

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

F.No. 01/92/171/06/AM-22/PCVI / 34-35, TR.No. 49 Date of Order: 20 .01.2022
Date of Dispatch: 21 .01.2022

Name of the Appellant: **Heubach Colour Pvt. Ltd.,
Plot No. 9002-9010,
Phase VI, GIDC,
Ankleshwar- 393002**

IEC No. : **3793000117**

Order appealed against: **Order-In-Original No. 16/2020-21 dated
05.03.2021 passed by the Development
Commissioner, Kandla Special Economic Zone
(KASEZ)**

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

Order-in-Appeal

Heubach Colour Pvt. Ltd. (hereinafter referred to as "the Appellant") filed an appeal dated 19.04.2021 (received on 29.06.2021) under section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against the Order-in-Original dated 05.03.2021 (issued from F.No. KASEZ/100%EOU/II/135/1993-94/Vol.VIII/7857) passed by the Development Commissioner (hereinafter referred to as "DC"), Kandla Special Economic Zone (KASEZ) imposing a penalty of Rs. 50,000/- (Rupees Fifty Thousand only).

2.1. 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 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. Appellant was issued a Letter of Permission (LOP) by the DC, KASEZ on 16-08-1993, as amended, for manufacture and export of Copper Phthalocyanine Green (Pigment Green 7), Copper Phthalocyanine Blue, Ammonium Sulphate Crystals (By Product), Ammonium Nitrate Crystals (By Product).
- 3.2. Appellant accepted the terms and conditions of the LoP, and thereafter executed a Legal Undertaking (LUT) with the DC, KASEZ to observe all the conditions and procedures prescribed under law in force.
- 3.3. As per the LOP, Appellant was required to fulfill the export obligation by exporting 100% of the resultant products, except those permitted under the law to be sold in Domestic Tariff Area (DTA). It was also required to achieve positive Net Foreign Exchange (NFE) Earnings.
- 3.4. Office of DC, Customs, EPC-4, Bharuch vide letter dated 29.06.2020 informed the DC, KASEZ about following irregularities committed by the Appellant which were not in accordance with the Foreign Trade Policy (FTP), 2015-20 and Customs Act, 1962 :-
- (i) Appellant sent the goods for job-work without obtaining job-work permission.
 - (ii) Appellant did not utilize the B-17 Bond for import of goods without payment of Customs duty and instead used General Bond which was not accepted by the competent authority being neither proper nor legal for operation of EOU for duty free import.
 - (iii) Appellant also did not submit appropriate Bank Guarantee (BG) for duty free imports.
- 3.5. DC observed that the Appellant had violated the procedures prescribed under FTP, 2015-20 and also violated the terms and conditions of LoP and LUT and issued a Show-cause Notice (SCN) to it for imposition of penalty under Section 11 read with Section 13 of FT(D&R) Act, 1992.
- 3.6. Appellant appeared before the DC for Personal hearing on 10.02.2021. In reply to the SCN and during personal hearing before the DC, the Appellant stated that :-
- (i) Appellant had applied for renewal of job work permissions but Customs Authority rejected their renewal request for want of BG.

- (ii) As per the para 6.12 of FTP, there was no requirement to submit the BG as Appellant had an untarnished record. However, it submitted BG of Rs. 4 crores on 19.03.2020 and 16.06.2020 and Dy. Commissioner of Customs renewed the permission for job-work granted to the Appellant.
- (iii) The general bond submitted by the Appellant was an additional compliance. Notification No. 01/2018-central excise (NT) dated 05.12.2018 stated that the fresh B-17 was not required for an existing EOU. But since jurisdictional Customs authority asserted for a fresh B-17 and BG it submitted the same vide their letter dated 23.07.2020.
- (iv) As per the provisions of FTP, the BG was not required. Appellant was qualified for dispensing way with the requirement of producing BG as required under para 6.12 of the FTP, 2015-20 because the Appellant's turnover was above Rs. 5 Crores, was in existence for more than 3 years and achieved positive NFE. Appellant also held an export House Status Certificate.
- (v) The SCN issued to the Appellant was due to procedural lapse and the waiver of the requirement of BG could not be denied.
- (vi) Two SCNs were issued to the Appellant regarding non-payment of excise duty of scrap sale and erroneous availing the CENVAT Credit on Service Tax Paid on sales commission and said SCNs were also concluded in Sabka Vishwas Scheme, 2019.
- (vii) But since the Jurisdictional Customs Authority did not agree with said explanation and insisted on providing a BG, Appellant furnished the same for importing duty free goods under IGCRD Rules.

3.7. On examination of the Appellant's submissions, the DC found that :-

- (i) DC, KASEZ was informed by the Deputy Commissioner, Customs on 29.06.2020 that the Appellant's Unit was not functioning in accordance with the FTP, 2015-20 and Customs Act, 1962.
- (ii) Appellant vide letter dated 05.09.2020 informed that it had submitted all compliances requested by the Jurisdictional Customs Office. Accordingly, a letter dated 27.10.2020 was issued to the Principal Commissioner of Customs, Ahmedabad to confirm the authenticity of the compliances made by the Appellant.



- (iii) It was informed by the Office of the Principle Commissioner, Ahmedabad vide letter dated 12.01.2021 that the Appellant after being pointed out started taking job work permission before sending goods for job work. It submitted a fresh B-17 Bond of Rs. 30 Crores and Bank Guarantee of Rs. 1.5 Crore vide letter dated 04.08.2020 which were accepted by the Deputy Commissioner, EPC-04, Bharuch.
- (iv) Appellant violated the rules and regulations for a considerable period of time for which necessary action was required to be taken.
- (v) Appellant did not take authorization before making DTA sale.

3.8. DC, KASEZ vide Order-in-Original dated dated 05.03.2021 imposed a penalty amount of Rs. 50,000/- in terms of Section 11 read with Section 13 of the FT(D&R) Act, 1992.

4.0. Aggrieved by the Order-in-Original dated 05.03.2021, the Appellant has filed the present Appeal. Shri Manish Jain and Ms. Shruti Agrawal, Advocates appeared on behalf of the Appellant in the personal hearing held on 18.11.2021. Appellant in its written and oral submissions has submitted as under :-

- (i) Appellant has significantly contributed in earning foreign exchange and was granted Two Star Export House Certificate by DC, KASEZ.
- (ii) The impugned order was based on the observations without any factual or legal basis and the observations made by the DC were not only biased in nature but also issued only to justify the proceedings initiated arbitrarily.
- (iii) Customs department wrongly denied the permission of job-work for the want of BG. Appellant has an unblemished record as none of the SCNs were issued in lieu of suppression, misrepresentation, etc. Thus as per Para 6.12 of FTP, 2015-20 there was no requirement for Appellant to submit the BG.
- (iv) Appellant however furnished the BG vide letter dated 19.03.2020 and the Deputy Commissioner vide letter dated 22.06.2020 renewed the permission for job-work.
- (v) The general bond submitted by the Appellant were additional compliance as it had already issued a B-17 continuity bond vide letter dated 05.06.2019. Thus, there was no default on part of the Appellant and it was wrongly penalized for the same.

5.0. Comments on the Appeal were obtained from the office of the DC, KASEZ. The DC vide letter dated 22.07.2021, inter-alia, stated as under :-

- (i) Order-in-original was issued after taking into consideration all the relevant facts and figures and as per the extant provisions of law and as informed by the Jurisdictional Customs Authority.
- (ii) The penalty was imposed upon the Appellant for not taking job work permission before sending goods for job work and non-submission of B-17 Bond and Bank Guarantee.
- (iii) Appellant achieved positive NFE but there was a lapse on its part for not taking authorization before making DTA sale. It also violated the procedures prescribed under FTP, 2015-20 as well as the terms and conditions of LoP & LUT.
- (iv) Appellant has already deposited an amount of Rs. 50,000/- towards full payment of penalty with the DC.

6.0. I have considered the Order-in-Original dated 05.03.2021 passed by DC, KASEZ, written submissions made by the Appellant, comments received from DC, KASEZ and all other aspects relevant to the case. It is noted that:-

- (i) Office of DC, Customs, EPC-4, Bharuch vide letter dated 29.06.2020 informed the DC, KASEZ about alleged irregularities committed by the Appellant in violation of the provisions of the FTP, 2015-20 and Customs Act, 1962.
- (ii) Only after issue of SCN by DC to the Appellant on 23.07.2020 under the FT(D&R) Act, 1992, it was confirmed by the Office of the Principle Commissioner, Ahmedabad vide letter dated 12.01.2021 that the Appellant has started taking job work permission before sending goods for job work, submitted a fresh B-17 Bond of Rs. 30 Crores and Bank Guarantee of Rs. 1.5 Crore.
- (iii) DC imposed a penalty upon the Appellant for not taking authorization before making DTA sale.
- (iv) It has not been denied by the Appellant that it had sent the goods for job work in the DTA without prior permission from the Customs.

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- (v) Appellant has stated that they applied with the Customs authority for grant of permission before expiry of the same but that authority rejected their request as they did not submit the Bank Guarantee. The delay in grant of permission for job work was a technical default as it was not clear whether the Appellant was required to submit the Bank Guarantee or not.
- (vi) The justification given by the Appellant cannot be accepted as it knowingly sent the goods for job work in the DTA.
- (vii) Appellant has violated the provisions of the para 6.12 of FTP, 2015-20 in not submitting Bank Guarantee before going for job work in DTA. It has also failed to take prior permission from the Customs authority for job work. Therefore, it is liable for penal action under the provisions of the FT(D&R) Act, 1992.
- (viii) DC has already taken a lenient view and imposed a penalty of Rs. 50,000/- which is a reasonable amount and does not deserve any intervention.

7.0. 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 5th December 2014, I pass the following order :-

Order

F. No. 01/92/171/06/AM-22/ PC-VI

Dated: 20.01.2022

The Appeal is dismissed.



(Amit Yadav)

Director General of Foreign Trade

Copy to:

1. ✓ Heubach Colour Pvt. Ltd., Plot No. 9002-9010, Phase VI, GIDC, Ankleshwar-393002
2. ✓ Development Commissioner, KASEZ 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