

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

F.No. 01/92/171/07/AM 19/ PC-VI/72-73 Date of Order: 13 .06.2019
Date of Dispatch: 14 .06.2019

Name of the Appellant: Swiss Singapore India Pvt. Ltd., Kolkata

IEC No. 0313024057

Order appealed against: Order-in-Original No. 02(1)/I-4/2000/3492 dated
01.02.2018 passed by the Development
Commissioner, Falta SEZ, Kolkata

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

Order-in-Appeal

Swiss Singapore India Pvt. Ltd., Kolkata (formerly known as Global Exports & Marketing Ltd., hereinafter referred to as 'the appellant'), an EOU, has filed an appeal on 27.03.2018 against Order-in-Original No. 02(1)/I-4/2000/3492 dated 01.02.2018 passed by the Development Commissioner (DC), Falta SEZ Kolkata.

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 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. 2(1)/I-4/2000/13375 dated 09.03.2000 to set up an EOU at Industry House, 16th Floor, 10, Camac Street, Kolkata for manufacture and export of 'Bulk Tea, Tea Bags and Tea Packets', as amended. It commenced commercial production on 30.03.2000.

3.2 As per Appendix 14-I-C of Foreign Trade Policy 2009-14 (sector specific requirement for EOUs for tea sector), it is mandatory for an EOU to achieve 50% value addition.

3.3 During test checks of the records of the third five year block period from 2010-11 to 2014-15, it was observed that the appellant imported duty free goods worth Rs. 887.37 Lakhs against which it was required to export worth Rs. 1331.06 Lakhs to achieve 50% value addition in terms of Appendix 14-I-C of Foreign Trade Policy 2009-14 . However it exported goods worth

Rs. 1192.71 Lakhs only at the end of the block period. Hence, there was shortfall of Rs. 138.35 Lakhs in achieving 50% value addition which was about 10.39% in percentage terms.

3.4 The appellant was issued a notice dated 01.08.2017 to show Cause as to why action should not be taken against it for violation of the conditions of the LOP and imposition of penalty under the Foreign Trade (Development & Regulation) Act, 1992.

3.5 The appellant pleaded that it was not possible to achieve 50% value addition in the then market scenario. It achieved positive NFE for other blocks of 5 years and had not made any DTA clearance and exported all the quantity after best possible value addition. The words 'insisted upon' as mentioned in Appendix 14-I-C does not mean that it is compulsory for the unit to achieve 50% value addition.

3.6 The DC in its findings has recorded that the applicant vide letter dated 17.07.2017 admitted that it had achieved 35% value addition as against 50% value addition to be achieved as per provisions of Appendix 14-I-C of HBP, 2015-20. Hence, the DC proceeded to adjudicate the matter and ordered the appellant and its Directors to deposit proportionate duty forgone amounting to Rs. 50.14 lakhs along with interest vide order-in-original dated 1.2.2018.

4.0 Aggrieved by the order-in-original dated 1.2.2018; the appellant filed the present appeal. During the personal hearing held on 02.05.2019 before me, the representative of the Appellant stated that Appendix 14-I-C of HBP, 2015-20 prescribe that "In case of Tea, a minimum value addition of 50% shall be insisted upon". The word 'insisted upon' does not mean that it is compulsory for the unit in normal way to achieve 50% value addition unless it is insisted by the concerned authority. It has never been insisted upon to achieve 50% value addition by the authority. Further, the words 'insisted upon' were intentionally provided by the policy makers because higher level of value addition may not be possible on every occasion.

5.0 Comments from the office of the DC, Falta, SEZ, were obtained. The DC *inter-alia* stated that DGFT vide letter dated 29.12.2017 has also clarified that in case of Tea, a minimum value addition 50% is mandatory. Since, the appellant failed to comply with sector specific requirement for EOU as per provision of 14-I-C of HBP, 2009-14 to achieve minimum value addition of 50% for Tea Sector, it is liable to deposit proportionate duty foregone amount of Rs. 50.14 lakhs along with interest.

6.0 I have gone through the facts of the case; oral/written submissions made by the appellant; comments of office of the DC, Falta SEZ and all other aspects relevant to the case. To summarize, the appellant was supposed to achieve a minimum value addition of 50% in respect of 'Tea' as per provisions under S.No. 7 of Appendix 14-I-C of HBP, 2009-14 under heading 'Sector Specific Requirement for EOUs'. However, it admitted to have achieved a value addition of 35% only. Hence, the appellant failed to comply with the minimum mandatory requirements.

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

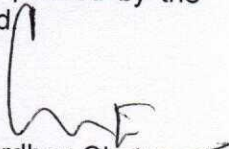
Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, we pass the following order:

Order

F.No. 01/92/171/07/AM 19/ PC-VII


Dated: 13 .06. 2019

Order Order-in-original No. 02(1)/I-4/2000/3492 dated 01.02.2018 passed by the Development Commissioner, Falta, SEZ is upheld and the appeal is dismissed


(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- ✓ (1) Swiss Singapore India Pvt. Ltd., Industry House, 16th Floor, 10, Camac Street, Kolkata
- ✓ (2) Development Commissioner, Falta SEZ, Kolkata.
- ✓ (3) DGFT's website


(Shobhit Gupta)
Dy. Director General of Foreign Trade

o/c

Issued
14/6/19