

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

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F.No.01/92/171/23/AM-16/PC-VI

Date of Order: 15/06/2015
Date of Dispatch:

Name of the Appellant:

M/s. JMT Auto Ltd.
C-19&20, 7th Phase, Industrial Area,
Adityapur, Jamshedpur-832109, Jharkhand

Order appealed against:

No.01/46/2007: EOU: CSEZ dated 08.01.2013
passed by Development Commissioner, Cochin
special Economic Zone (CSEZ), Bangalore.

Order-in-Appeal passed by:

Shri Pravir Kumar, DGFT
Dr. L.B. Singhal, Addl. DGFT

ORDER-IN-APPEAL

M/s. JMT Auto Ltd. (hereinafter referred to as 'the appellant') filed an appeal on 7/12.03.2013, under section 15 of FT(D&R) Act, against Order-in-Original No.01/46/2007: EOU: CSEZ dated 08.01.2013, passed by Development Commissioner, Cochin special Economic Zone (CSEZ), Bangalore.

2. Vide Notification No.101/(RE-2013)2009-2014, dated 5th December, 2014, the Central Government has authorised the Director General of Foreign Trade aided by one Addl. Director General of Foreign Trade to function as Appellate Authority against the order passed by the Development Commissioner, as Adjudicating Authority. Hence, the appeal is before us.

3. M/s. JMT Auto Ltd., No. 13/94, was issued the Letter of Permission (LOP) No. 01/46/2007: PER: EOU: KR: CSEZ dated 08.10.2007 for manufacture and export of "cups and cones" as an Export Oriented Unit under Chapter 6 of the Foreign Trade Policy (FTP). The appellant declared commencement of commercial production on 06.04.2008 and as per the performance reports filed they had purportedly affected exports of Rs. 514.29 lakh during the first three years of operation.

4. The Assistant Commissioner, Central Excise, Dharwad Division, Hubli vide C No. 28.02.2012, reported that the appellant, permitted to exit from the EOU scheme in principle, did not affect any exports and ever since its inception, the unit had been undertaking only job work. The process undertaken did not amount to manufacture as per the Central Excise Act. The figures reported in the Quarterly Progress Report (QPR) were clear mis-statement and the production figures shown in the QPR were completely false.

5. Verification of records produced by the appellant unit reflected that they had not manufactured cups and cones for which they were issued the above mentioned LOP. The unit had instead carried out only job work for three Domestic Tariff Area (DTA) units and supplied the goods back to DTA. The above infringement constitute violation of the provisions of the FTP & Foreign Trade (Development and Regulation) Act 1992.

6. In view of the above, the DC, CSEZ, issued show cause notice to the unit on 25.04.2012 directing them to show cause as to why penalty should not be imposed under Section 11(2) and why the goods and material that are imported/ indigenously procured should not be confiscated under Section 11(5) of the said Act. They were also directed to show cause as to why their LOP should not be cancelled.

7. In reply to the SCN, the appellant, gave written submissions to DC and, interalia, stated as under:

- i. Unit has sent Cups and Cones for further processing, production and supply to Timken India Manufactures Pvt. Ltd. an SEZ, after due permission from the jurisdictional CE authorities;
- ii. The Cups and Cones received in unfinished condition from various manufactures are inspected/ checked, cleaned, pre-heated, carburized, washed, inspected, tested and thereafter dispatched to the SEZ unit;
- iii. A harmonious reading of Para 6.10 of FTP with Para 6.18 of HBP would conclude that supply of goods by an EOU to SEZ which subsequently exports the goods, comes within the ambit of export by EOU and such exports shall be counted towards fulfilment of the obligation of the EOU;
- iv. As per Sec. 53(1) of the SEZ Act 2005 and CBEC Circular number 29/2006-Cus dated 27.12.2006 supply to SEZ unit amounts to export of goods. They have thus fulfilled the export obligation of achieving positive NFE. They have accordingly shown the value of goods supplied to SEZ as deemed exports. They have not misstated or suppressed any information. They are under the bonafide belief that supply of finished goods to SEZ unit amounts fulfilment of NFE and they have complied with the condition of the LUT.
- v. They have been described as job workers only because they are not owners of the goods and have carried out manufacture of articles for others.

8. The appellant unit was given an opportunity of personal hearing (PH) on 06.12.2012 by DC, CSEZ, wherein, the appellant reiterated the submissions made in the reply to Show Cause Notice (SCN).

9. DC, CSEZ examined the facts of the case and vide order dated 08.01.2013 imposed a fiscal penalty of Rs. 5.00 lakh for non fulfilment of the conditions of the LOP and Rs. 5,000/- for non filing of APR. The unit has stated that it has deposited the penalty amount of Rs.5,05,000/- in the Office of DC, CSEZ on 25.02.2013 and has produced a copy of letter dt. 25.02.2013 to DC and copy of DD no. 294 drawn on IDBI Bank. **This may be verified by DC, SEZ at its end.**

10. The appellant was provided on opportunity of PH before us on 27.05.2015, at 3:30 PM. Mr. D. Ravi, Manager Excise, appeared for PH on behalf of the appellant. He repeated the submissions made along with appeal in the PH as well.



11. We have examined complete facts of the case including written submissions and submissions made in the PH. We find that appellant has not done any physical exports at all. It has not made any supplies to the SEZ unit. Instead it has supplied the goods back to the DTA units only. It has essentially carried out job work on behalf of the DTA unit and supplied the goods back to the DTA unit. Subsequently DTA unit has moved the goods for export and the ARE-1 carries the name of the DTA unit only. This shows clearly that goods were supplied back to the DTA unit and DTA unit carried out the exports. Export documents do not contain the name of EOU unit at any place. Hence, these exports cannot be called as third party export of the appellant EOU. In the PH also, representative of the appellant admitted that ARE-1 was in the name of DTA unit and that export documents do not carry the name of EOU.


12. Therefore, in exercise of the powers vested in us under Section 15 of the FTD&R Act, 1992 (as amended in 2010), we pass the following order:-

ORDER

F. No. 01/92/171/23/AM-16/PC-VI

Date of Order: 15/06/2015

The Order-in-Original No. 01/46/2007: EOU: CSEZ dated 08.01.2013 passed by Development Commissioner, Cochin special Economic Zone Bangalore is upheld and the present appeal is dismissed.


(Dr. Lalit B. Singhal)
Addl. Director General of Foreign Trade


(Pravir Kumar)
Director General of Foreign Trade

To

M/s. JMT Auto Ltd.
C-19&20,7th Phase, Industrial Area,
Adityapur, Jamshedpur-832109, Jharkhand

Copy to: Development Commissioner, Cochin special Economic Zone (CSEZ), Bangalore.


15.6.2015
(Pradeep Kumar)
Dy. Director General of Foreign Trade
Tel. 23061562/232 (Ext.)

