

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

F.No. 01/92/171/24/AM16/ PC-VI	Date of Order: 14 th May, 2015
	Date of Dispatch:
Name of the Appellant:	M/s Canfruit Exports India Ltd., Flat No. 206, Sanghamitra Apartments, Entrenchment Road, East Marredpally, Secunderabad-500026
Order appealed against:	Order-in-Original No.8/EOU/QPR-446/VSEZ/2014 dated 17.12.2014 passed by the Development Commissioner, Vishakhapatnam SEZ
Order-in-Appeal passed by:	Shri Pravir Kumar, DGFT Dr. Lalti B. Singhal, Addl. DGFT

Order-in-Appeal

M/s Canfruit Exports India Ltd., Secunderabad (hereinafter referred to as 'the appellant') has filed an appeal, on 20.04.2015, against Order-in-Original No.8/EOU/QPR-446/VSEZ/2014, dated 17.12.2014, passed by Development Commissioner, Vishakhapatnam SEZ.

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 us.

3.1 Facts of the case in brief are that the appellant was issued a Letter of Permission (LOP) No. PER:559(1995) LOP/672/95 dated 24.10.1995 by the VSEZ, Govt. of India, to set up a 100% EOU at Tellaprolu Village, Krishna District in the State of Andhra Pradesh for manufacture and export of 'Mango, Papaya, Pine Apple fruit juices and Tomato Pulp'. The unit commenced production on 10.06.2002. The unit was granted extension of EOU status for a further period of five years w.e.f 10.06.2002 to 28.05.2007, subject to the condition that the revival of the project should be taken up immediately and exports commenced within the next one year from the date of issue of the letter, failing which the LOP would be cancelled without any further notice. In the Legal Undertaking dated 09.08.2007, it was also mentioned that the unit shall restart production on or before 28.05.2008, failing which the LOP would stand cancelled automatically without any further notice. However, later, the validity was extended further up to 10.11.2009 by Development Commissioner, VSEZ, as the unit had not effected any export within the stipulated time limit.



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3.2 Development Commissioner, VSEZ reviewed export performance of the unit for the period from 10.06.2007 to 09.06.2011 (48 months in the 2nd block period of five years) and found that the unit was having negative NFE of Rs.188.00 lakhs, as there was no export. The NFE performance of the unit for the block period from 10.06.2007 to 09.06.2012 was also found to be negative.

3.3 Central Excise authorities at Vijayawada Division visited the unit on 15.03.2010 and 03.05.2010 and found that the unit was not in operation since a long time. However, in view of the assurance given by Managing Director of the unit (Shri Ashok Muddha) in his letter dated 27.12.2012 and in the personal hearing on 04.03.2013 before the Development Commissioner, VSEZ, the validity of LOP was extended further upto 31.12.2013 by the Development Commissioner, VSEZ.

3.4 The unit did not start production by 31.12.2013, but requested for further six months' extension to start production stating that the machinery was totally reconditioned and kept ready for production. Joint inspection was carried out at the factory of the unit by Asst. Development Commissioner, along with Central Excise authorities that found the machinery as overhauled. In view of this, the Development Commissioner, VSEZ granted further extension of six months in the validity till 01.07.2014 vide letter dated 10.03.2014, with a condition that the LOP would stand cancelled automatically w.e.f. 01.07.2014, if the unit did not commence production by 30.06.2014.

3.5 The Superintendent of C&CE, Vuyyuru Range, Vijayawada in his report vide No.OC.No.395/2014 dt.2.7.2014 sent to Asst. Commissioner of the said range of Central Excise, stated that the raw mango pulp was procured from Chittoor District along with 7 workers for sterilization purpose, and there was no evidence of commencement of production in the factory.

3.6 Show Cause Notice dated 01.08.2014 was issued by the Development Commissioner, VSEZ to the appellant to clarify the factual position with regard to commencement of production and confirmation from the Central Excise authorities on this issue within 15 days from the issue of the notice. Despite being provided several opportunities to the appellant, it could not produce a letter from the jurisdictional Central Excise authorities clarifying that the unit was functional. In view of this, the Development Commissioner, VSEZ, in exercise of the powers vested in him under the FTDR Act, passed the Order-in-Original dated 17.12.2014 wherein the LOP dated 24.10.1995 was deemed to have been cancelled w.e.f. 01.07.2014 and a penalty of Rs.50,000/- (Rs. Fifty thousand only) was imposed.



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4. We have examined complete facts of case including written submissions and submissions made by appellant in P.H. The appellant has filed the present appeal against the Order-in-Original dated 17.12.2014 passed by the Development Commissioner, VSEZ. Opportunity of personal hearing was granted to the appellant on 05.5.2015. Shri Ashok Muddha, Managing Director of the firm appeared before us. He also gave written submission before us. He informed that the company was issued LoP on 10th March, 2014 which was valid upto 30th June, 2014. Effectively, this LoP was valid for only three months though it was made retrospectively valid from 1st January, 2014. He further stated that mango fruit season was over by the middle of June, around Vijayawada. Hence, they procured 4 tons of raw mango pulp from Chittoor and commenced processing in their plant. The firm completed the processing and aseptically packed the pulp using aseptic bag in M.S. Drum packaging. The manufacturing process carried out by the firm involved turbo extracting the fibre and peel particles, removing the black specs through Disc centrifuge separator, passing pulp through Destoners for finishing and sterilizing the pulp to 110°C in Tube and Tube Sterilizer.

5. Shri Ravindra K. Panda, Asst. Development Commissioner, O/o the Development Commissioner, VSEZ was also present. Shri Muddha submitted that order dated 17.12.2014 was not received by them and he collected a copy of order on 04.03.2015 from VSEZ office. In this regard, Asst. Development Commissioner, VSEZ stated that the order was dispatched on 19.12.2014 and this was never received back undelivered. In the office copy of order-in-original, produced by Asst. DC, VSEZ, it is shown clearly that the order-in original was sent by "speed post".

6. As per Section 15 (1) of Foreign Trade (Development & Regulation) Act, 1992 (amended in 2010), an appeal has to be filed within a period of 45 days from date of receipt of the order. The Appellate Authority has powers to condone any delay up to 30 days beyond 45 days, if sufficient reasons are shown for the delay. Beyond this period, i.e., 45 + 30 days, an appeal under Section 15 of Foreign Trade (Development & Regulation) Act, 1992 cannot be entertained. In this case, if 7 days are granted for postal service, the appellant would have received the said order dated 17.12.2014 dispatched on 19.12.2014 by speed post, by 26.12.2014, where as this appeal has been filed on 20.04.2015. Hence this appeal is clearly a time barred appeal.

7. The appellate firm has also requested that the validity of the LoP may also be re-validated for a period of 5 years from the date of expiry of LoP, i.e, from 1.7.2014. We find that extending validity of the LoP is an independent action and this issue is to be decided by the Development Commissioner, VSEZ / Unit Approval Committee / Board of Approval on merits.



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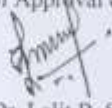
8. In view of the above, in exercise of the powers vested in us under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, we pass the following order:

Order

F.No. 01/92/171/24/AM16/ PC-VI

Dated: 14th May, 2015

Appeal is dismissed as appeal is clearly time barred. The Order-in-Original No. No.8/EOU/QPR-446/VSEZ/2014 dated 17.12.2014 passed by Development Commissioner, VSEZ is upheld. On the issue of further extension of validity of LOP, a view may be taken by the Development Commissioner, VSEZ /Unit Approval Committee / Board of Approval on merits.



(Dr. Lalit B. Singhal)

Addl. Director General of Foreign Trade



(Pravir Kumar)

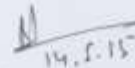
Director General of Foreign Trade

To

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Copy to:

Development Commissioner, Visakhapatnam Special Economic Zone,
Administrative Building, Duvvada, Visakhapatnam-530049.



(Pradeep Kumar)

Deputy Director General of Foreign Trade

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