

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

F.No. 01/92/171/22/AM-16/PC-VI/61,62 Date of Order: 24.05.2019
Date of Dispatch: 24.05.2019
Name of the Appellant: R.K. Ispat Limited, 76-A Industrial Area Sector-21
Bhiwani – 127021(Haryana) India.
Order appealed against: Order-in-Original No. 4-516/2001-100%EOU/7003dated
12.09.2012 passed by the Development Commissioner,
Noida, Special Economic Zone, Noida.
IEC No. 3393001302
Order-in-Appeal passed by Shri Alok Vardhan Chaturvedi, DGFT

Order-in-Appeal

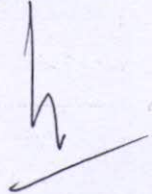
R.K. Ispat Limited (hereinafter referred to as 'the appellant'), a 100% EOU, has filed an appeal on 30.10.2012 under Section 15 of the Foreign Trade (Development & Regulation) Act 1992, as amended from time to time, against Order-in-Original No.4-516/2001-100%EOU/7003 dated 12.09.2012 passed by the Development Commissioner, Noida Special Economic Zone, Noida imposing on it a penalty of Rs. 10,00,000/-..

2. Vide Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, 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 Authority. 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. 4-516/2001-100%EOU/7003 dated 25.06.2001, as amended, to set up a 100% EOU at Bhiwani, Haryana for manufacture and export of the Nylon/Polyester Blended Yarn, all types of fabrics etc. It commenced commercial production on 1.9.2001.

3.2 It did not achieve positive NFE in the first five-year block period which completed on 31.08.2006. As, it was declared sick under SICA, NSEZ vide letter dated 19.8.2009 granted extension for further period of five years ended on 30.8.2011 on the recommendation of the Board of Approval subject to compliance of it's directions.



3.3 Since, the appellant again failed to achieve positive NFE within the extended period and failed to submit QPRs/APRs in contravention of para 6.10.1 of HBP, a notice was issued to it by the DC on 17.10.2011 to Show Cause as to why action should not be taken against it under the provisions of section 11 of FT(D&R) Act, 1992 read with para 6.6(c) of FTP.

3.4 The appellant pleaded before the DC that it has in stock finished goods worth Rs. 45 lakhs which it proposes to export and for which it seeks permission from the department and if the permission is granted, it would achieve positive NFE to the extent of 3.09%. As regards the non-submission of QPRs/APRs, the appellant stated that the same were not filed as there was no business activity after June, 2006.

3.5 The DC observed that even if the appellant could export stock of Rs. 45 lakhs claimed to be available, it would not be achieving positive NFE. The contention of the appellant for considering value of goods sold illegally in DTA was not accepted. Hence, the DC imposed a penalty of Rs. 10.00 lakh on the appellant vide Order-in-Original dated 12.09.2012.

4. Aggrieved by the said order dated 12.09.2012, the appellant filed appeal before the Appellate Committee in Department of Commerce. However, DoC vide O.M. No. 17.9.2014 referred the appeal to DGFT in terms of Notification No. 21 dated 13.6. 2013.

5. In addition to what was stated before the DC, the appellant in its appeal submissions has additionally stated that:

- (i) the DC has passed the impugned order without considering para 3(2) of the Guidelines for Revival/Exit of Sick EOUs provided in Appendix-14-I-M of the Handbook of Procedures of the FTP 2009-14.
- (ii) the DC failed to consider the amount of Deemed Export sale of Rs. 61.17 Lacs and fully paid Custom and Excise Duty Sale of Rs. 243.12 Lakhs as a part of the FOB value of Exports while computing the Net Foreign Exchange Earnings of the Appellant.

6. Comments from the office of the Development Commissioner, NOIDA, SEZ, were also obtained. The DC has, inter-alia, stated that the Board Of Approval granted extension for five years within which the appellant was required to achieve positive NFE. However, the appellant did not resume the operation despite revival by the BOA. The deemed exports and the DTA sale were not eligible for considering achievement of NFE.

7. The appellant was granted personal hearings on 26.5.2015 and 4.8.2015 but it sought adjournments. The representatives of the appellant attended the personal hearing on 3.11.15 sought one week time to submit written submissions which he submitted on 17.11.2015. Further opportunities of personal hearing on 20.06.2018, 25.10.2018 and 31.01.2019 were also granted to the appellant however no body appeared. The Bank Guarantee No. E33 GT 0113040000/- furnished by the appellant also expired on 4.2.2015

which was not extended by it despite reminder. In view of the above, I am constrained to finalise action on the basis of information/documents available in record.

8. I have gone through the facts of the case; written submissions made by the appellant; comments of office of the DC, NSEZ and all other aspects relevant to the case. It is observed appellant could not achieve the positive NFE in the first block of 5 years. It was granted an opportunity by BOA to achieve the same in the second block, but it again failed to do so. Even, it did not take any step to resume the operations despite revival by the BoA. It had imported duty free capital goods, raw material and spares for which it was required to fulfil export obligation as per policy but it failed to comply with those provisions of the FTP/HBP. The failure on the part of the appellant led to loss of substantial foreign exchange to the exchequer.

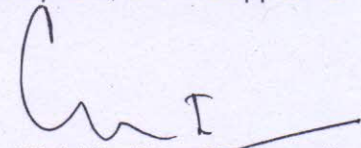
9. In view of the above, in exercise of the powers vested in us under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, we pass the following order:

Order

F.No. 01/92/171/22/AM-16/ PC-VI/

Dated: 24.05.2019

Order-in-Original No. 4-516/2001-100%EOU/7003 dated 12.09.2012 passed by the Development Commissioner, Noida, Special Economic Zone, Noida is upheld, and the appeal is dismissed.



(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- (1) R.K. Ispat Limited, 79-A, Industrial Area, Sector-21, Bhiwani-127021
- (2) Development Commissioner, Noida SEZ.
- (3) DGFT Website


(Shobhit Gupta)

Dy. Director General of Foreign Trade

o/c

Issued
29/5/19