

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

F. No. 01/92/171/47/AM-20/ PC-VI/24-25 Date of Order: 02.12.2020
Date of Dispatch: 02.12.2020

Name of the Appellant: M/s Maruti Exports
Plot No. 75-B, 76 to 81, 82-B,
Sector II, Kandla Special Economic Zone,
Gandhidham (Kutch)-370230

IEC Number: 3797000626

Order appealed against: Order-in-Original No. KASEZ/57/2019-20
dated 26.08.2019 passed by the
Development Commissioner, KASEZ

Order-in-Appeal passed by: Amit Yadav, DGFT

Order-in-Appeal

M/s Maruti Exports, Gandhidham (hereinafter referred to as 'the Appellant'), an SEZ unit, filed an appeal on 19.09.2019 u/s 15 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as "the Act") against Order-in-Original No. KASEZ/57/2019-20 dated 26.08.2019, issued from file No. KASEZ/IA/MEE/53/2018-19/6366-6371, passed by the Development Commissioner (here-in-after referred to as 'DC'), Kandla Special Economic Zone (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. Brief facts of the case:

3.1. The Appellant was issued a Letter of Approval (LOA) No. KASEZ/IA/1677(A)/97/3945 dated 30.07.1997 by DC, KASEZ for manufacturing of



- (1) Segregation of textile waste/ waste yarn, reconditioned clothing and rags from used waste clothes; (2) made- ups sets, comforter shells, pillow shells, quilt covers made from raw material produced from segregation of textile waste/ waste yarn and (3) readymade (woven) garments made from raw material produced from segregation of textile waste/waste yarn, reconditioned clothing and rags from used waste clothes. As per conditions at Sl. No. 1 and 11 of the Bond-Cum-Legal Undertaking (BLUT) filed by the Appellant under Rule 22 of SEZ Rules, it was obliged to abide by the provisions of SEZ Act and Rules/Orders made thereunder.
- 3.2. Vide DGFT's Notification No. 43 dated 19.05.2010, the sale of un-mutilated worn and used clothings by the SEZ units in the Domestic Tariff Area (DTA) was made "Restricted" for import. Further, as per the sub-para (iii) of the para 1 of the Customs Circular No. 36/2000 dated 08.05.2000, the old and worn clothes would be considered as rags, only if the said clothes are totally unserviceable and are beyond repairs.
- 3.3 KASEZ, vide File No. KASEZ/IA/Worn-Used Clothing/06-07 dated 06.06.2014 issued a circular No. 01/2014-15 stating that a penalty would be imposed in case there is mis-declaration while clearing such goods in the DTA.
- 3.3. It was observed that the Appellant filed Bill of Entries bearing No. 2010640 dated 20.09.2018 and 2000131 dated 04.01.2019 seeking DTA clearance of goods declaring the same as "Mutilated Synthetic/Cotton Rags" under Customs Tariff Code No. 63109020 and Bill of Entries No. 2000143 dated 05.01.2019 and 2000189 dated 07.01.2019, declaring the same as "Mutilated Synthetic/Cotton Rags (Garbage)", under Customs Tariff Code No. 63109040. On detailed examination by KASEZ, it was found that some of bales contained used clothes which were not properly mutilated in accordance with Custom Circulars and instructions issued in the matter from time to time. It was found that the goods of twenty-one bales were containing old and used clothes having only two small cuts along the seam at the bottom on both sides. Further on detailed examination of another 29 bales, it was found that these were stuffed with zippers attached with small cloths retrieved from used and worn clothings instead of mutilated rags as declared in Bill of Entries. The approximate weight of these impugned goods was about 22070 Kgs. The Appellant was informed that the goods presented for DTA clearance were not fit for removal in DTA, as the same did not conform to the requirements of mutilation prescribed vide Customs Circular No. 36/2000 dated 08.05.2000. The goods of the above mentioned fifty bales weighing approx 22070 Kg were seized under the reasonable belief that the same have contravened the provisions of the Customs Act, 1962 and SEZ Act, 2005 & Rule made thereunder. The value of seized goods ascertained at the rate of \$0.81 per Kg @ exchange rate Rs. 71.25 per USD, came to Rs. 12,73,715/-.



- 3.4 Consequently, a notice dated 29.07.2019 was issued to the Appellant to show cause as to why its LoA should not be cancelled and penalty should not be imposed on it and its directors under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006 and under Section 25 of SEZ Act, 2005 and why impugned mis-declared goods should not be confiscated under the provision of Section 11(8) of FTDR Act, 1992 read with Rule 17 of Foreign Trade (Regulation) Rules, 1993, as amended.
- 3.5 In its oral and written submissions before the DC, the Appellant stated that the valuation of the alleged goods was neither determined by the seizing officer nor by the Panchas. The declared value of the impugned goods was Rs. 4,71,746/- whereas in the SCN the assessed value had been taken as Rs. 12,73,715/-. The Appellant further stated that the valuation in the SCN was made on the basis of the report of a committee constituted in 2014. The committee for valuation was formed only for the purpose of determining the value of un-mutilated worn clothing. Further there is no provision in the FTDR Act, 1992 of SEZ Act/Rules which authorizes the DC, Kandla SEZ to enhance/re-determine the declared value. The Appellant further stated that even in the Seizure Memo dated 12.01.2019, the description of the goods was shown as "old & used mutilated clothes/rags", even in the Panchnama, the panchas have stated that the alleged offending goods of 13.41 MT of mutilated worn clothing were mutilated but not properly mutilated. It means that the mutilation of alleged offending goods was not strictly as per the Circular No. 36/2000 dated 08.05.2000 of CBEC. Further the quantity of 8.66 MTs of zippers are of no use as the same are damaged and have no commercial value.
- 3.6. On examination of the Appellant's submissions, the DC found that:
- (i) As per sub-para (iii) of para 1 of the Customs Circular No. 36/2000 dated 08.05.2000, the old and worn clothes would be considered as rags only if the said clothes are totally unserviceable and are beyond repair. The circular further clarified that the said good are unserviceable and beyond repairs could be ensured by applying criteria of three cuts or more, through the entire length of the garment, in a crisscross manner and not along the seams.
- (ii) If the garment has less than three cuts along its entire length and that too not along the seams, then it cannot be considered as 'Rags' but would be considered as a garment only. The partners of the Appellant in their own statement accepted that the goods presented for DTA clearance were only with two small cuts along with seams of both side and the same were not in conformity to the Customs Circular 36/2000 dated 08.05.2000.



(iii) On 10.01.2019, the Appellant by resorting to the said act of misdeed of mis-declaration of not properly mutilated worn and used clothing, as "Mutilated Synthetic/Cotton Rags" and "Mutilated Synthetic/Cotton Rags (Garbage)" was intended to clear restricted items into DTA.

3.7 Accordingly, the DC, KASEZ adjudicated the matter and imposed a penalty of Rs. 63,68,575/- on the Appellant under the provisions of Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 and a penalty of Rs. 5,00,000/- on each of the partner of the Appellant for their action and omission in the case under 11(3) of FTDR Act, 1992 read with Section 25 of the SEZ Act, 2005.

4.0 Aggrieved by the Order-in-Original dated 26.08.2019, the Appellant filed the present appeal. In addition to what was stated before the DC, the Appellant in its written as well as oral submissions during the personal hearing held on 18.09.2020 made following submissions:

(i) The enhancement of value of the goods is beyond jurisdiction of Development Commissioner. Valuation is within the sole domain of the Customs Act, 1962. It was also not given any opportunity of being heard to explain the case in this regard.

(ii) It had filed a Bill of Entry for 135.370 MTs of goods for which assessment of the goods was made by the proper officer accepting value of the alleged offending goods as Rs. 4,71,746 and therefore value of 22.070 MTs out of the total 135.370 MTs could not have been taken as Rs. 12,73,715/- by the DC.

(iii) Imposition of penalty equal to 500% of the value of the goods is disproportionate, harsh, unreasonable, arbitrary and unjustified for such irregularities. In such cases, where the goods were mutilated but not in accordance with the procedure laid down under Circular dated 08.05.2000 issued by the CBEC, the consistent practice has been to impose penalty ranging from 5% to 10% of the value of the goods.

(iv) Penalty of Rs.5 lakhs each on all the partners of the firm is not only unjustified but illegal also as Section 25 of the SEZ Act does not confer any power on the DC to penalize partners and directors of the firm functioning as SEZ Unit.

(v) In the matter of Tulit Exim Pvt. Ltd, the Ahmedabad Bench of the CESTAT vide Order No. A/13108-13109/2017 dated 04.10.2017 has held that the manner of mutilation incorporated under Circular dated 08.05.2000 was only a procedural restriction and not a mandatory requirement. Putting cuts on textile goods was



substantial compliance of the requirement of mutilation, and no case can be made out against an SEZ Unit only because the cuts were not made on the concerned goods strictly in accordance with the above Circular.

(vi) The Hon'ble Gujarat High Court in judgments like (i) Jalprakash Motwani 2010 (258) ELT 204 (Guj.) (ii) 2010 (259) ELT 179 (Guj.) (iii) 2010 (260) ELT 51 (Guj.) and M/s. Jupiter Exports- 2007(213) ELT 641 (Bom) has held that partnership firm and its partners not being separate or independent entities for taxation and penalty, no separate penalty is permissible on partners when penalty imposed on the firm.

(vii) The entire cargo was presented by it for inspection and examination which shows that there was no ill-intention on its part. Therefore, even a token penalty was not justified in this case.

5.0 Comments on the appeal were also obtained from the office of the DC, KASEZ. The DC, vide letter dated 04/05.11.2019, has inter-alia stated as under:

- (i) The Appellant attempted to clear the impugned goods into DTA, which were not properly mutilated and were not in conformity with CBEC Circular 36/2000 dated 08.05.2000 into DTA, by declaring the goods as "Mutilated Synthetic/Cotton Rags" and "Mutilated Synthetic/Cotton Rags (Garbage)". The Appellant in its own submission accepted that 22070 Kgs of goods were actually not properly mutilated in the manner as laid down in the Customs Circular 36/2000-Cus dated 08.05.2020. Hence, it has contravened and violated the terms and conditions of the LoA, BLUT, CBEC Circulars, Instructions and SEZ Act & Rules made thereunder.
- (ii) The assessing officer at the time of assessing the Bill of Entry does not examine the goods. Therefore, the Appellant's contention that the assessing officer accepted the different value of offending goods is not acceptable.
- (iii) The Appellant is engaged in the monopoly business of reprocessing of used & worn clothing out of the imported worn clothing falling under Chapter heading 63090000 which otherwise is restricted for import for normal DTA importer. This puts an additional responsibility/onus on the Appellant to be more law compliant.
- (iv) To present goods for inspection and verification is a mandatory provision to clear the goods into DTA. Hence, taking this plea that it presented the entire lot of goods for examination has no meaning.



- (v) The case reference cited by the Appellant is not applicable in this case as in both case references the Hon'ble High Court and the Tribunal held that the old and used clothes should be cut in a manner which renders the goods unserviceable and beyond repair, while in the present case goods were old and used clothes in intact condition having only two small cuts along the seam at the bottom on both sides, which was easily serviceable and repairable.
- (vi) It is not the right of the Appellant to claim that if any Adjudicating Authority imposed a penalty of 5% in any case than that will be squarely applicable or binding upon in its case also. The Adjudicating Authority decided the case on facts of the case and available evidences on record. Therefore, the Appellant's contention is baseless and without merit.
- (vii) As per Section 25 of SEZ Act, 2005, 'where an offence has been committed by a company, every person, who at the time of the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

6.0 I have considered the Adjudication Order dated 26.08.2019 passed by DC, KASEZ, oral/written submissions made by the Appellant, comments of the office of DC, KASEZ and all other aspects relevant to the case. It is noted that:

- (i) The Appellant has been found guilty of clandestinely clearing the goods into DTA which did not conform to requirements of mutilation prescribed under Customs Circular No. 36/2000 dated 08.05.2000. The criteria of the worn clothes to be considered as Rags was explicitly given in the said Custom Circular and was *sine qua none*. The said goods were also restricted for imports into DTA. One of the partners of the Appellant firm has also accepted in his statement that the said goods were not mutilated properly in accordance with the said Custom Circular.
- (ii) The value of the assessed goods was determined as Rs. 12,73,715/- on the basis of the report and assessment done by an assessing officer especially deputed for the purpose.
- (iii) The Appellant was given a Personal Hearing on 13.08.2019 by the DC, hence the plea of the Appellant that it was not given any opportunity to explain the case is not valid.
- (iv) It was mandatory on part of the Appellant to present the goods for inspection and verification for clearing into DTA. Therefore, plea of the Appellant having offered goods for inspection does not prove his innocence.



- (v) The Appellant was well aware of the fact that it was enjoying the benefits of doing business of in SEZ which is a trust-based scheme. Hence, it was expected to be more vigilant and careful in clearing the restricted goods into DTA. However, the Appellant did not comply with the conditions of Customs Circular while removing the goods into DTA.
- (vi) The Appellant contravened conditions No. (1) and (11) of the BLUT and Rule 48 of SEZ Rules read with Customs above mentioned circular and instructions.
- (vii) The case references cited by the Appellant are not applicable in the facts and circumstances of the present case.
- (viii) As per Section 25 of the SEZ Act, 2005, penalty can be imposed on the entity as well as on every person found guilty for the offence.
- (ix) As per Section 11(2) of the FTDR Act, the Adjudicating Authority is empowered, based on the facts of the case and gravity of the offence, to impose a penalty up to 5 times of the valuation of the goods in question.

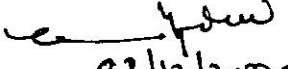
7.0 In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, I pass the following order:

Order

F.No. 01/92/171/47/AM-20/ PC-VI

Dated: 02.12.2020

The appeal is dismissed.


02/12/2020
(Amit Yadav)

Director General of Foreign Trade

Copy To:

- (1) M/s Maruti Exports, Plot No. 75-B, 76 to 81, 82-B, Sector II, Kandla Special Economic Zone, Gandhidham (Kutch)-370230
- (2) Development Commissioner, Kandla SEZ with an advice to make recoveries.
- (3) DGFT's web site


(Shobhit Gupta)

Dy. Director General of Foreign Trade