mosaics Borders Tiles of Stone, Marble Stones, Slate Stones,



Onyx, Travertine Stone, Granite, Limestone, Metallic Tiles, Glass, Ceramics, Vitrified Tiles.

- 3.2 As per the terms and conditions of the LoP, the Appellant, inter-alia, was required to achieve positive Net Foreign Exchange (NFE) earnings as prescribed in the FTP.
- 3.3 Appellant commenced commercial production under the EOU Scheme w.e.f. 01.09.2005. At the time of renewal of LoP for a further period of 5 years and on review of export performance for second five year block as on 31.03.2015 on the basis of Annual Performance Reports (APR), DC found that :-
- (i) Appellant has made total exports of Rs. 23.45 lakhs with NFE earnings of Rs. 23.45 lakhs whereas outstanding export proceeds are US\$ 11,50,475.33 (equivalent to Rs. 720.09 lakhs).
 - (ii) Appellant had negative NFE of Rs. 696.64 lakhs during the five year block period from 2010-11 to 2014-15.
 - (iii) Appellant had sold the land/Bonded premises situated at Block No. 563 of village Pipaldhara, Taluka-Gandevi, District: Navsari, without taking the permission of the DC and Central Excise authorities, thus contravening the provisions of the FTP, HBP and the conditions of LoP. Further, the Appellant has used duty free goods for such unrealized export proceeds.
- 3.6 DC, KASEZ observed that the Appellant violated the conditions of the LoP and had thus contravened the FTP. DC issued a Show-cause notice (SCN) dated 09.11.2015 to the Appellant as to why action should not be taken against them for cancellation of their LoP under Section 9 of the FT(D&R) Act, 1992 read with Rule 10 of the FT(Regulation) Rules, 1993 and imposition of penalty under Section 11 of the Act, as amended.
- 3.7 DC granted a Personal Hearing on 26.11.2015. Appellant in its oral/written submissions stated that they were facing difficulty in export proceeds due to global problem, export proceeds of \$1 lakhs had been realized and they are managing to get the remittance of their past invoices.
- 3.8 DC, KASEZ observed that the Appellant had unrealized export proceeds, negative NFE and sold the land/bonded premises without permission.
4. DC vide Order-in-Original dated 21.01.2016 imposed penalty of Rs. 270 lakhs on the Appellant under Section 11 and 13 of the FT(D&R) Act, 1992, as amended. The breakup of the penalty imposed is as under :-
- (i) For non-realization of export proceeds amounting to US\$ 11,50,475.33 (Indian Rupees Rs.720.09 lakhs) : Rs. 10 lakhs
 - (ii) For having negative NFE of Rs. 696.64 lakhs : Rs. 250 lakhs
 - (iii) Selling the land without taking the permission of DC, KASEZ and without consent of the Central Excise Authority : Rs. 10 lakhs

5. Aggrieved by the Order-in-Original dated 25.01.2016, the Appellant filed the present Appeal. The opportunities of personal hearing were given on 17.01.2020, 03.04.2020, 03.12.2020, 21.01.2021, 30.04.2021, 17.06.2021, 12.08.2021, 29.10.2021, 07.01.2022 and 09.05.2022. The hearing on 03.04.2020 could not take place due to lockdown due to Covid pandemic. Nobody appeared on behalf of the Appellant in the remaining Personal hearings.

6. Appellant in written submissions has raised the following grounds :-

- (i) Appellant got loan from Syndicate Bank, Navsari and availed credit limit of Rs. 560.00 lakhs against securities of their Directors, Shri Manoj Kumar C. Patel and Shri Ashish M. Patel.
- (ii) Appellant got the village Pipaldhara declared as a warehousing station by the Central Excise Commissionerate, Daman at Vapi after getting approval of the Unit as 100% EOU from DC, KASEZ on 07.02.2005.
- (iii) Unit earned NFE of US\$ 8,55,140,40 during the first block period from 01.09.2005 to 31.08.2010.
- (iv) As the Unit could not repay the loan and the amount of discounted foreign export bills from the Syndicate Bank for a long time because of recession in business and non-realization of export proceeds during the first block, the Bank filed an application before the Hon'ble DRT, Ahmedabad for recovery of dues. Hon'ble DRT, Ahmedabad passed an order of recovery of debt in DRT Appln. No. 28/09 and issued a recovery certificate to recover Rs. 6,99,58,650/-.
- (v) Shri Manoj Kumar Patel, the owner of the land block No. 563 of Village Pipaldhara Tal. Gandevi Dist: Navsari decided to dispose off the land to repay the dues to the Syndicate Bank. Since the ownership of the land is private and the property was a leased property for 10 years as per lease agreement executed between the Unit and the owner, there was no need to take permission either from DC, KASEZ or the Central Excise Department for selling it.
- (vi) As per direction of DC, KASEZ, Unit applied on 04.12.2013 to the DC, Central Excise Department, Valsad to get NOC for location change of the Unit from village Pipaldhara to village Bodvank declared as warehousing station by the Central Excise Department. Appellant did not receive any reply.
- (vii) DC, KASEZ did not give permission for location change of the Unit and extension of the validity of LoP.
- (viii) DC, KASEZ did not make inquiry and relied upon the APRs in treating NFE as Negative to impose penalty of Rs. 250.00 lakhs which is contrary to the facts.
- (ix) The Unit could achieve Export Performance of US\$ 19,92,640.00 but it could not achieve full realization of export proceeds because of recession in business and closure of business by the buyer company Can Mosaics Inc., Brampton-Toronto-Canada.

7. Comments on the Appeal were obtained from the office of DC, KASEZ. The DC vide letter dated 30.05.2017 stated as under :-

- (i) Appellant had outstanding export proceeds of Rs. 720.09 lakhs and also negative NFE of Rs. 696.64 lakhs during the five year block period from 2010-11 to 2014-15, in violation of the FTP.

- (ii) Appellant had sold the land/bonded premises without the permission of DC, KASEZ and without the consent of Central Excise authorities, thus breaching the provisions of the FTP, HBP and the conditions of LoP.
- (iii) As per the APRs submitted by the unit, foreign exchange realization USD 1078507.48 pending since 2006-07 has increased to USD 1150475.33 in the second block period ending in 2014-15 which contradicts the statement given by the unit that they have made efforts to recover foreign exchange realization/export proceeds.
- (iv) Since there is no production since 2013-14 onwards and no export production activities, the objectives of EOU Scheme are getting defeated.
- (v) Case was filed before Hon'ble DRT, Ahmedabad for the recovery of the dues from the unit and Hon'ble Court has also issued a recovery certificate.

8. I have considered the Order-in-Original dated 25.01.2016 passed by DC, KASEZ, Appeal, comments of DC, KASEZ and all other aspects relevant to the case. It is noted that opportunities of personal hearings were granted on 17.01.2020, 03.12.2020, 21.01.2021, 30.04.2021, 17.06.2021, 12.08.2021, 29.10.2021, 07.01.2022 and 09.05.2022 but nobody appeared on behalf of the Appellant. Accordingly, the Appeal is being decided ex-parte.

- (i) The para 6.05(c) of FTP, 2015-20 stipulates 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."

As per the policy/procedure, the NFE is calculated cumulatively for a period of five years and the Appellant was found to have negative NFE for the five year block period from 2010 to 2015. Hence, the action taken by the DC, KASEZ for imposition of penalty of Rs. 250 lakhs for having negative NFE of Rs. 696.64 lakhs during the block period from 2010-11 to 2014-15 for contravening the provisions of the FTP and conditions of the LoP is in accordance with the Act.

- (ii) The para 2.54(a) of FTP, 2015-20 stipulates as under :-

"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."

The penalty has also been imposed on the Appellant for non-realization of exports proceeds within the stipulated time period by the DC. In the Appeal, Appellant has stated that it is trying to get the outstanding amount remitted from

overseas. However, in the absence of a fresh updated status regarding realization of export proceeds it is assumed that the overdue export realization amount as indicated by DC, KASEZ in the Order-in-Original is pending. In the absence of evidence in the representation it is assumed that the Appellant has also not approached RBI for extension of period for realizing export dues or for writing off export dues. Accordingly, penalty imposed on this account is reasonable and upheld.

- (iii) As regards the imposition of penalty for selling the land without taking the permission of DC, KASEZ, and without consent of the Central Excise Authority it is observed that the grounds submitted by the Appellant are without merit and accordingly penalty on this account is upheld.
- (iv) As regards the quantum and reasonableness 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. The penalty imposed could have been upto five times i.e. Rs. 3,483.20 lakhs and therefore uphold the imposition of penalty of Rs. 270 lakhs as reasonable.

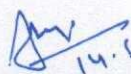
9.0. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5th December 2014, I pass the following order :

Order

F.No. 01/92/171/05/AM-17/PC-VI


Dated: 14.06.2022

The Appeal is dismissed.


(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:

1. ✓ United Brothers Stones & Mines Pvt. Ltd., At Boriach Post-Ashtagam, Tal. & Dist Navsari-396433, Gujarat.
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