

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

F.No.01/92/171/42/AM-20/PC-VI

Date of Order: 16 .10.2020

Date of Dispatch: 16 .10.2020

Name of the Appellant:

Siyaram Metals Pvt. Ltd.,
B-18/A, GIDC, Shanker Tekri
Udyog Nagar, Jamnagar
Gujarat – 361006.

IEC Number:

2499003227

Order appealed against:

Order-in-Original No. 05/2019-
20 dated 04/05.07.2019 passed
by the Development
Commissioner, KASEZ

Order-in-Appeal passed by:

Amit Yadav, DGFT

Order-in-Appeal

Siyaram Metals Pvt. Ltd., Jamnagar, Gujarat (here-in-after referred to as 'the Appellant'), an EOU unit, 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 No. 05/2019-20 dated 04/05/.07.2019, issued from File no. KASEZ/100%EOU/II/946/2000-01/Vol. II, passed by the Development Commissioner (here-in-after referred to as 'DC'), Kandla Special Economic Zone (KASEZ).

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 Permission (LoP) by DC, KASEZ vide LoP No. KASEZ/100%EOU/II/946/2000-01/1773 dated 22.03.2001, as amended, for setting up an EOU for manufacture and export of recycled metal scrap, ingot and metal alloys etc. The Appellant commenced its commercial production w.e.f 20.04.2001.
- 3.2 The Appellant accepted all the terms and conditions of the LoP and executed a Legal Undertaking with the DC, KASEZ in accordance with the provisions of the Foreign Trade Policy. As per the Condition No. 6 of the Legal Undertaking, the Appellant was required to submit Annual Performance Report (APR) in the prescribed format as given in Appendix 6E of Foreign Trade Policy, 2015-2020, duly certified by a Chartered Accountant within a period of 90 days following the closing of financial year. However, the Appellant failed to furnish the APR for the year 2017-18 for which the last day of filing the reports was 30thJune, 2018.
- 3.3. Accordingly, a notice dated 26/30.04.2019 was issued to the Appellant by DC, KASEZ to show cause as to why the Importer Exporter Code, LoP, Green Card issued in its favour should not be suspended/cancelled in terms of Section 8 and 9 of the Act read with Rule 10 of Foreign Trade (Regulation) Rules, 1993 and/or a penalty be imposed under Section 11 read with Section 13 of the Act.
- 3.4. The Appellant in its reply and during personal hearing before the DC, stated that prior to this SCN, it had also received another SCN dated 03.07.2015 for non-submission of APR's for the years 2011-12, 2012-13, 2013-14 and 2014-15. A detailed explanation was submitted on 27.07.2015 wherein it was informed that it could not submit the said APR's as records of the company were seized by the Income tax Department during a search conducted on 23.08.2012. The said APR's were submitted vide letter dated 29.08.2014. After considering the reply, the DC dropped the proceedings vide Order-in-Original dated 21.08.2018. The Appellant quoted the same precedence and informed that



it has not carried on any business activity after 01.07.2012 and requested to condone the delay in submission of the said APR.

- 3.5. The DC in its findings recorded that the Appellant submitted its APR for the Financial Year 2017-18 on 29.05.2019, after a delay of 10 months in contravention of relevant provisions of FTP/ HBP. Hence, the DC proceeded to adjudicate the matter and imposed a penalty of Rs. 10,000/- on the Appellant under Section 11 read with Section 20(2) of the Act.
4. Aggrieved by the Order-in-Original dated 04/ 05.07.2019, the Appellant filed the present appeal. In addition to what was pleaded before the DC, the Appellant in its written as well as oral submissions during the personal hearing held on 11.09.2020 stated as under:
 - i. The Show Cause Notice dated 26/30.04.2019 was issued to it for not submitting the APR's for the year 2017-18. However, the penalty has been imposed for not submitting APR's for the year 2015-16 and 2016-17 which is beyond the scope of the Show Cause Notice.
 - ii. The Appellant changed its business location in 2016 but because of instability in the market it could not follow the procedure of filing of APR' and QPR's in due time.
5. Comments were also sought from the DC on 27/28.08.2019. The DC in its reply dated 10.11.2019 has inter-alia stated that:
 - i. The Appellant did not furnish the APR for the year 2017-18 even after the last date of filing. After issuance of SCN, it submitted the APR's on 29.05.2019. Since, there was a violation of specific provision of FTP/LUT, penalty has been imposed on it.
 - ii. Earlier also, it was issued a SCN for similar violations for which relief was granted. However, it again repeated the same acts and omissions which cannot be termed as technical delay.
6. I have considered the Adjudication Order dated 04.04.2016 passed by DC, KASEZ, oral/written submissions made by the Appellant, comments of the office of DC, KASEZ and all other aspects relevant to the case. It is noted that as per Para 5 &



6 of the Show Cause Notice dated 26/30-04-2019, the Appellant was asked to show cause as to why action, should not be taken for non-submission of APR for the year 2017-18 and in para 9 of the O-i-O, the DC has found that the Appellant submitted the said APR with a delay of 10 months. However, as per Para 11 of the impugned order dated 4-07-2019, penalty has been imposed for non-submission of APR for the year 2015-16 and 2016-17. It is noticed that there was no Show Cause notice issued to the applicant before taking action for non-submission of APR for the years 2015-16 and 2016-17 for which penalty has been imposed.

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

Order in original No. 05/2019-20 dated 04-07-2019 is set aside and the case is remanded back to the Adjudicating Authority for reconsideration.

F. No. 01/92/171/42/AM-20/ PC-VI/

Dated: 16 .10.2020



(Amit Yadav)

Director General of Foreign Trade

Copy To:

- (1) ✓ Siyaram Metals Pvt. Ltd., B-18/A, GIDC, Shanker Tekri Udyog Nagar, Jamnagar Gujarat – 361006.
- (2) ✓ Development Commissioner, Kandla SEZ.
- (3) ✓ DGFT's web site.



Dy. Director General of Foreign Trade