

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

F. No. 01/92/171/39/AM-17/PC-VI

Date of Order: 25.07.2018

Name of the Appellant:

M/s. Lotus Recyclers, Shed No.  
167-168, Sector-1, KASEZ,  
Gandhidham (Kutch) 370230.

Order appealed against:

Order-in-Original No.  
KASEZ/13/2016-17 issued  
from file No.  
KASEZ/1A/1641/96/3394,  
dtd. 13.01.2017, passed by DC,  
KASEZ, Gandhidham (Kutch)

Order-in-appeal passed by:

Shri Alok Chaturvedi, DGFT  
Shri J.V. Patil, Addl. DGFT

**ORDER-IN -APPEAL**

M/s. Lotus Recyclers., is a SEZ Unit engaged in worn and used clothes processing located in KASEZ, Gandhidham (LOA No. KFTZ/IA/1793/2000/5568 dated 03.10.2000). They were approved for manufacture of segregation old textile of waste/waste yarn, reconditioned clothing, rags; and blankets and export yarn made from the raw material produced from these activities.

2. Vide Notification No.101/(RE 2013)/2009-2014 dated 5<sup>th</sup> 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 orders passed by the Development Commissioners as Adjudicating Authority. Hence, the appeal is before us.

3. The import of worn clothing and worn articles under ITC (HS) 6309 are restricted for imports under the Foreign Trade Policy 2015-20 and require an import authorization. Import of rags under ITC (HS) 6310 are restricted for import under the FTP 2015-20 and are permitted in completely mutilated form only and the mutilation should confirm to that specified in the relevant customs circular.

4. The, clearance of the rags/wipers etc. from SEZ unit to the Domestic Tariff Area, is governed by the guidelines laid down by the Customs Circular No. 36/2000 dated 08.05.2000.

*"Rags to be considered as completely mutilated should be totally unserviceable and beyond repair, and this can be ensured by applying criteria of three cuts or more, through the entire length-of garment, in a crisscross manner, not along the seams."*

*Shri*

5. On 27.09.2016, M/s. Lotus Recyclers, KASEZ presented 300 bales of clothes bearing No. 516 to 815 declared "Old and Used Mix Mutilated Wiper" under ITC HS 6301010 for 100% inspection and examination at the demarcated area, under assessed Bill of Entry No. 0007196 dated 27.08.2016 for DTA clearance.

6. During the course of 100% examination of 300 bales bearing serial No. 516 to 815, some of the bales appeared to contain clothes which were not properly mutilated as per circulars and Instructions issued in the matter from time to time. It was found that the goods of three bales bearing No. 669, 749 and 753 of the lot of 300 bales, were containing T-shirts, having small cuts along the seam at the bottom on both sides. The approximate weight of these goods was about 150 kgs. The value ascertained in the presence of independent panchas/partner was at the rate of \$0.80 per kg @ exchange rate Rs. 67.75 per USD, came to Rupees Eight Thousand one hundred and thirty only.

7. The unit was informed that the goods presented for DTA clearance were not fit for removal in DTA, as the same does not confirm to the requirements of mutilation prescribed vide Customs Circular No. 36/2000 dated 08.05.2000 and were seized under panchnama dated 27.09.2016.

8. Consequently, DC KASEZ issued a Show Cause Notice as to why their LOP should not be cancelled and penalty should not be imposed on the firm and partners and why the goods should not be seized under the relevant provisions of SEZ Act 2005, FTDR Act, 1992.

9. In their submission to DC, they informed that the quantity under question is only 3 bales (total 150 kgs) out of total quantity under inspection of 300 bales (total 15100 kgs.) which is less than 1% of the total. The said 3 bales were actually meant for export and they were marked clearly for export. They requested to excuse them, as by human error, the loaders loaded the said 3 bales along with material meant for DTA sale inadvertently.

10. DC adjudicated the matter imposing a penalty of Rs. 41,000/- as per Section 11 (2) of FTDR Act, 1992 read with Rule 54 (2) of SEZ Rule 2006. The proceedings initiated under section 16 of the SEZ Act, 2005 for cancellation of LOA and penalty on partners were dropped. However, noticee was warned that any repetition of such contravention in future would render them punishable under the above section. He ordered for confiscation of seized goods valued at Rs. 8,130/- under section 11 (8) of FTDR Act, 1992, as amended, read with Rule 17 (1) (c) FTR Rules, 1993.

11. The firm filed an Appeal against the order of DC. Shri Gaurav Gadodia, partner of M/s. Lotus Recyclers appeared for the Personal Hearing held on 30.01.2018 and prayed for setting aside the order of the DC, arguing that the error was in only a small quantity and due to human error.

12. Their contention in their appeal as per written submission was as follows: -

a) The Development Commissioner has committed error in imposing penalty of Rs. 41, 000/- on the appellant and therefore the order imposing such

penalty is absolutely illegal. The penalty of Rs. 41, 000/- imposed is high-handed and disproportionate to the small irregularity that occurred in clearance of the goods and secondly, the value of the goods taken as Rs. 8130/- is also illegal and is an erroneous action.

b) They had filed a Bill of Entry for 75500 kgs for which the assessment was made by the preventive officer, accepting value of the entire cargo as Rs. 15,34,537/- and therefore value of 150 Kgs. out of total cargo of 15100 kgs could be as Rs. 3,048/- only. The value of the goods in question could never be taken as Rs. 8,130/-. Imposition of penalty on such illegal and unauthorized valuation is liable to be set aside. Out of total quantity of 15100 Kgs. only 150 Kgs. of goods were found offending and not properly mutilated which comes out hardly 1%. This happened due to the mistake on the part of unskilled/illiterate loading labours. For such a small irregularity about the nature of mutilation in respect of only 3 bales, the highest permissible penalty being five times the value of the goods unreasonable.

c) The facts of the present case did not justify any penal action and therefore imposition of penalty on the Appellant is wholly illegal and without any justification.

d) The Appellant has established the unit in KASEZ with investment of more than Rs. 5.00 crores in plant and machinery and is providing employment to 125 persons and there has been no case of even a minor irregularity in the Appellant's operations in the past 15 years.

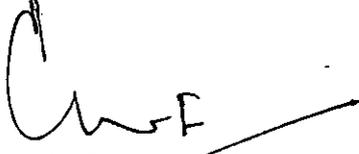
e) Imposition of penalty under section 11 of the FTDR Act is even otherwise unauthorized and contrary to instruction No. 1/2014-15 dated 06.06.2014 issued by KASEZ. The appellant has complied with the procedure of presenting the entire cargo for examination, without any attempt to hide any portion of the cargo.

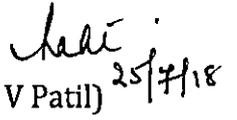
13. The submissions of the appellant were considered. The appellant, an SEZ unit is engaged in manufacture of segregation of old textile waste etc as specified in the LoP. Under the FTP 2015-20, import of rags is restricted and import is subject to the condition that they are completely mutilated, as per the conditions laid down in the customs circular. The supply for SEZ to DTA is subject to import policy of FTP 2015-20. The operation of the SEZ is on a trust based approach and the SEZ has the responsibility to operate as per the rules and regulation and the government revenue is involved in the operation of the SEZ operations. Thus, any violation has to be viewed seriously to ensure proper functioning of the SEZ. The firm is liable for action under FTDR Act, 1992 read with Rule 54 (2) of SEZ Rule 2006. The garments were presented as mutilated but subsequently found not properly mutilated as per customs circular. Obviously, value of such garments would be more than that originally presented. Thus, the DC has rightfully considered the value of seized materials as valued by the preventive officer and imposed penalty upto 5 times the value as per the section 11 (2) of

the FTDR act, 1992. The appellants arguments are not sustainable. The action of the firm breaches the trust imposed on the firm in the operation of the SEZ Scheme. The penalty is also to act as deterrence against any violation in future and to have discipline in the operation of the SEZ Scheme.

### ORDER

We do not intend to interfere with the Order-In-Original No. KASEZ/13/2016-17 issued from file No. KASEZ/1A/1641/96/3394, dated 13.01.2017, passed by DC, KASEZ, Gandhidham (Kutch). The Appeal stands dismissed.

  
(Alok Chaturvedi)  
DGFT

  
(J V Patil) 25/1/18  
Addl. DGFT

To,

M/s. Lotus Recyclers,  
Shed No. 167-168, Sector-1,  
KASEZ, Gandhidham (Kutch) 370230.

Copy to: - Development Commissioner, KASEZ, Gandhidham (Kutch)

(Shobhit Gupta)  
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