

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

F.No. 01/92/171/59/AM16/ PC-VI/53,54

Date of Order: 24.5.2019
Date of Dispatch: 24.5.2019

Name of the Appellant:

Ashapuri Metals Pvt.Ltd.,
Plot No. 705/B,GIDC,Road No. 7,
Sachin, Surat, Gujarat.

IEC No.

3701000484

Order appealed against:

Order-in-Original No. 03/2013-14
dated 22.08.2013 passed by
the Development Commissioner,
Kandla Special Economic Zone,
Ghandhidham

Order-in-Appeal passed by:

Shri Alok Vardhan Chaturvedi, DGFT

Order-in-Appeal

Ashapuri Metals Pvt. Ltd.(hereinafter referred to as 'the appellant'), a 100% EOU, has filed an appeal on 16.10.2013 against Order-in-Original No. 03/2013-14 dated 22.08.2013 passed by Development Commissioner, Kandla Special Economic Zone from F.No. ASEZ/100%EOU/II/932/00-01) imposing on it a penalty of Rs.3,10,000/- .

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.

3.0 Brief facts of the case:

3.1 The appellant was issued an LOP for the manufacture of Copper Cathode, Copper Wire, Aluminium Wires, Copper/ Aluminium/ Wire Scrap, Cable Scrap etc. vide LOP No. KASEZ/100%EOU/II/932/2000-01/2075 dated 29.03.2001, as amended. It commenced commercial production w.e.f. 11.05.2002.

3.2 It projected 20.07% NFE during the period of five years from the date of commencement of production. On 23.09.2002, it obtained permission for Advance DTA sale amounting to Rs. 75 lakhs against which it was under the obligation to export to the tune of Rs. 150 lakhs. This export

obligation should have been completed on or before 10.05.2004 in accordance with para 1 (f) of Appendix 14-I-I of Handbook of Procedures (Vol. I).

3.3 The DC received a copy of the show cause notice issued by Central Excise to the appellant vide CE letter dated 13.10.2010 wherein it was mentioned that the appellant failed to achieve positive NFE.

3.4 Hence, the appellant was issued a notice dated 27.03.2013 to show Cause as to why action should not be taken against it for imposition of penalty under para 6.6(c) of FTP read with Section 11 of the foreign Trade (Development & Regulation) Act, 1992.

3.5 The appellant, in its defence, stated before the DC that due to the worsening market conditions, it could not fulfil export obligation as stipulated. During that period 2002-03 and 2003-04, its actual value of export was Rs. 3,31,92,662/- and value of imported raw materials in freely convertible currency was worth Rs. 3,37,39,125/-. Therefore, there was a negative NFE of (-) 1.65% only which could be condoned.

3.6 On review of the APRs for the years 2002-03 and 2003-04, it was found that during that period, it imported raw materials worth Rs. 362.23 lakhs and exported finished goods worth Rs. 331.35 lakhs. Hence, they had negative NFE by 30.88 lakhs.

3.7 Since the appellant failed to achieve positive NFE as per para 6.5 of Appendix-I of Exim Policy, 2002-07, the DC proceeded to adjudicate the matter and imposed a penalty of Rs. 3.10 Lakh only on the appellant u/s 11 read with section 20(2) of FT(D&R) Act, 1992 vide order-in-original dated 22.08.2013.

4.0 Aggrieved by the adjudication order dated 22.08.2013, the appellant has filed the present appeal. The appellant was given several opportunities of personal hearing on 4.2.2016, 7.3.2016, 22.3.2016, 10.5.2016, 4.7.2016 and 12.3.2019, however nobody appeared to represent the appellant. In its appeal submissions, the appellant has reiterated the same/similar grounds as made before the DC.

5.0 Comments from the office of the Development Commissioner, Kandla, SEZ, were also obtained on the appeal. The DC has, inter-alia, stated that the appellant has admitted the fact of negative NFE of (-) 9.32% in its APR for the period 2003-04. After considering all legal aspects of the case and written submissions made by the appellant, the DC imposed a penalty of Rs. 3,10,000/- which has been paid by the appellant in the Central Bank of India, Surat on 03.10.2013

6.0 I have gone through the facts and request of the case; 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 achieve positive NFE during the period under review however, it failed to achieve the same as per para 6.5 of Appendix-I of Exim Policy, 2002-07. It has also admitted the fact of non achievement of positive NFE during the said period. By taking a lenient view, the DC imposed a penalty of Rs. 3,10,000/- on the appellant which has already been deposited.

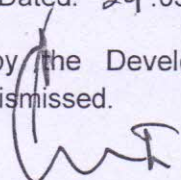
7.0 In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, I pass the following order:

Order

F.No. 01/92/171/59/AM16/ PC-VI

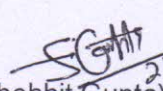
Dated: 24.05.2019

Order-in-Original No. 03/2013-14 dated 22.08.2013 passed by the Development Commissioner, KASEZ, Gandhidham, Gujrat is upheld and the appeal is dismissed.


(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- ✓(1) Ashapuri Metals Pvt. Ltd. Plot No. 705/B,GIDC, Road No. 7, Sachin, Surat Gujarat.
- ✓(2) Development Commissioner, SEZ, Kandla.
- ✓(3) DGFT's website


(Shobhit Gupta)
Dy. Director General of Foreign Trade

O/c Issued
27/5/2019