

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

F. No. 01/92/171/43/AM-20/ PC-VI/63-64 Date of Order: 14.01.2021
Date of Dispatch: 14.01.2021

Name of the Appellant

Lohmann Adhesive Tapes India Pvt.
Ltd,
Plot No. OZ-15, High-tech SEZ,
Sipcot Industrial Growth Centre,
Oragadam, Sriperumbudur -
602105.

IEC Number:

0407007318

Order appealed against:

Order-in-Original No. 8/5/2007/
Oragadam SEZ- II dated 27.06.2019
passed by Development
Commissioner (DC), Madras Export
Processing Zone (MEPZ), Chennai.

Order-in-Appeal passed by:

Amit Yadav, DGFT.

Order-in-Appeal

Lohmann Adhesive Tapes India Pvt. Ltd. (here-in-after referred to as 'the Appellant'), a Unit in Special Economic Zone (SEZ), filed an appeal on 08.08.2019 u/s 15 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as "the Act") against Order-in-Original Number 8/5/2007/Oragadam SEZ-II dated



27.06.2019 passed by Development Commissioner (DC), MEPZ imposing a penalty of Rs. 52,64,470/-

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 Approval (LoA) on 13.11.2007 for setting up a Unit in Madras Export Processing Zone to manufacture and export of Die-cuts for Mobile Phones, Electronics and other industries & customized Adhesive Tapes. The Unit commenced its operations on 11.11.2008.

3.2. As per provisions of Rule 25 and 54(2) of SEZ Rules, 2006 and conditions stipulated in its LoA & Bond-Cum-Legal undertaking, which were accepted by the Appellant, the Appellant is liable for penal action under the provisions of FT(D&R) Act, 1992 in case it fails to achieve positive Net Foreign Exchange in any block of five year after commencement of its operations. Further, as per Rule 80 of the SEZ Rules, if an SEZ unit, in case of bonafied defaults, fails to achieve the minimum specified NFE or specified value addition, such shortfall may be regularized after the Unit deposits an amount equal to one percent of shortfall in such NFE.

3.3 On completion of its second five-year block period on 10.11.2018, the Appellant applied for renewal of its LOA for another Five Years Period. Hence, its performance during the second five-year block period from 11.11.2013 to 10.11.2018 was reviewed by the DC based on provisional Annual Performance Report submitted by the Appellant. It was found that the Appellant failed to achieve positive NFE during the

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second five-year block period in contravention of provisions of Rule 25 and 54 of SEZ Rules, 2006 and conditions stipulated in its LoA & Bond-Cum-Legal undertaking.

3.4. Accordingly, a notice dated 11.12.2018 was issued to the Appellant by DC, MEPZ to show cause as to why action should not be taken against it by imposing a penalty under Section 11 (2) of the Act.

3.5. In its written submissions dated 19.12.2018 before the DC, the Appellant stated that:

- i. It used to supply its manufactured items to Nokia India Limited. However, Due to internal issues at Nokia, its sales to Nokia came down drastically in the year 2010 and totally stopped from 2011.
- ii. Business done during the period from 2013 to 2015 in ASEAN countries was shifted to Singapore in view of the sudden decision of its head office in Germany which resulted in slipping of exports.
- iii. It prayed not to impose high penalty as it was a loss-making company.

3.6. On examination of written submissions made by the Appellant, the DC found that the Appellant achieved Negative Net Foreign Exchange (NFE) of Rs. 5264.47 Lakhs during Second Block from 11.11.2013 to 10.11.2018. Accordingly, the DC decided to adjudicate the matter and imposed a penalty, of Rs. 52,64,470/-, equivalent to one percent shortfall in the FOB value, on the Appellant under Section 11 of the Act read with Rule 80 of SEZ (Amendment) Rules, 2018 vide Order-in-Original dated 27.06.2019 for the violation of Rule 25 and 54(2) of SEZ Rules, 2006 and the provisions and conditions stipulated in its LoA and Bond-Cum-Legal undertaking.

4. Aggrieved by the above stated Adjudication Order, the Appellant filed the present appeal u/s 15 of FT (D&R) Act, 1992. Personal Hearing was held on



15.10.2020. The Appellant in its oral and written submissions raised the following issues:

- i. It could not achieve positive NFE during second block of five years despite bonafide efforts.
- ii. Rule 80 of The SEZ Rules, which came into effect on 19.09.2018, is not applicable to it for most of the period of its operations. However, by invoking this rule, huge penalty has been imposed on it.
- iii. As the financial position of the Appellant is not good, imposing huge penalty would make the company further sick.
- iv. By taking a lenient view, penalty, if any, should be levied u/s 11(2) of the FT (D&R) Act, 1992.

5. Comments of DC were also obtained on the appeal filed by the Appellant. The DC vide letter File No.8/5/2007/ORGADAM SEZ II dated 03.10.2019 has *inter-alia* stated:

- i. Rule 80 of SEZ Rules, as amended on 19.09.2018, would be applicable on the Units which complete its Five-Year Block Period and earns Negative NFE on or after 19.09.2018. In this case, second block period of the Appellant expires after 19.09.20218 hence, Rule 80 is applicable.
- ii. As per Section 11(2) of the FT (D&R) Act, a penalty of maximum of five times the value of the goods or services can be imposed, which would be exorbitantly higher. Hence, penalty levied under Rule 80 cannot be said to be high.
- iii. The Appellant has already deposited the penalty amount on 18.07.2019 under protest.

6. I have considered the Adjudication Order dated 27.06.2019 passed by DC, MEPZ, oral/written submissions made by the appellant, comments of DC, MEPZ and all other aspects relevant to the case. It is noted that:

- (i) The fact regarding short fall in the NFE has been admitted.

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- (ii) Rule 80 of the SEZ Rules, which came into effect on 21.09.2018 vide DoC's Notification dated 19.9.2018, is for regularization of bonafide defaults for not achieving the minimum specified NFE/value addition. Here the Appellant has stated that it failed to achieve positive NFE despite its bonafide efforts during second block of five years which expired on 10.11.2018. Since, the said Rule 80 of SEZ Rules was already in existence before the expiry of second block period, the Appellant should have come forward to get its shortfall regularized by paying 1% of the value of such shortfall.
- (iii) In this case, the matter has been adjudicated as per section 11(2), imposing a penalty taking a cue from the regularization fee as prescribed in Rule 80. Under Section 11(2), the Adjudicating Authority could have imposed a penalty up to five times of the value of goods for which contravention has been made. In the instant case, the value of goods under contravention is Rs. 5264.47 Lakh. Therefore, the penalty amount could have been up to Rs. 26322.35 Lakh whereas the Adjudicating Authority imposed a penalty of Rs. 52,64,470/- only. Such a penalty cannot be termed as harsh or unreasonable, by any stretch of imagination.

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 pass the following order:

Order

F.No. 01/92/171/43/AM-20/ PC-VI

Dated: 14.01.2021

The appeal is dismissed.



(Amit Yadav)

Director General of Foreign Trade

Copy To:

- (1) Lohmann Adhesive Tapes India Pvt. Ltd., Plot No. OZ-15, High-tech SEZ, SIPCOT Industrial Growth Centre, Oragadam, Sriperumbudur- 602 105.
- (2) Development Commissioner, MEPZ, SEZ.
- (3) DGFT's web site.


(Shobhit Gupta)

Dy. Director General of Foreign Trade