

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

F.No. 01/92/180/202/AM15/
ADJ/PC-VI

Date of Order: 30 April, 2015

Date of Dispatch:

Name of the Appellant:

M/s Teknomin Aqua Exports (India) Limited,
29-36-20, Samrat Complex,
Museum Road, Governorpet,
Vijayawada - 520 002.

Order appealed against:

Order -in-Original No.8/EOU/Adj/QPR-
90/VSEZ/2004 DATED 10.05.2004 passed by
Development Commissioner, Vishakhapatnam SEZ

Order-in-Appeal passed by:

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

Order-in-Appeal

Hon'ble High Court of Andhra Pradesh in its order dated 27.08.2014, in the Writ Petition No. 24715 of 2014, M/s Teknomin Aqua Exports (India) Ltd. versus (1) Development Commissioner, Vishakhapatnam SEZ and (2) the Additional Secretary, Appellate Committee Division, Department of Commerce, has directed as follows:

"...the Writ Petition is allowed, setting aside the order passed by the Appellate Authority, which was communicated to the petitioner vide letter dated 2.11.2004 and the matter is remanded back to the 2nd respondent for fresh consideration by giving notice and opportunity of being heard to the petitioner herein. The said exercise shall be completed within a period of six months from the date of receipt of this order. It is also made clear that pending such exercise, the order passed by this Court on 30.12.2004 shall continue to operate."

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. Therefore, Department of Commerce vide



its letter dated 05.02.2015 has forwarded order dated 27.08.2014 passed by the Hon'ble High Court of Andhra Pradesh to the Directorate General of Foreign Trade to take necessary action in the matter.

3. Facts of the case in brief are that M/s Teknomin Aqua Exports (India) Ltd., (hereinafter 'the Unit') a 100% EOU was issued Letter of Permission (LOP) No. PER:34(1993)EOB/871/92 dated 28.01.1993 by the Govt. of India, Ministry of Industry, SIA, Department of Industrial Development, New Delhi for manufacture and export of frozen shrimps. As per condition of the LOP the Unit was required to (i) fulfill the export obligation by exporting the entire (100%) resultant-products to GCA/Hard Currency Area and at the same time (ii) achieve a minimum value addition as prescribed in the said LOP/LOA. The Unit commenced production on 02.09.1994. The Unit imported capital goods for a value of Rs. 15.91 lakhs and procured duty free indigenous capital goods for a value of Rs.468.33 lakhs. Export performance of the Unit during the period 01.04.1999 to 31.03.2003 was reviewed by Development Commissioner, Vishakhapatnam SEZ on the basis of progress reports received from the Unit. Development Commissioner found that the Unit had not achieved NFE nor had it fulfilled the export performance. Therefore, a Show Cause Notice dated 31.12.2003 was issued by Development Commissioner, Vishakhapatnam SEZ to the Unit for non- fulfillment of Export performance for the period from 01.04.1999 to 31.03.2003 asking it to show cause as to why action should not be taken against it for imposing penalty under FTDR Act. The Unit submitted its reply dated 04.02.2004 stating that it had already paid Rs.35,000/- for non-fulfillment of export performance for the review period from 02.09.1994 to 31.03.2001 vide adjudication order dated 30.05.2002. The Unit also stated that it has supplied shrimp seeds for aquaculture projects spread over in coastal Andhra Pradesh and other maritime states. It was also stated by the Unit that on attaining the marketable size the shrimps were harvested and marketed to processors for 100% export as per letter Ref.4/186/F-Sub/PF/VJA/92 dated 31.07.1995 issued by MPEDA. But such supplies were not considered as deemed exports. The Unit further stated that it has made supplies of Rs. 1,92,000/- during the year 2002-03 which may be considered as deemed exports in the view of the MPEDA's above letter dated 31.07.1995. Representative of the Unit was also granted personal hearing by Development Commissioner, VSEZ. Development Commissioner, VSEZ concluded that the Unit has effected 'nil' exports, did not make any effort for export and continued unauthorized DTA sales. Therefore, Development



Commissioner, VSEZ vide its Order-in-Original dated 10.05.2004 imposed a penalty of Rs. 2.00 lakh on the Unit.

4. Aggrieved by the order dated 10.05.2004 of the Development Commissioner, VSEZ, the Unit preferred an appeal to the Appellate Committee in the Department of Commerce. The Appellate Committee noted that the Unit imported capital goods for a value of Rs. 15.91 lakhs and procured duty free indigenous capital goods for a value of Rs.468.33 lakhs and that the Unit also admitted that no exports were made by it. Accordingly, the Appellate Committee found that there was no merit in the appeal and dismissed the appeal without any prejudice to any further action to be taken under law by the Development Commissioner. Unanimous decision of the Appellate Committee was communicated to the Unit vide letter dated 02.11.2004.

5. The Unit filed WP No. 24715 of 2004 against decision of the Appellate Committee (Respondent No.2) before Hon'ble High Court of Andhra Pradesh praying therein to issue writ or direction, more particularly one in the nature of writ of mandamus to the Appellate Committee, declaring the impugned order dated 02.11.2004 passed by the Appellate Committee as illegal, arbitrary and unjustified. The Hon'ble High Court of Andhra Pradesh vide its interim order dated 30.12.2004 directed follows:

"There shall be interim stay on collection of balance penalty, subject to the petitioner paying the respondent a sum of Rs. 50,000/- within a period of four weeks from today."

Hon'ble High Court vide order dated 27.08.2014 allowed the Writ Petition with the directions reproduced in Para-1.

6. In pursuance of the directions of the Hon'ble High Court, we granted personal hearing (PH) to the Unit on 03.03.2015; but no one appeared. Next date of PH was scheduled on 17.03.2015 and the Unit was informed that if it failed to attend the PH, the case would be decided on the basis of available facts and records. In response to this, Shri P. Parandhamaiah, Director of the Unit requested for adjournment of the PH scheduled on 17.03.2015 and requested to grant another opportunity for PH. We acceded to this request and granted next date of PH on 07.04.2015. Shri P. Parandhamaiah, Director of the Unit appeared for PH. He submitted written submissions and stated that these submission may be taken into consideration. He also stated that he has deposited



-4-

entire amount of penalty amount imposed on unit so far and submitted a statement of the same. He stated that beyond written submission, he has nothing further to add.

7. We have examined the submissions made by the appellant at various stages including submissions made in personal hearing, contents of adjudication order and all other facts available in the file and observe as under:

(i) Appellant himself has clearly admitted that it has not done any exports and the shrimp seed produced by the unit were sold to M/s Rank Aqua Estates Ltd. At another place, it has been stated that they have sold shrimp seed to several other shrimp farmers. It has been stated that M/s Rank Aqua Estates Ltd. and other shrimp farmers have processed the shrimp seed and exported. Clearly, the entire produce of the 100% EOU was sold in the domestic market. The supply of the goods from 100% EOU to Domestic Tariff Area (DTA) cannot be counted towards fulfillment of export obligation and achievement of value addition/NFE. EOU has to complete export obligation in accordance with provisions of Export Import Policy/Foreign Trade Policy.

(ii) The appellant has also taken the plea that Marine Products Export Development Authority (MPDEA) through its letters have also authorized them to sell the surplus seeds in the domestic market rather than restricting the sale to the DTA upto 50% of the value. In this context, it is observed that EOU has to operate under the provisions of Export Import Policy/FTP. Any interpretation to the provisions of Export Import Policy/FTP can be given only by the authorized competent authorities, i.e., Development Commissioners/DGFT. MPDEA at best can make recommendations to the Government and if these recommendations are accepted by the Government and incorporated in the Export Import Policy/FTP, then only the same will apply on the unit. Hence MPDEA's letter No.AQ/HO/33/2004-05 .20.9.2004, recommending "in view of the above facts, it is opined that sale of seeds to any shrimp farm need to be treated as DTA sales or deemed exports and the penalty imposed on M/s.Teknomin Aqua Exports (India) Ltd. may be waived, as in a few other similar such cases, as understood" has no legal bearing. At best, it is a recommendation to the Development Commissioner.

(iii) Similarly, MPDEA's observations vide its letter dated 9.7.1996 "Further again the matter has been recently been taken up through another letter vide even no. dated 13.3.1996 to the Ministry of Commerce to expedite the matter. We have recommended 100% Aquaculture EOUs to sell the surplus seeds in domestic



markets rather than restricting to the permitted DTA sale of upto 50%", is also a recommendation to the Ministry of Commerce. MPEDA has no authority to either carry out amendment to Export Import Policy/FTP or to interpret the same. These recommendations cannot take the position of Export Import Policy/FTP provisions. Hence, sale of produce by this 100% EOU in the DTA cannot be accounted towards export performers/achievement of NFE.

(iv) Appellant in its written submission, at the time of personal hearing, has also stated that it has already paid the entire penalty amount which has been imposed on it on different occasions. It has given a statement of the same and this is enclosed as Annexure 1. This aspect can be looked into by the Development Commissioner, for appropriate action.


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

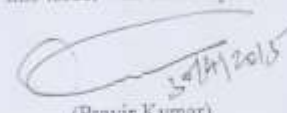
F.No. 01/92/180/202/AM15/ ADJ/PC-VI

Dated: 30 April, 2015

Appeal is dismissed and Order-in-Original No.8/EOU/Adj/QPR-90/VSEZ/2004 dated 10.05.2004 passed by Development Commissioner, VSEZ is upheld. However, Development Commissioner will examine the statement given by the appellant showing that it has already paid the entire amount of penalty, and on this issue, will take steps as considered appropriate.


(Dr. Lalit B. Singhal)

Addl. Director General of Foreign Trade


(Pravir Kumar)

Director General of Foreign Trade

To

M/s Teknomin Aqua Exports (India) Limited,
29-36-20, Samrat Complex,
Museum Road, Governorpet,
Vijayawada - 520 002.

Copy to Development Commissioner, Visakhapatnam Special Economic Zone,
Administrative Building, Duvvada, Visakhapatnam-530046.

ANNEXURE-I

Teknomin Aqua Exports (India)Limited
Penalty & Payment Details of Division commissioner, V.S.E.Z - VIZIC

S.NO	Date	D.D.No.	Bank - Branch	Penalty letter Particulars	Rs. Penalty Amount	Rs. Paid - Amount	Rs. Balance Amount
1.	26-01-1993			Penalty for ITA Status for the period of 01.01.1992 to 31.03.2002 As per Letter LOP No: PEP34 (1992)EDDUT/192 Gudal, 28.01.1992 by the Govt of India Ministry of Industry, New Delhi (represented by O.C VSEZ - Vizag	2,00,000-00		
2.	01-04-1999			Fiscal Penalty for the above (M/F) Mill Export Performance for the period from 01.01.1999 To 31.03.2004.	1,00,000-00		3,00,000-00
3.	13-09-2005		IOB - Gudur	Adjusted of the pre- Deposit amount		50,000-00	2,50,000-00
4.	26-06-2009	713B33	IOB - Gudur	Less - Penalty payment		1,00,000-00	1,50,000-00



FOR Teknomin Aqua Exports (India) Limited
 Authorised Signatory

[Signature]

5.	11-11-2009			Imposed Penalty Amount for by the D.C. - VSEZ, VIZAG for Bill Performance As per Letter No. ETO/HR/HR-80VSEZ2009/10006 Dated : 11.11.2009	1,00,000-00		2,50,000-00
6.	01-12-2009	7154755	IOB - Gudur	Less - Penalty payment		2,00,000-00	1,50,000-00
7.	10-01-2010	364397	IOB - Gudur	Less - Penalty payment		15,000-00	1,35,000-00
8.	26-06-2010	137456	IOB - Gudur	Less - Penalty payment		10,000-00	1,25,000-00
9.	24-08-2010	138227	IOB - Gudur	Less - Penalty payment		15,000-00	1,10,000-00
10	29-01-2011	118577	IOB - Gudur	Less - Penalty payment		20,000-00	90,000-00
11	26-03-2011	327787	IOB - Gudur	Less - Penalty payment		30,000-00	60,000-00
12	09-01-2012	150786	IOB - Gudur	Less - Penalty payment		25,000-00	40,000-00
13	15-04-2012	156448	IOB - Gudur	Less - Penalty payment		40,000-00	Nil



For submission of report to
 Authorised Signatory