

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

F.No. 01/92/171/51/AM-20/PC-VI /7-8

Date of Order: 15.06.2021  
Date of Dispatch: 15.06.2021

Name of the Appellant: **Pramukh International,  
Plot No. 156, Surat SEZ,  
Sachin,  
Surat - 394230**

IEC No.: **5205019590**

Order appealed against: **Order-in-Original No. 05/2019-20 dated  
25.11.2019 passed by the Development  
Commissioner, Surat Special Economic Zone**

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

**Order-in-Appeal**

Pramukh International, Surat (hereinafter referred to as "the Appellant") filed an appeal dated 07.01.2020 (received on 13.01.2020) under section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against the Order-in-Original No. 05/2019-20 dated 25.11.2019 (issued from F.No. SSEZ/P-12/2005-06/852) passed by the Development Commissioner (hereinafter referred to as "DC"), Surat Special Economic Zone (SSEZ) imposing a penalty of Rs. 15,00,00,000/- (Rupees Fifteen Crores Only).

2.1. Vide Notification No. 101 (RE-2013)/2009-2014 dated the 5<sup>th</sup> 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 the 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 The Appellant was issued a Letter of Approval (LOA) by the DC, SSEZ vide F.No. SSEZ/P-12/312/2005-06/524 dated 04.10.2005, as amended/extended from time to time to set up a new undertaking in the Surat SEZ for manufacturing activity subject to the conditions imposed therein.
- 3.2 As per the terms and conditions of the LOA, the Appellant was required to execute a Bond-cum-Legal Undertaking in the Form-H under Rule 22 of the Special Economic Zone (SEZ) Rules, 2006.
- 3.3 Accordingly, the Appellant executed the Bond-cum-LUT in the Form-H. The following condition was mentioned at S.No. 7 of the Bond-cum-LUT :-
- “the unit is required to submit Annual Performance Reports within a period of ninety days following the close of financial year, in the form prescribed under the Special Economic Zone Rules, 2006, certified by Chartered Accountant. In case of wrong submission of such information or failure to submit such information within the stipulated time, the permission granted to them for carrying out the authorised operations may be withdrawn and/or the permission for further imports and sales in the Domestic Tariff Area may be stopped.”*
- 3.4 The Appellant filed its APR for the year 2014-15 duly certified by a Chartered Accountant before the DC, SSEZ.
- 3.5 DC observed that in the APR for the year 2014-15, the Net Foreign Exchange (NFE) status of the unit from the year 2010-11 to 2014-15 in the second block of five years was Rs. 1814.64 lakhs. Further, 13 cases of Foreign Exchange Inward Remittance of Export amounting to Rs. 1495.25 lakhs for the period from 2012 to 2015 were still unrealized.
- 3.6 The issue of non-realization of export proceeds by the Appellant was placed before the Unit Approval Committee of the DC in the meeting held on 03.05.2016 and it was decided to issue a Show-Cause Notice (SCN) to the Appellant.
- 3.7 DC issued a SCN dated 16.07.2019 to the Appellant for imposition of penalty under the provisions of the Rule 54(2) of the SEZ Rules, 2006 read with the Section 11(2) of the Act. It was, inter-alia, stated in the SCN that the Appellant was supposed to realize the export value as per the time limit of twelve months stipulated by the Reserve Bank of India (RBI). Further, Appellant has neither realized and repatriated the value of goods amounting to Rs. 1495.25 lakhs within a period of twelve months from the date of export nor obtained extension of time as per the RBI's AP(DIR Series) Circular No. 108 dated 11.06.2013.



4.0. Appellant in its written submissions dated 19.08.2019 and Personal Hearing on 19.09.2019 before the DC stated that:-

- (i) Appellant suffered due to worldwide recession from 2005 as the overseas clients delayed its payments. It was unable to realize its export proceeds as its exports consignments were rejected.
- (ii) The delay in payment of overseas customers and/or receivable are temporary financial crunch being faced by them were due to circumstances which are beyond their control.
- (iii) Appellant is in the process of recovering the overseas dues and has also appointed an Arbitrator in Hong Kong for recovery of dues and reconciling with the parties.
- (iv) DC failed to take into consideration all the written and oral submissions.

5.0. DC after going through the contents of the SCN and all other related documents, proceeded to adjudicate the matter and imposed a penalty of Rs. 15,00,00,000/- (Rupees Fifteen Crores only) on the Appellant for non-realization of Foreign Exchange Inward Remittance for the period 2012 to 2015 vide Order-in-Original dated 25.11.2019 for violation of provisions of the FT(D&R) Act, 1992 read with Rule 54 of the SEZ Rules, 2006 with the following observations:-

- (i) As per the APR for the year 2014-15 filed by the Appellant there are 13 cases of Foreign Exchange Inward Remittance of Export amounting to Rs. 1495.25 lakhs for the period 2012 to 2015 were still unrealized.
- (ii) Despite grant of sufficient opportunities over a period of 5 years, the Appellant neither submitted the realization nor produced any documentary evidence concerning extension of time from the RBI.

6.1. Aggrieved by the Order-in-Original dated 25.11.2019 the Appellant has filed the present Appeal. Notices for the Personal Hearing sent at the following addresses vide Speed Post were returned as undelivered :-

1. Pramukh International,  
Plot No. 156, Surat SEZ,  
Sachin, Surat-394230
2. Pramukh International  
101 to 105, Yogi Estate (Plot No. 74)  
Sarathi Industrial Estate Nandu Doshi Ni Wadi  
Vasta Devadi Road, Surat-395004.



Notice could also not be served via e-mail as the Appellant did not furnish details in the Appeal.

6.2. ADC, SSEZ vide e-mail dated 24.03.2021 has submitted that :-

- (i) Since no contactable person of Appellant could be found, the Preventive Officer, SSEZ visited premises of Pramukh International, Plot No. 156, SSEZ and found it closed.
- (ii) Accordingly, Panchnama dated 23.03.2021 had been drawn and pasted on the factory gate.

6.3. Accordingly, it has been decided to proceed ex-parte. The Appellant in its written submissions has raised the following grounds:-

- (i) The entire export proceeds of Rs. 1495.25 lakhs for the period from 2012 to 2015 is still due and receivable by the firm from the overseas customer.
- (ii) The delay in realization of export proceeds from the overseas customers was temporary.
- (iii) The delay in realization of export proceeds was due to worldwide recession from the year 2005.
- (iv) The delay in realization of export proceeds was due to rejection of various export consignments by the overseas buyer.
- (v) The delay in realization of Export Proceeds is beyond the control of the partners of the firm. It cannot be held that the delay in realization of Export Proceed is a deliberate act of the partners of the firm since there is no relation or common business interest between the buyer and seller.
- (vi) An Arbitrator for recovery of export proceeds had already been appointed in the buyer's country who was actively pursuing the recovery of outstanding dues of the Appellant.
- (vii) The Appellant was already in the process of filing an extension with the RBI for extension of realization of export proceeds.



7.0. Comments on the Appeal were obtained from the office of the DC, SSEZ. The DC vide letter dated 05.03.2020 has stated as under :-

- (i) The Export proceeds of Rs. 1,495.25 lakhs are still due and receivable from the overseas customers.
- (ii) The Export proceeds are pending for the period 2012 to 2015, which is a very long period. Therefore, it cannot be treated as temporary.
- (iii) The ground taken that the export proceeds were not realized due to recession is not sustainable.
- (iv) If the export consignments were rejected, the same should have been brought back to India. The ground taken is baseless.
- (v) The Appellant failed to realize the huge export proceeds, so they may have faced financial crunch but that is not the ground for present appeal.
- (vi) The delay is beyond the control of partners is no ground for the appeal.
- (vii) The time-period of 5 to 7 years has already passed and the appellant has not taken any extension from RBI. So, the adjudicating authority had to take appropriate action and rightly imposed penalty of Rs. 15 crores.

8.0. I have considered the Order-in-Original dated 25.11.2019 passed by the DC, SSEZ, written submissions made by the Appellant, comments given by the DC on the appeal and all other aspects relevant to the case. It is noted that :-

- (i) Appellant was issued a LOA on 04.10.2005 by the DC, SSEZ for setting up a Unit in the SSEZ, subject to the conditions imposed therein. On the request of the Appellant, the validity of the LOA has been extended from time to time.
- (ii) One of the main objectives of the SEZ Scheme is to promote exports of goods and services by providing incentives and necessary infrastructure to the potential units.
- (iii) Appellant has availed of the incentives/benefits available to the Units operating under the SEZ Scheme since the date of LOA i.e. 04.10.2005. It was well aware that it was required to realize the export proceeds within stipulated time as per instructions of the RBI and fulfill the conditions of the LOA. However, the Appellant has unrealized Foreign Exchange Inward Remittance of Export amounting to Rs. 1495.25 Lakhs for the period 2012 to 2015.

by

- (iv) After issue of a SCN, DC, SSEZ has passed the Order-in-Original dated 25.11.2019 taking into consideration the oral and written submissions of the Appellant.
- (v) Notice for PH to be held on 25.03.2021 before this Authority could not be served on the Appellant either by post or e-mail. DC, SSEZ has informed vide e-mail dated 24.03.2021 that there is no contactable person of the Appellant and also the premises of the firm are locked. It has been therefore decided to proceed ex-parte.
- (vi) The reasons furnished by the Appellant that it could not realize the export proceeds due to worldwide recession from the year 2005 and rejection of its consignments by the overseas buyers cannot be accepted as the grounds are too generic trade and business related reasons/situations.
- (vii) Rule 71 of the SEZ Rules, 2006 states as under :-  
*"Export value of goods, software and services may be realized and repatriated as per instructions of the Reserve Bank of India issued from time to time."*
- (viii) The contention of the Appellant that it is in the process of filing a request with RBI for extension of time period of realization of export proceeds cannot be accepted because the period of realization has expired atleast more than five years ago. It had sufficient time to file a request before the RBI for grant in extension of time for realization of export proceeds beyond the stipulated period of twelve months, as per the RBI circular dated 11.06.2013.
- (ix) Therefore, Appellant has committed a violation of the provisions of LOA and Bond-cum-LUT. Any condonation of the violation will give an encouragement to other units in the SEZs to not comply with the conditions of the LOA granted by the concerned SEZ and orders of the RBI as applicable to them.
- (x) Appellant is liable for penal action under the provisions of the FT(D&R) Act, 1992 as made applicable vide Rule 54(2) of the SEZ Rules, 2006. DC has imposed a penalty of Rs. 15 crores i.e. just Rs. 4.75 lakhs more than the amount of the non-realized export proceeds by the Appellant. DC has also not imposed any interest.
- (xi) In view of the above, the penalty of Rs. 15,00,00,000/- imposed by the DC is a reasonable amount and does not deserve any intervention.



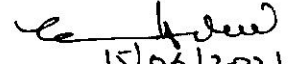
9.0. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5<sup>th</sup> December 2014, I pass the following order:

**Order**

F.No. 01/92/171/51/AM 20/ PC-VI

Dated: 15.06.2021

The Appeal stands dismissed.

  
15/06/2021  
(Amit Yadav)

**Director General of Foreign Trade**

Copy to:

- 1) Pramukh International, Plot No. 156, Surat SEZ, Sachin, Surat - 394230,
- 2) Development Commissioner, SSEZ with an advice to make recoveries.
- 3) Addl. Secretary (SEZ Division), DoC, New Delhi for information.
- 4) DGFT's website.



**(Randheep Thakur)**  
**Joint Director General of Foreign Trade**

