

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

F. No. 01/92/171/01/AM-22/PC-VI/28-29

Date of Order: 29.06.2022

Date of Dispatch: 29.06.2022

Name of the Appellant: **DOZCO (India) Private Limited,
Plot No. G1 and G2,
Phase-II, VSEZ, Duvvada,
Visakhapatnam- 530046**

IEC Number: **2189000271**

Order appealed against: **Appeal filed against Order-in-Original dated
22.01.2021 passed by the Development Commissioner,
Visakhapatnam SEZ**

Order-in-Appeal passed by: **Santosh Kumar Sarangi, DGFT**

Order-in-Appeal

DOZCO (India) Private Limited (hereinafter referred to as "the Appellant"), a SEZ unit, has filed an appeal dated 10.03.2021 (received on 26.03.2021) under Section 15 of Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original dated 22.01.2021 (issued under F.No. 9/SEZ/173/VSEZ/2020), passed by the Development Commissioner (hereinafter referred to as "DC"), Visakhapatnam Special Economic Zone (VSEZ).

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 DOZCO (India) Private Limited was issued a Letter of Approval (LoA) dated 15.09.2005 by the DC, VESEZ, for manufacture of "BBS Castor Oil/commercial grade Castro oil and refined Castor oil and also for Trading activity" subject to conditions imposed therein.


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- 3.2 As per the terms and conditions of the aforesaid LoA, the Appellant, inter-alia, was required to achieve positive Net Foreign Exchange (NFE) as prescribed in the SEZ Act, 2006 and Rules made thereunder.
- 3.3 DC noticed that the Appellant has negative NFE in the period of four years from 01.04.2015 to 31.03.2019 and did not fulfill the conditions of the LoA and Bond-cum-LUT executed by it.
- 3.4 DC issued a Show-cause notice (SCN) dated 18.11.2019 to the Appellant as to why action should not be taken against them for the poor performance in terms of exports and for having a negative NFE.
- 3.5 Later, DC observed that in the five-year block of performance i.e. 01.04.2015 to 31.03.2020, the Appellant had negative NFE earnings to the tune of Rs. 232.82 lakhs.
- 3.6 Appellant in its written/oral submissions in the Personal hearing on 22.01.2021 before the DC informed that due to global scenario in their field of activity and competition from their competitors there was a poor performance. They are hopeful of having good exports in the year 2020-21 and 2021-22.
- 3.6 DC observed that the grounds given are not justifiable with respect to the provision of SEZ Act, 2005 and Rules made thereunder.
4. DC, VSEZ vide Order-in-Original dated 22.01.2021 imposed a penalty of Rs. 2,32,820/- for non-achievement of positive NFE during the block period of five years from 01.04.2015 to 31.03.2020, under Section 11(2) of FTDR Act, 1992 read with Rule 80 of SEZ Rules, 2006.
5. Aggrieved by the Order-in-Original dated 22.01.2021, the Appellant filed the present Appeal. Nobody was present on behalf of the Appellant in the Personal hearing on 23.05.2022. Shri K.V. Prasanna Kumar, ADC appeared on behalf of the DC, VSEZ.
6. Appellant in written submissions has raised the following grounds :-
- (i) Appellant faced poor export performance on account of the economic downturn in the Indian and global economy. Further, export incentives like MEIS benefits and the Customs Duty Drawback were not adequate to match the competitive edge of the exporters of countries.
 - (ii) Export incentives under RoDTEP is likely to make them competitive in the global market and they will be able to convert negative NFE into positive NFE in the near future. They are confident and hopeful that in the next 2 financial years there will be a significant increase in their exports.
 - (iii) DC has failed to consider the submissions made about the adverse economic conditions in the foreign countries during the block period from 01.04.2015 to 31.03.2020.
 - (iv) The penalty imposed is against the principles of equity and natural justice and therefore is liable to be set aside.

7. Comments on the Appeal were obtained from the office of DC, VSEZ. The DC vide letter dated 20.06.2021 stated as under :-

- (i) Appellant was issued LoA dated 15.9.2005 for manufacture of "BBS Castor Oil/commercial grade castor oil, refined Castor oil and Trading activity. The unit had been in trading activity in "Construction equipment and its parts" for the period under review.
- (ii) The reply of the Unit has been taken into consideration while adjudication of the SCN dated 18.11.2019 issued under FTDR Act, 1992 to the Unit for accrual of Negative NFE for the period from 01.04.2015 to 31.03.2020 (5 year period block period).
- (iii) The unit could not achieve positive NFE as per the SEZ Act and Rules. The unit had negative NFE after the end of 5 year block period from 01.04.2015 to 31.03.2020 to the tune of Rs. 232.82 lakhs.
- (iv) Appellant was bound to have competition in the international market and the unit should have utilized the duty exemptions and other benefits to SEZ units to increase their performance.
- (v) DC, VSEZ did not find merit in the reasons given by the Appellant for negative NFE to the tune of Rs. 232.82 lakh and passed the Order-in-Original imposing penalty on it.

8. I have considered the Order-in-Original dated 22.01.2021 passed by DC, VSEZ, Appeal, comments given by the DC and all other aspects relevant to the case. It is noted that :-

- (i) As per the SEZ Rules, 2006 and Rules made thereunder, the Appellant was required to have positive NFE for the five year block period from 1.04.2015 to 31.03.2020. Hence, the action taken by the DC, VSEZ for imposition of penalty for contravening the provisions of the SEZ Act and conditions of the LoA is in accordance with the Act.
- (ii) Rule 80 which been inserted w.e.f. 19.09.2018 in the SEZ Rules, states that :-

"if a Special Economic Zone Unit, in case of bona fide default, fails to achieve the minimum specified Net Foreign Exchange or specified value addition, then such shortfall may be regularized after the Unit deposits an amount equal to one per cent."

Since the Rule 80 was already in existence before expiry of the block period, the Appellant should have come forward to regularize its shortfall by the paying 1% of the value of the shortfall.

- (iii) In the instant case the matter has been adjudicated as per Section 11 of the FT(D&R) Act imposing a penalty taking cue from the regularization fee as prescribed in Rule 80 of SEZ Rules. As per the Section 11(2) of the Act, the Adjudicating authority could have imposed penalty upto five times of the value of goods for which contravention has been made. In the present case, the shortfall in NFE is Rs. 232.82 lakhs. Therefore, the penalty amount could have been upto


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Rs. 1,164.10 lakhs whereas the Adjudicating Authority imposed a penalty of Rs. 2,32,820/- only. By any stretch of imagination, such a penalty cannot be termed as harsh or unreasonable and is upheld.

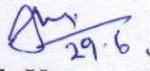
9. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5th December 2014, I pass the following order :-

Order

F.No. 01/92/171/07/AM-22/PC-VI


Dated: 29-06-2022

The Appeal is dismissed.


(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:

1. DOZCO (India) Private Limited, Plot No. G1 and G2, Phase-II, VSEZ, Duvvada, Visakhapatnam- 530046
2. Development Commissioner, Vishakhapatnam SEZ for information and compliance.
3. Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. DGFT's website.


(Randheep Thakur)
Joint Director General of Foreign Trade