

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

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F.No. 01/92/171/32/AM 18/ PC-VI/51,52 Date of Order: 23.05.2019  
Date of Dispatch: 24.05.2019

Name of the Appellant: Raveshia Colours Pvt. Ltd., Vapi

IEC No. 0302043730

Order appealed against: Order-in-Original No. 20/2017-18 (F.No. KASEZ/100%EOU/II/169/01-02/Vol.III) dated 19.12.2017 passed by the Development Commissioner, Kandla SEZ, Gandhidham.

Order-in-Appeal passed by: Shri Alok Vardhan Chaturvedi, DGFT

**Order-in-Appeal**

Raveshia Colors Pvt. Ltd, Vapi (hereinafter referred to as 'the appellant'), a 100% EOU, has filed an appeal dated 7.2.2018 against Order-in-Original No. 20/2017-18 dated 06.09.2017 passed by the Development Commissioner, Kandla, SEZ, Gandhidham imposing on it a penalty of Rs. 5,00,000/-.

2. 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 the appeal is before me.

3.0 Brief facts of the case.

3.1 The appellant was issued a letter of permission (LOP) No. KASEZ/100%/EOU/II07/2006-07/6236 dated 28.07.2006, as amended, to set up a 100% EOU at Plot No. 123, GIDU, Vapi-396195 (Gujarat) for manufacture and export of Chrome Pigments, as amended. It commenced commercial production on 27.12.2006.

3.2 As per Para 6.08(a) of FTP read with Para 6.40(h) of HBP, 2015-20, an EOU can sell its finished goods at concessional rate of duty under intimation to the DC, subject to achievement of positive NFE, if the EOU is a holder of valid status certificate. Otherwise, it has to obtain permission of the DC in the prescribe form in terms of Para 6.08(a) of FTP 2015-20 read with ANF-6C of Appendices and Aayat Niryat Forms 2015-20. The DC determines the extent of DTA sale admissible and issue authorization in terms of value.

3.3 During test checks of the records for the period 2010-11 to 2015-16, it was observed that the appellant had cleared goods in DTA at concessional rate of duty under intimation to the DC whereas its status certificate, issued from DGFT on 14.03.2007, was valid only up to 31.03.2009.

3.4 Hence, the appellant was issued a notice dated 27.07.2017 by the Development Commissioner, KASEZ, to show Cause as to why action should not be taken against it for imposition of penalty under Section 11 read with Section 20(2) of the foreign Trade (Development & Regulation) Act, 1992.

3.5 The appellant, in its defence, stated before the DC that it had applied for renewal of star export house certificate on 18.09.2009 followed by another application but it did not receive any response from DGFT. It filed third application on 13.01.2017 and DGFT issued 'One star export house certificate' on 24.01.2017 for the period 13.01.2017 to 12.01.2022. During the disputed period, its DTA sales were well within the entitlement and its export performance in each year was more than Rs. 20 Cr. Hence, it was qualified for status holder certificate. As it was NFE positive during the said period, non-obtaining permission is just a minor procedural laps. Imposition of penalty for these technical laps is not sustainable.

3.6 The DC in its findings has recorded that the basic condition for DTA clearance on payment of concessional duties is that the value of goods to be cleared in DTA will be 50% of FOB value of exports which shall be determined by the concerned DC by way of issuing authorisation in terms of value and the DTA sale entitlement would accrue only if the unit has achieved positive NFE on cumulative basis. Since the appellant never applied for DTA sale permission, the DC proceeded to adjudicate the matter and imposed a penalty of Rs. Five Lakh only on the appellant u/s 11 read with section 20(2) of FT(D&R) Act, 1992 vide order-in-original dated 19.12.2017.

4.0 Aggrieved by the adjudication order dated 19.12.2017; the appellant filed the present appeal. During the personal hearing held on 25.04.2019 before me, the representative of the Appellant stated that :

- (i) During the disputed period, DTA sale was well within the DTA sale entitlement in terms of Para 6.8 of Foreign Trade Policy.
- (ii) The DC has also accepted in the impugned O-I-O, in Para 10, that the appellate has fulfilled the condition of achievement of cumulative positive NFE for entitlement of DTA sale.
- (iii) Being status holder, there was no requirement to take DTA sale permission from the DC. However, on regular basis, the appellant was intimating to the DC regarding DTA sales for each quarter based on the FOB value of goods exported and cleared the goods in DTA at concessional rate of duty under Notification No. 23/2003-CE dated 31.3.2003.



- (iv) It had regularly filed monthly ER-2 returns which include the details of quantity, value etc. of all clearances made from its factory.
- (v) It applied for renewal of star export house certificate on 06.05.2009 and also submitted original certificate of one star export house on 18.09.2009. It again filed second application on 03.09.2011 for renewal of star trading house certificate along with all documents. The application should have been disposed of within the time prescribed in Para 6.39 of HBP. But no response was received from DGFT.
- (vi) On 13.01.2017, it again filed an application for renewal of status holder certificate. DGFT finally issued the same on 24.01.2017 with validity up to January, 2022.

5.0 Comments from the office of the Development Commissioner, Kandla, SEZ, were also obtained on the appeal which have been received vide letter dated 12.12.2018. The DC has, inter-alia, stated that as per the available records, the appellant has neither applied for extension of status certificate to its office nor furnished extended copy of status certificate issued from DGFT. Since, the appellant failed to obtain permission for clearance of goods in DTA in terms of Para 6.08(a) of FTP 2015-20 read with ANF-6C of Appendices and Aayat Niryat forms 2015-20, the DC imposed the penalty on it.

6.0 I have gone through the facts and request of the case; oral/written submissions made by the appellant; comments of office of the DC, KASEZ and all other aspects relevant to the case. To summarize, the appellant was under obligation to obtain permission of DC under para 6.08(a) of FTP 2015-20 read with ANF-6C of Appendices and Aayat Niryat Forms, 2015-20 before clearance of goods in DTA. It was aware of the fact that it was not a holder of valid status certificate at the time of clearing the goods in DTA on concessional rate of duty and was not authorised to take the benefits of Para 6.40(h) of HBP, 2015-20. Even then, it chose to clear goods of a huge value for a long period in DTA only on intimation to DC in contravention of the relevant policy/procedure. By taking a sympathetic and lenient view, the DC imposed a penalty of Rs. 5,00,000/-only on the appellant which has already been deposited.

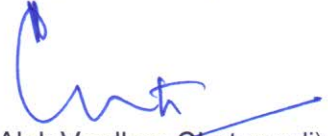
7.0 In view of the above, in exercise of the powers vested in us under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5<sup>th</sup> December 2014, we pass the following order:

**Order**

F.No. 01/92/171/32/AM 18/ PC-VI/

Dated: 23.05.2019

Order Order-in-original No. 20/2017-18 dated 19.12.2017 passed by the Development Commissioner, Kandla, SEZ is upheld and the appeal is dismissed.

  
(Alok Vardhan Chaturvedi)  
Director General of Foreign Trade

**Copy To:**

- ✓(1) Raveshia Colours Pvt. Ltd. , Plot No. 123, GIDC, Vapi – 396195 (Gujarat)
- ✓(2) Development Commissioner, Kandla SEZ.
- ✓(3) DGFT's website

  
(Shobhit Gupta)

Dy. Director General of Foreign Trade