

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

F.No. 01/92/171/48/AM-20 / PC-VI/346

Date of Order: 28.02.2020

Date of Dispatch: 02.03.2020

Name of the Appellant:

✓ Kanishk Overseas Pvt. Ltd.,
Plot No. 501, New Area, KETWZ,
Kandla Special Economic Zone,
Gandhidham, Kutch

IEC No.

AAFCK5889F

Order appealed against:

Order-in-Original No. KASEZ/59/2019-20 dated 31.10.2019 passed by the Development Commissioner, Kandla Special Economic Zone.

Order-in-Appeal passed by:

Shri Amit Yadav, DGFT

Order-in-Appeal

Kanishk Overseas Pvt. Ltd. (hereinafter referred to as 'the appellant'), an SEZ unit, has filed an appeal on 19.01.2018 under Section 15 of the Foreign Trade (Development & Regulation) Act 1992, (FTDR Act) as amended from time to time, against Order-in-Original No. KASEZ/59/2019-20 dated 31.10.2019 (issued from F.No. KASEZ/IA/22/2018-19) passed by the Development Commissioner, Kandla Special Economic Zone (DC KASEZ).

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 me.

3.0 Brief facts of the case:

3.1 The appellant obtained a Letter of Approval (LOA) No. KASEZ/IA/22/2018-19 dated 13.02.2019, as amended, for warehousing service activities in KASEZ subject to

 

conditions imposed therein and all rules and regulations related to SEZ/Customs/Foreign Trade etc.

3.2 On receipt of information from DRI, AZU, 100% examination of container No. TRHU1148645 covered under shipping Bill No. 4 of 1007823 dated 20.05.2019 was carried out by SIIB, Kandla along with SIIB, Mundra. It was observed that out of the declared quantity of 10185 Pcs, total 5085 Pcs of various types of Proteins found short in the said container. During investigation and on comparison of goods with actual stock available, total shortage of goods found 4421 Pcs valued about Rs. 19,28,126/- from the said container. In addition, 277 Pcs were also found short in their stock.

3.3 Shri Saurabh Gulati, Director of the appellant, in his statement dated 11.06.2019, admitted that the goods found short were clandestinely removed from KASEZ and the same were sold in the open market. For the act of mis-declaring the quantity of goods in the export container and for clandestinely removing the impugned goods into DTA, a notice 27.08.2019 was issued to the appellant for imposition of penalty against it and its directors and for cancellation of LOA under relevant provisions of FTDR Act, SEZ Act, 2005 and rules made thereunder.

3.4 During the personal hearing on 12.09.2019 before the DC and in written reply dated 12.9.2019, it accepted its mistake and mis-declaration done by it and findings of SIIB. It submitted that its staff did not take proper care of quantity loaded in the container.

3.5 On examination of the contentions of the appellant, the DC found the appellant as guilty of mis-declaration of goods and for clandestine removal of goods into DTA. Since, the appellant had committed a serious offence and betrayed the trust given to SEZ Units, the DC imposed a penalty of Rs. 1,07,12,710 i.e. five times of the value of such goods on the appellant u/s 11(2) of FTDR Act as made applicable vide Rule 54(2) of the SEZ Act, 2006 along with upholding the demand of Rs. 14,99,201/- equivalent to the Customs duty availed u/s 26 of the SEZ Act, 2005 vide Order-in-original dated 31.10.2019. In addition, the DC imposed personal penalty of Rs. Five Lakh on both the Directors of the appellant for their action and omissions in the case u/s 11(3) of FTDR Act read with section 25 of the SEZ Act, 2005

4.0 Aggrieved by the adjudication order dated 31.10.2019, the appellant filed the present appeal. During the personal hearing held on 10.01.2020 before me, the representative of the Appellant stated that the appellant has already admitted its fault for diversion of goods into DTA and paid the customs duty plus penalty imposed by Customs. As, the DC has imposed a harsh penalty on the appellant and its Directors, a lenient view may be taken.

5.0 I have gone through the facts of the case; written/oral submissions made by the appellant and all other aspects relevant to the case. It is noted that the units in SEZ



works under the trust based regime. They are given certain facilities and procedural exemption and relaxations on the basis of self certification. It is, therefore, the duty of the units and its proprietors/directors to maintain the trust bestowed on them and work in a manner upholding the supremacy of the law of land. In the present case, the appellant was trying to export short quantity of goods as compared to that declared in the shipping bill and was caught red-handed. It also removed the goods in DTA for illegal gains. Hence, the appellant, its directors have breached the trust by mis-declaring the goods in the export container and clandestine removal of goods in the DTA with an intention to defraud the Govt. revenue.

6.0 In view of the above, in exercise of the powers vested in me 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, I pass the following order:

Order

F.No. 01/92/171/48/AM-20 / PC-VII

Dated: 28.02.2020

The appeal preferred by the appellant is dismissed.


(Amit Yadav)
Director General of Foreign Trade

Copy To:

- 347 ✓ (1) Kanishk Overseas Pvt. Ltd., Plot No. 501, New Area, KETWZ, Kandla Special
Economic Zone, Gandhidham, Kutch
348 ✓ (2) Development Commissioner, KASEZ.
(3) DGFT Website.


(Shobhit Gupta)
Dy. Director General of Foreign Trade