

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

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F.No.01/92/171/27/AM-16/PC-VI/93

Date of Order: 9/06/2015

Date of Dispatch: 10/06/2015

Name of the Appellant:

M/s. Hindustan Aeronautics Ltd.
Post Bag No, 1788, Bangalore -560017

Order appealed against:

No.01/01/1992:EOU:CSEZ dated 9th May, 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. Hindustan Aeronautics Ltd. (hereinafter referred to as 'the appellant') has filed an appeal on 13.06.2013, under Section 15 of FT(D&R) Act, against Order-in-Original No.01/01/1992:EOU:CSEZ dated 9th May, 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. Hindustan Aeronautics Ltd., was issued Letter of Permission No. LI:EOB: 37(88)/E.087(88)-IL dated 18.07.1998, for manufacture and export of "aircraft parts", for functioning as an Export Oriented Unit, under Chapter 6 of the Foreign Trade Policy.

4. In accordance with Para 6.6 of the Foreign Trade Policy, the authorised signatory of the unit executed Legal Undertaking. Clause 6 of the Legal Undertaking (LUT) obliged the unit to file an Annual Performance Report (APR), certified by a Chartered Accountant, by 30th June of every year, i.e. within 90 days of closure of financial year, failing which they would render themselves liable to penal action.

5. Unit failed to file its APR for the year 2011-12 in time. DC, CSEZ issued a show cause notice dated 14/08/2012 directing unit to show cause as to why Letter of Permission should not be cancelled/revoked and why penalty should not be imposed under Sec.11 (2) of the Foreign Trade (Development & Regulation) Act, 1992. This was followed by a reminder dated 20/3/2013.

6. In its reply dated 28.03.2013, the appellant unit stated that they had already submitted the CA certified APR for the year 2011-12 on 03/09/2012. No reasons what so ever were furnished for the delay in submission of APR and no personal hearing was sought by the appellant.

7. Development Commissioner, CSEZ, Bangalore adjudicated the case and vide Order-in-Original dated 9th May, 2013 imposed a fiscal penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on the appellant under Section 11(2) of the FTDR Act, 1992. While issuing order-in-original, DC observed that the APR (hard copy) for the year 2011-12 was filed only after issue of SCN and long after the due date of 30.6.2012 i.e on 03/09/2012. The online copy of APR was filed on 10.09.2012. The reply to the SCN was filed only after receipt of reminder. No reasons what so ever were furnished for the delay. The unit had executed a Legal Undertaking (LUT) to file the APR within 90 days of close of the financial year. Non filing of APR in time hinders annual review. Failure to fulfil conditions of LUT rendered the appellant liable to penalty under FTDR Act 1992.

8. The appellant has filed the present appeal against Order-in-Original dated 09.05.2013 passed by the Development Commissioner, CSEZ, Bangalore. Opportunity of Personal Hearing was granted to the appellant on 27.5.2015. Sh. H.K. Prakash, Deputy General Manager (Pur & ST) appeared in personal hearing on behalf of the appellant. He requested to condone the delay in furnishing APR because APR could be submitted only after audit and adoption of account in AGM.

9. We have examined complete facts of the case including written submission and submission made by the appellant in P.H. Under the Companies Act, 1956, all companies are subjected to audit. For filing an APR, appellant was not required to wait for closure of accounts or till adoption of accounts in the AGM. The appellant was to consolidate their QPRs and file the APR, online and hard copy, for which purpose they had 90 days time. The reasons given for delay are not justifiable grounds for the repeated delay in filing of APR.

10. Therefore, in exercise of the power vested in us, under section 15 of the FT D&R Act, 1992 (as amended in 2010), we pass the following order:-

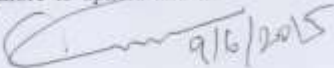
ORDER

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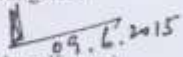
The Order-in-Original No. 01/01/1992:EOU:CSEZ dated 9th May, 2013 passed by Development Commissioner, Cochin Special Economic Zone Bangalore is upheld and the present appeal is dismissed.

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


(Praveer Kumar)
Director General of Foreign

To
M/s. Hindustan Aeronautics Ltd.
Post Bag No. 1788, Bangalore -560017

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


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