

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

F.No.01/92/171/29/AM-16/PC-VI/73-74

Date of Order: 27/05/2015

Date of Dispatch: 04/06/2015

Name of the Appellant:

M/s. Anwar Jolly Jewellers
No. 13/94, 1st Floor, B.K.M. Street,
Kadapa - 516001.

Order appealed against:

No.8/EOU/EOU-298/VSEZ/2013-14 dated
11.9.2013 passed by Development
Commissioner, VSEZ, Vishakhapatnam.

Order-in-Appeal passed by:

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

ORDER-IN-APPEAL

M/s. Anwar Jolly Jewellers (hereinafter referred to as 'the appellant') has filed an appeal on 21st October, 2013, under Section 15 of FT(D&R) Act, against Order-in-Original No. 8/EOU/EOU-29VSEZ/ 2013-14/3943 dated 11.9.2013 passed by Development Commissioner, VSEZ, Vishakhapatnam.

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. Anwar Jolly Jewellers, No. 13/94, 1st Floor, B.K.M. Street, Kadapa - 516001, was issued Letter of Permission bearing No.PER: 340/EOU/VSEZ/2006 dated 7.3.2006, in terms of Para 6.6.1 of the Foreign Trade Policy (FTP), 2009-2014 for setting up a 100% EOU to manufacture and export "Gold and Silver Jewellery" with certain conditions mentioned in the LOP. LOP was valid for 3 years from its date of issue. The Unit was required to implement the project in this period. The Unit executed Legal Undertaking dated 27.03.2006. The Unit vide letter dated 27.03.2006 also accepted all the terms and conditions of LOP.

4. Thus, as per condition of the LOP, it was valid for three years from its date of issue with in which time, the unit should have implemented the project. However, the Unit was not able to implement the project within prescribed time limit of 3 years from the date of issue of LOP and requested for extension of LOP. The validity of the LOP of the Unit was extended by the Development Commissioner upto the end of six years i.e. till 06.03.2012 in terms of para 6.6.1(a) of FTP, 2009-14. Unit could not implement its project even after the end of 6

years. Appellant again requested DC, VSEZ for renewal of its LOP for a further period of 6 years w.e.f. 07.03.2012.

5. Para 6.6.1 of FTP, 2009-14 provides as under:-

"On approval, a letter of permission (LOP)/ Letter of Intent (LOI) shall be issued by DC/ designated officer to EOU/EHTP/STP/BTP Unit. LOP/LOI shall have an initial validity of 3 years, by which time unit should have commenced production. Its validity may be extended further up to 3 years by competent/ authority. However, proposal for extension beyond six years shall be considered in exceptional circumstances, on a case to case basis by BoA. Once unit commences production, LoP/LoI issued shall be valid for a period of 5 years for its activities. This period may be extended further by DC for a period of 5 years at a time".

6. Keeping in view the failure on the part of the Unit in fulfilling the condition of the LOP, within the stipulated time period, a Show Cause Notice dated 15.7.2013 was issued to the appellant as to why penal action should not be taken against the appellant unit under FT(D&R) Act, 1992. The appellant could not attend the Personal Hearing as he was on fasting during "Ramdan". His request for adjournment of PH was acceded to by DC, VSEZ and appellant was granted a PH on 27.8.2013. Sh. D.Mohammed Ali Khan, Proprietor of firm attended PH and requested for extension of the validity of LOP on the following grounds:-

- (i) that he had been making efforts for implementation of the project;
- (ii) that the delay in implementation of the project was due to the delay in getting permission from different offices and the problems on the domestic front; and
- (iii) that he had visited Nepal, Oman, Bangkok to get market tie ups for their proposed exports. However, he did not get adequate response.

7. After giving a Personal Hearing to the appellant, DC, VSEZ cancelled the LOP of the appellant unit vide Order-in-Appeal dated 11.09.2013 on the following grounds:-

- (i) The unit did not have a complete Project Report for manufacture and export of Gold Jewellery and Silver Jewellery.
- (ii) No documents were submitted by the unit to the effect that the unit was making efforts in securing Bank loan for implementing its project; and
- (iii) Efforts made by the promoter for marketing tie ups were found to be not with clear vision and direction and no marketing assessment seemed to have been made.

8. The appellant has filed the present appeal against the Order-in-Original dated 11.9.2013 passed by the Development Commissioner, VSEZ in accordance with the provisions of Section 15(1) of the FT(D&R) Act, 1992. Opportunity of PH was granted to the appellant on 26.5.2015. Sh. D.Mohammad Ali Khan, Proprietor of the firm appeared for the Personal Hearing before us and pleaded for the extension of LOP. He stated that he made lot of efforts for implementation of the project but the same could not be implemented because of various reasons including delayed permissions from various authorities, lack of proper response from international market and domestic reasons. He stated that he is a senior citizen, aged 65 yrs., and would like to implement this project. In view of these reasons, he requested that LoP may be extended further.



9. We have examined complete facts of the case including written submissions and submissions made by the appellant in P.H. After going through complete facts of the case, we find that appellant has already been allowed a period of 6 years for execution of the project. Para 6.6.1 of FTP, 2009-2014, allowed Development Commissioner to grant extension of LoP maximum only upto 6 years. Therefore, Development Commissioner has rightly rejected the request of the firm for further extension of LoP and has accordingly cancelled the same. Since the appellant has not imported or procured any material or machinery, Development Commissioner has already taken a lenient view and has not imposed any penalty. Hence, we do not find any reason to interfere in the order-in-original passed by the Development Commissioner.

10. In view of the above facts, 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

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The Order-in-Original No.8/EOU/EOU-298/VSEZ/2013-14 dated 11.9.2013 passed by Development Commissioner, VSEZ, Vishakhapatnam is upheld and the present appeal is dismissed. However, in view of the fact that the appellant is very keen to implement this project, in case, it desires to apply for extension of present LoP, appellant should approach the competent authority, i.e, Board of Approval (BoA). Alternatively, he may apply for grant of fresh LoP and, in case he decides to make a fresh application for obtaining the LoP, he needs to be facilitated in granting LoP and subsequent approvals, expeditiously, in accordance with the law.

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

(Pravir Kumar)
Director General of Foreign Trade

To

M/s. Anwar Jolly Jewellers
No. 13/94, 1st Floor, B.K.M. Street,
Kadapa – 516001 (Addhra Pradesh)